

REPORT OF THE HEAD OF PLANNING AND REGENERATION

**14/01452/MFUL INSTALLATION OF SOLAR ENERGY FARM ON
13.34 HA OF LAND TO GENERATE 5.5 MEGAWATTS OF ENERGY
(REVISED SCHEME) EST OF BOWDENS LANE, SHILLINGFORD**

Description of Development:

The application is for the installation of a ground mounted photovoltaic solar array on approximately 13.34 hectares of agricultural land to generate up to 5.5MW of power, together with associated infrastructure.

The application site lies approximately 1.4 kilometres to the north-east of Shillingford. The site consists of 5 agricultural fields and extends to approximately 13.34 hectares. The land is currently used for grazing. The topography of the site is south facing sloping land on the northern side of a valley. The site itself is on the lower ground which has a gentler slope than the higher fields. An overhead electricity line runs to the south of the site.

The development would consist of 26,300 crystalline PV panels mounted on steel frames to a maximum height of 3.5 metres, in rows facing towards the south. The application includes 5 x inverter/transformer cabins. The inverter cabins are to measure 8.7 metres x 2.6 metres and have a maximum height of 3.2 metres and will be on a concrete plinth set into the ground. A control building measuring 5 metres x 5 metres and 4.5 metres in height would be provided adjacent to the electricity sub-station at the Bowdens Lane entrance.

There would be an access track running east/west from the Bowdens Lane entrance to the site which would be approximately 1.4 kilometres long, 3 metres wide and surfaced with aggregate.

It is intended that the security fencing would be deer fencing with a height of 2.5 metres with security cameras mounted on the fence posts. No lighting is proposed.

Additional hedge and copse planting is proposed.

Permission is sought for a temporary 25 year period, after which the land would revert to agriculture.

REASON FOR REPORT:

- 1. To report to Members on the outcome of the review of the Minutes of the meeting of 5 November 2014 in relation to this planning application.**
- 2. To consider the reasons for refusal proposed by the Planning Committee at the meeting of 5 November 2014 in light of further advice from Officers and to decide how the Council would have determined the planning application had it the ability to do so in light of an appeal for non-determination submitted by the applicants on 23 December 2014.**

RECOMMENDATION:

1. That Members indicate that had they the opportunity to do so, that they would have approved planning permission for the scheme subject to conditions as set out in the officer report to Planning Committee 5th November 2014.
2. Should Members wish to refuse the application, that of the draft reasons put forward, they do so only on landscape and visual impact grounds:

In the opinion of the Local Planning Authority, due to the scale, design and siting of the proposed solar photovoltaic installation, the development is considered to have a significant adverse effect on the visual amenity and rural landscape character of the area, in particular when viewed from vantage points on local roads to the south and north west of the site and from the B3227 during winter months, and it has not been demonstrated that the harm could be addressed adequately by mitigation planting. The Local Planning Authority does not consider that the benefits of renewable energy production in this instance outweigh the significant adverse effect. The application is therefore considered to be contrary to policies COR2 and COR5 of the Mid Devon Core Strategy (LP1), DM2 and DM5 of the Local Plan 3 Development Management Policies and the National Planning Policy Framework.

Relationship to Corporate Plan:

None

Financial Implications:

Any appeal may require the appointment of planning consultants to assist in the defence of the reasons for refusal. The applicant may make an application for costs on any appeal against the Council and such costs claims are made by demonstrating that there has been unreasonable behaviour. The Council must be in a position to defend and substantiate each and every reason for refusal based on evidence.

Legal Implications:

Planning Committee may indicate that they would have refused this application contrary to officer advice. Due to the non-determination appeal jurisdiction for the determination of the application now lies with the Planning Inspectorate. If Members conclude that they would have refused permission had they the opportunity to do so, the reasons for refusal will form the Council's appeal case. The Council will need to be in a position to robustly justify and defend any reasons, calling on policy backing within the Development Plan and any other material considerations.

Risk Assessment:

If Committee decide to refuse the application for reasons that cannot be sustained at appeal there is a risk of a successful appeal costs claim against the Council for reasons of unreasonable behaviour.

Reason for report

At the meeting on 5 November 2014, Planning Committee indicated that they were minded to refuse the application and in accordance with the protocol covering proposed decisions against officer recommendation, consideration of the application was deferred for a further report setting out suggested reasons for refusal, advising on the implications of these reasons for refusal (the implications report), to ensure that the original report had considered

a number of specific policies which the Planning Committee listed, and to allow Planning Committee to attend a site visit. The site visit has now taken place.

The implications report was due to be considered at the Planning Committee meeting on 3 December 2014, following the site visit. At that meeting, Planning Committee were unable to approve the minutes of the previous meeting as they did not agree that the minutes were a true representation of the discussions and resolutions. The implications report had been based on the minutes and therefore could not be discussed. Consideration of the implications report was deferred until the minutes could be reviewed and the implications report reconsidered in the light of the reviewed minutes.

Since 3 December 2014, the application has been appealed to the Planning Inspectorate on non-determination. The Planning Committee are no longer able to determine this application, although it is requested that the Committee consider it to conclude whether they would have resolved to approve or refuse the application.

1. **Review of Minutes of the meeting of 5 November 2014**

The minutes drafted of the meeting of 5th November 2014 for this application (Minute 100b) were as follows:

***‘RESOLVED** that the Committee were minded to refuse this application but would defer making their final decision until receipt of an Officer report setting out the potential implications of the proposed decision and the taking place of a site visit. The reasons being as follows:*

- Landscape and visual impact of the proposal;*
- The effect on the local economy;*
- Highway impact;*
- Inappropriate use of medium grade agricultural land.’*

At the meeting of Planning Committee on 3rd December 2014 minute 108 records:

‘Discussion took place regarding the minutes of the previous meeting, it was suggested that the policies referred to in discussions during the Bowdens Lane application at the previous committee had not appeared in the resolution, it was also felt that appropriate reasons for refusal were not given and therefore the implications report that was before the Committee today did not contain the appropriate information. Members had sought additional information regarding a possible bond and the types of panels to be erected. It was felt that Members reasons for refusal needed to be incorporated into the implications report so that reasons were sound for appeal purposes.

Therefore subject to:

a) *the withdrawal of minute 100b from the minutes of the meeting of 5 November 2014 and the submission of a fresh minute identifying the various policy numbers and additional information if this formed part of the previous final resolution following review of the audio recording of the meeting; and*

b) *an amendment to the resolution of Minute 100(e) (i) removing the words "amendment to" and inserting "additional condition",*

*the minutes of the held on 5 November 2014 were approved as a correct record and **SIGNED** by the Chairman.'*

The review of the recording of the meeting of Planning Committee 5th November 2014 has occurred and was undertaken by the Principal Member Services Officer and the Professional Services Manager. The officers reviewed the recording and came to conclusion over whether the minutes as drafted were an accurate reflection of the resolution on the application. The officers undertook this separately.

It is important to note that a range of issues were debated but did not form part of the formal resolution. Both officers have concluded that the minutes as drafted record the formal resolution of the Planning Committee, but that the minutes should also have recorded that Members wished the following policies to be had regard to when drafting the proposed reasons for refusal:

COR2 a, b, c; COR5; COR11 a, b, c; DM2 a, b, c, e(ii); DM7 1.29; DM22 b, c, d and DM29 b.

These policies in themselves did not form proposed reasons for refusal, but rather were being suggested in support of the four proposed reasons. Whilst raised during discussion on the application, the formal resolution of the Committee did not refer to the taking of a financial bond or the type of panels.

2. Reasons for refusal and implications

Set out below are:

1. The Committee's proposed draft reasons for refusal,
2. Implications of refusing the application under each reason, and
3. Consideration of the relevant policies listed in the meeting that Members wished to be taken into account when drafting these reasons.

Set out below is suggested wording for the reasons for refusal to appear on the planning decision notice, together with any implications identified for each reason for refusal. This report does not repeat the reasons for the officer's original recommendation of approval, subject to conditions. These are set out in the report presented to the 5th November Planning Committee meeting.

2.1 Landscape and visual impact of the proposal

Suggested wording:

1. In the opinion of the Local Planning Authority, due to the scale, design and siting of the proposed solar photovoltaic installation, the development is considered to have a significant adverse effect on the visual amenity and rural landscape character of the area, in particular when viewed from vantage points on local roads to the south and north west of the site and from the B3227 during winter months, and it

has not been demonstrated that the harm could be addressed adequately by mitigation planting. The Local Planning Authority does not consider that the benefits of renewable energy production in this instance outweigh the significant adverse effect. The application is therefore considered to be contrary to policies COR2 and COR5 of the Mid Devon Core Strategy (LP1), DM2 and DM5 of the Local Plan 3 Development Management Policies and the National Planning Policy Framework.

In their report to Planning Committee, your officers identified that there would be some harm to the landscape character and visual quality of the area, but, in balancing that harm against the benefits of production of renewable energy, were of the opinion that the benefits outweighed the harm. Members should undertake this balancing exercise for themselves and come to a conclusion as to the weight attributable to both the harm identified and to the benefits and determine whether the harm outweighs the benefits.

2.2 The effect on the local economy

Suggested wording:

2. In the opinion of the Local Planning Authority, due its adverse effect on visual amenity and rural landscape character, the proposed solar photovoltaic installation is considered to harm the rural economy in an area which relies on tourism and country pursuits and which forms a gateway to Exmoor National Park, contrary to the National Planning Policy Framework which seeks to support a prosperous rural economy.

Members should consider any evidence they have of a negative impact on the rural economy of a solar farm in this location and weigh any harm identified against the benefits of the production of renewable energy. Members should ensure that the evidence on which their reason for refusal is based is robust enough to defend this reason for refusal at appeal. In addition Exmoor National Park Authority has not objected to the application. Instead it has confirmed that it does not wish to comment.

2.3 Highway impact

Suggested wording:

3. In the opinion of the Local Planning Authority, the increased traffic movements in Bowdens Lane during the construction period, the road being narrow and without passing places, would cause a significant danger to other road users, including to cyclists, horse-riders, pedestrians, and children using the Bowdens Lane play area, contrary to the National Planning Policy Framework.

The Highway Authority has indicated that, subject to compliance with the submitted construction management plan, it does not object to the development for reasons of highway safety. The construction period and associated disruption to the highway network would be for a limited period only (3-4 months). The National Planning Policy Framework states that development should only be refused on transport grounds where the residual cumulative impacts of development are severe.

Members should consider any evidence they have that the proposed development would have a significant impact on highway safety and ensure that the evidence on which their reason for refusal is based is robust enough to defend this reason for refusal at appeal. Members should bear in mind that the Highway Authority will not assist Members in defending this reason for refusal at appeal.

2.4 Inappropriate use of medium grade agricultural land

Suggested wording:

4. In the opinion of the Local Planning Authority, the proposal would represent an unacceptable development of medium quality agricultural land where it has not been adequately demonstrated that use of this land is necessary, contrary to the National Planning Policy Framework.

The National Planning Policy Framework defines “best and most versatile agricultural land” as land in grades 1, 2 and 3a of the Agricultural Land Classification and directs Local Planning Authorities to seek to use areas of poorer quality land in preference to that of a higher quality. Policy DM5 of the LP3 DMP states that development should consider the quality and productivity of the best and most versatile agricultural land and defines this as grades 1, 2 and 3a. The land has been assessed as being grade 3b with some grade 4.

At the meeting on 5 November, Members referred to the content of the Minister’s Speech referred to in Planning Practice Guidance which seeks to focus solar panels on previously developed and non-agricultural land. However, it does allow for agricultural land to be used for large scale solar PV if necessary, provided it is poorer quality land and an agricultural use can continue.

The land is not considered to be best and most versatile agricultural land in grades 1, 2 and 3a” and your officers therefore consider that, if a greenfield site can be demonstrated to be *necessary* for renewable energy development, then grade 3b and 4 land would be poorer quality land and would be acceptable.

Members are directed to the original officer’s report on page 59 which refers to the applicant’s assessment of alternative sites. Members should take into consideration the applicant’s assessment and come to a conclusion as to whether the applicant has demonstrated that there are no suitable alternative previously developed sites, and therefore whether the use of greenfield land is necessary.

3. Consideration of relevant policies

Members also asked officers to ensure that the following policies had informed their assessment of the application: COR2 a), b) and c), COR5, COR11 a), b) and c), DM2 a), b), c) and e) ii), DM7 1.29, and DM22 b), c) and d) and DM29 b). Taking these in turn:

COR2: This policy seeks to sustain the distinctive quality, character and diversity of Mid Devon’s environmental assets through high quality sustainable design, efficient use and conservation of natural resources and the preservation and enhancement of Mid Devon’s natural landscape. This policy is considered in the original committee report and is included in the suggested wording for the first reason for refusal.

COR5: This policy seeks to minimise the impact of climate change and seeks measures to contribute against the reduction of greenhouse gas emissions where the development of renewable energy would have an acceptable local impact, including visual, on nearby residents and wildlife. This policy is considered in the original committee report and is included in the suggested wording for the first reason for refusal.

COR11: This policy relates to flood risk and was considered in the officer’s original report. The Environment Agency has confirmed it has no objection to the proposal provided it proceeds in accordance with the surface water drainage strategy outlined in the proposal. Flooding did not form one of the Members’ reasons for refusal.

DM2: This policy seeks high quality design that demonstrates a clear understanding of the site, its wider context and surrounding area, makes efficient and effective use of the site, makes a positive contribution to local character and which takes account of surrounding landscapes and the amenities of neighbouring properties in its siting, layout, scale and massing. This policy is considered in the original committee report and is included in the suggested wording for the first reason for refusal.

DM7: This policy relates to development that negatively impacts the quality of the environment through noise, odour, light, air, water, land and other forms of pollution. Where development risks negatively impacting the quality of the environment through pollution, the policy requires that the application be accompanied by a pollution impact assessment. These issues are addressed in the original committee report. Pollution did not form one of the Members' reasons for refusal.

DM22: This policy relates to agricultural development and requires that development is sensitively located to limit adverse effects on the living conditions of local residents and respects the character and appearance of the area, will not have an unacceptable adverse effect on the environment and will not have an unacceptable traffic impact on the local road network. Your officers do not consider that this policy is strictly relevant to the proposal as although the development could be considered to be farm diversification, it is not agricultural development. However, each of the sub-paragraphs are in this policy addressed through consideration of other policies in the original committee report.

DM29: This policy relates to the proposal in that the development has the potential to affect the setting of Exmoor National Park. Where development proposals affect a protected landscape, the policy seeks to conserve and enhance biodiversity where possible through linking of habitats, landscaping and habitat creation. Consideration of the requirements of this policy is included in the officer's original report. Exmoor National Park Authority was re-consulted and has confirmed it does not wish to comment on the application.

Members also asked officers to consider the Minister's Speech by Greg Barker on 25 April 2013 which is referred to in Planning Practice Guidance. This was considered in the original officer's report and under paragraph 4 above.

Contact for any more information

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Background Papers

Planning Committee 5th November and 3rd
December 2014
Planning Practice Guidance
Ministerial speech 25th April 2013

File Reference

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Circulation of the Report

Cllrs Richard Chesterton
Members of Planning Committee