
APPLICATION NO.	P22/S1541/FUL
APPLICATION TYPE	FULL APPLICATION
REGISTERED	3.5.2022
PARISH	NUNEHAM COURTENAY
WARD MEMBER(S)	Sam Casey-Rerhaye Elizabeth Gillespie
APPLICANT	Cowley Baldon Green Limited
SITE	Nineveh Farm Nuneham Courtenay, OX44 9PA
PROPOSAL	Application under Section 73 (of the Town and Country Planning Act 1990) for the variation of condition 3 on application P20/S4360/FUL - to extend the time limiting restriction of the operational life of the proposed development from 35 to 40 years resolving the discrepancy between condition 3 and condition 19. (Installation of renewable led energy generating station comprising ground-mounted photovoltaic solar arrays and battery-based electricity storage containers together with substation, inverter/transformer stations, site accesses, internal access tracks, security measures, access gates, other ancillary infrastructure, landscaping and biodiversity enhancements).
OFFICER	Nicola Smith

1.0 INTRODUCTION AND PROPOSAL

- 1.1 This application has been referred to Planning Committee for a decision as the original application to which it relates was determined by the Planning Committee. Councillors Casey-Rerhaye and Gillespie have also requested that the application be referred to the Committee for a decision.
- 1.2 At the Committee meeting on 15th December 2021 Councillors resolved to grant planning permission for the *“Installation of renewable led energy generating station comprising ground-mounted photovoltaic solar arrays and battery-based electricity storage containers together with substation, inverter/transformer stations, site accesses, internal access tracks, security measures, access gates, other ancillary infrastructure, landscaping and biodiversity enhancements”*. After consulting with the Secretary of State, as per the Town and Country Planning (Consultation) Direction, temporary permission was granted on 11 January 2022. Application P20/S4360/FUL refers. The development has not yet begun.
- 1.3 This 123-hectare site (excluding the grid connection route), which is shown on the OS extract **attached** as **Appendix A**, is located to the south of the Oxford Science Park and to the north of Nuneham Courtenay village. The site consists of 6 arable fields, five of which are identified to contain solar panels, and is wholly located within the Oxford Green Belt. A full description of the development site can be found in the Officer’s report for the original application which is located at **Appendix B**.

- 1.4 This current application seeks consent to vary Condition 3 attached to planning permission P20/S4360/FUL to extend the life of the temporary permission by an additional 5 years (from 35 to 40 years). Condition 3 currently reads as follows:

Planning permission is hereby granted for a temporary period of 35 years from the date of the first commercial export of energy. No later than one month after the first commercial export of energy the applicant shall supply written notice to the local planning authority. Following the expiry of the 35 years temporary period all ancillary equipment and structures shall be decommissioned and removed from the site within 12 months in accordance with the Decommissioning Method Statement agreed pursuant to Condition 19.

Reason: Because of the temporary nature of the development and in order to safeguard the amenities of the area and protect the rural character of the area in accordance with Policies STRAT6, ENV1, DES1 and DES9 of the South Oxfordshire Local Plan 2035.

- 1.5 Condition 19, referred to in condition 3, requires a decommissioning method statement and reads as follows:

Not less than 12 months before the cessation of the development hereby permitted, a Decommissioning Method Statement (DMS) shall be submitted to and approved in writing by the Local Planning Authority. The DMS shall include details of the removal of the panels, supports, inverters, cables, buildings and all associated structures and fencing from the site, and a timetable for their removal. The DMS shall also include a traffic management plan to address likely traffic impacts during the decommissioning period and details of the proposed restoration of the site. The site shall be decommissioned in accordance with the approved DMS within 6 months of the expiry of the 40 year period of planning permission.

Reason: Because of the temporary nature of the development and in order to safeguard the amenities of the area and protect the rural character of the area in accordance with Policies ENV1, DES1 and DES9 of the South Oxfordshire Local Plan 2035.

- 1.6 The application has been accompanied by a covering letter which sets out the applicant's case for allowing the variation of condition, and an updated Environmental Statement addendum to reflect the change requested. It should be noted that no other changes to the original proposal are proposed.
- 1.7 As discussed in paragraph 6.1 below, this application seeks only to vary Condition 3. This report will only deal with this matter and the implications of the variation in planning terms, but a full discussion of all the issues can be found in the original Officer's report at **Appendix B**.
- 1.8 The Committee is advised that, in accordance with paragraph 4 of the Town and Country Planning (Consultation) (England) Direction 2009, a positive decision for this application is required to be referred to the Secretary of State. The previous resolution to grant planning permission for the original application was referred to the Secretary of State, who determined not to call it in for his own determination.

2.0 **SUMMARY OF CONSULTATIONS & REPRESENTATIONS**

2.1 Parish Councils, local residents and interest groups:

Marsh Baldon and Toot Baldon Parish Councils	<ul style="list-style-type: none"> No comments received
Nuneham Courtenay Parish Council	<ul style="list-style-type: none"> No comments received
Sandford-on-Thames Parish Council	<ul style="list-style-type: none"> No comments received
Garsington Parish Council	Object <ul style="list-style-type: none"> Garsington Parish Council wishes to support the CPRE objection [please see CPRE response below]
Neighbour representations	<p>Two comments from members of the public have been received in relation to this application raising the following concerns:</p> <ul style="list-style-type: none"> The initial application, was not considered under the Council's own Local Plan DES 9, as is required by planning law Green Belt land and food security, as well as neighbourhood amenity, should not be destroyed to profit speculative solar farm development Has there been a modern slavery assessment of where the panels will be manufactured (in a very non net zero process) SODC Net Zero by 2030 Policy is not democratic as it was not in any party's election manifestos in 2019 If net zero is to be achieved to any degree, it should not be at the expense of arable farmland but on brownfield sites only and rooftops
South Oxfordshire District of Campaign to Protect Rural England (CPRE)	Object <ul style="list-style-type: none"> The time extension would continue the acknowledged harm arising from the development for a further five years rather than requiring it, if appropriate, to be re-applied for after thirty-five years. The shorter the time period granted for what may in the interim become outdated and inappropriate technology the greater the public interest is served.
Gardens Trust	No comments to make <ul style="list-style-type: none"> We have considered the information provided in support of the application and on the basis of this confirm we do not wish to comment on the proposals at this stage. We would however emphasise that this does not in any way signify either our approval or disapproval of the proposals.

2.3 Technical Consultees:

Insight & Policy (Climate Action Lead Officer)	<ul style="list-style-type: none"> The Climate Team has already commented on the original application P20/S4360/FUL and we do not have any further comments.
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Conservation Officer	<ul style="list-style-type: none"> No further heritage observations arising from this.
Historic England	<ul style="list-style-type: none"> No comments to make
Countryside Officer	<ul style="list-style-type: none"> No comments to make
Drainage Officer	No objection <ul style="list-style-type: none"> The proposal to extend a time limiting restriction has no impact on flood risk or drainage and therefore, I would have no objections to the Section 73 for the variation of condition 3 on application P20/S4360/FUL.
Forestry Officer	<ul style="list-style-type: none"> No comments to make
Contaminated Land	<ul style="list-style-type: none"> No comments to make
Landscape Architect	<ul style="list-style-type: none"> No comments to make
Natural England	<ul style="list-style-type: none"> No comments to make
Environment Agency	No objection <ul style="list-style-type: none"> Subject to previous condition being re-applied
Oxford City Council (Planning)	No response
Oxfordshire County Council Single Response	<i>Transport Development Control</i> No objection <i>Lead Local Flood Authority</i> No objection <i>Archaeology</i> No objection <ul style="list-style-type: none"> Subject to conditions [as previous]

3.0 RELEVANT PLANNING HISTORY

3.1 [P20/S4360/FUL](#) - Approved (11/01/2022)

Installation of renewable led energy generating station comprising ground-mounted photovoltaic solar arrays and battery-based electricity storage containers together with substation, inverter/transformer stations, site accesses, internal access tracks, security measures, access gates, other ancillary infrastructure, landscaping and biodiversity enhancements (additional information January, March, August, September 2021) and amended plans received 10 November 2021.

[P21/S3848/OH](#) - Approved (29/09/2021)

Notification of Permitted Development and Prior Approval Request at Cowley Substation.

Installation of new earthing transformer.

[P19/S3264/PEJ](#) - Advice provided (19/05/2020)

The proposed development will comprise the following; construction and operation of a grid connected solar PV farm, with battery storage and other associated infrastructure.

[P20/S0562/FUL](#) - Approved (13/05/2020)

Installation of 33kV Underground Cable (as amended by plans received on 20 April 2020)

[P20/S0002/PEJ](#) - Advice provided (12/02/2020)

Proposed Temporary Installation of a Battery Storage and Peaking Gas Development

[P19/S0623/FUL](#) - Approved (19/07/2019)

Construction and operation of a 49.9MW battery storage facility, access road and hard surfacing; and a habitat management area on land to the South of the existing Cowley substation. As clarified by Applicant's email dated 3 April 2019 and as further clarified and amended by Botanical Report, Habitat Management Plan, Updated Net Gain Assessment accompanying Agent's letter dated 29 May 2019 and Agent's letter dated 15 July 2019.

[P17/S4225/PEM](#) - Advice provided (08/01/2018)

Installation of a battery-based energy storage facility (with maximum charge and discharge rate of up to 49.99mw) together with transformer, parking area, CCTC, landscaping, security fencing and associated infrastructure and equipment.

4.0 ENVIRONMENTAL IMPACT ASSESSMENT

4.1 The size and nature of the proposed development, the characteristics of the site and cumulative impacts were considered under the original scheme. Based on the likely environmental impacts of the development, the development was considered to be Environmental Impact Assessment (EIA) development for the purposes of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

4.2 A positive Screening Opinion was issued on 29 July 2020, which confirmed that the proposals are EIA development. An Environmental Statement (ES) was submitted with the original planning application. The specific environmental topics scoped into the ES include landscape and visual impact, and cultural heritage. Officers have taken the ES into account including the environmental impacts and mitigation.

4.3 The National Planning Policy Guidance states that an application made under Section 73 of the 1990 Town and Country Planning Act is considered to be a new application for planning permission under the 2017 Environmental Impact Assessment (EIA) Regulations. Where an EIA was carried out on the original application, the planning authority will need to consider if further information needs to be added to the original Environmental Statement to satisfy the requirements of the Regulations. Whether changes to the original Environmental Statement are required or not, an Environmental Statement must be submitted with a section 73 application for an EIA development. In this case an addendum to the Environmental Statement has been submitted in support of this application. Officers have taken the information set out in the ES addendum into account.

5.0 POLICY & GUIDANCE

5.1 Development Plan Policies

In the case of South Oxfordshire, the Development Plan is the South Oxfordshire Local Plan 2035, which was adopted in December 2020 and any "made" Neighbourhood Plans within the relevant geographical area. The Baldons has a made Neighbourhood Development Plan, the development is partially within the designated area of the made Neighbourhood Plan. Nuneham Courtenay does not have a made Neighbourhood Plan.

5.2 South Oxfordshire Local Plan 2035 (SOLP) Policies:

STRAT1 - The Overall Strategy

STRAT6 - Green Belt

STRAT11 - Land south of Grenoble Road

EMP10 - Development in Rural Areas

ENV1 - Landscape and Countryside

ENV2 - Biodiversity - Designated sites, Priority Habitats and Species

ENV3 - Biodiversity

ENV4 - Watercourses

ENV5 - Green Infrastructure in New Developments

ENV6 - Historic Environment

ENV7 - Listed Buildings

ENV8 - Conservation Areas

ENV9 - Archaeology and Scheduled Monuments

ENV10 - Historic Battlefields, Registered Parks and Gardens and Historic Landscapes

ENV11 – Pollution – Impact from Existing / Previous Land Uses

ENV12 - Pollution - Impact of Development on human health, the natural environment and/or local amenity

DES1 - Delivering High Quality Development

DES2 - Enhancing Local Character

DES6 - Residential Amenity

DES7 - Efficient Use of Resources

DES9 - Renewable Energy

TRANS4 - Transport Assessments, Transport Statements and Travel Plans

TRANS5 - Consideration of Development Proposals

5.3 Neighbourhood Plan

Baldons Neighbourhood Plan

Policy 1 - General principles

Policy 3 - Local Gaps

5.4 Supplementary Planning Guidance/Documents

South Oxfordshire Design Guide 2016 (SODG 2016)

Developer Contributions SPD

5.5 National Planning Policy Framework and Planning Practice Guidance

5.6 Other Planning Guidance/Documents

- National Policy Statement for Overarching Energy (EN-1)
- National Policy Statement for Renewable Energy Infrastructure (EN-3)
- National Policy Statement for Electricity Networks (EN-5)
- UK Solar PV Strategy Part 1: Roadmap to a Brighter Future
- UK Solar PV Strategy Part 2: Delivering a Brighter Future
- Oxfordshire Energy Strategy
- National Infrastructure Commission - Net Zero - Opportunities for the Power Sector
- BRE's Planning Guidance for Large Scale Ground Mounted Solar PV Systems
- The Solar Trade Association's Solar Farm 10 Commitments

5.7 Other Relevant Legislation

Human Rights Act 1998

The provisions of the Human Rights Act 1998 have been taken into account in the processing of the application and the preparation of this report.

Equality Act 2010

In determining this planning application the Council has regard to its equalities obligations including its obligations under Section 149 of the Equality Act 2010.

6.0 **PLANNING CONSIDERATIONS**

6.1 Section 73 of the 1990 Act relates to planning applications for development without complying with conditions placed upon a previous permission. Consideration should only be given to the conditions subject to which the planning permission should be granted. If it is agreed that planning permission should be granted subject to conditions differing from those previously imposed, planning permission should be granted. If the Council decides that planning permission should be granted subject to the same conditions as those originally imposed, the application should be refused.

6.2 The relevant planning consideration in relation to the variation of Condition 3 is whether the development should have a temporary time period of 35 or 40 years.

6.3 The principle of developing this site for a solar farm was established through the granting of permission P20/S4360/FUL. Therefore, in considering this application for an additional five years the planning considerations relate specifically to the impact the additional five years would have on the following:

- Openness of the Green Belt
- Landscape impact
- Agricultural land
- Other material planning considerations

Openness of the Green Belt

6.4 In terms of Green Belt, the NPPF addresses the appropriateness of locating renewable energy developments in the Green Belt at paragraph 151, which states: *“When located in the Green Belt, elements of many renewable energy projects will comprise inappropriate development. In such cases developers will need to demonstrate very special circumstances if projects are to proceed. Such very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources.”*

6.5 The development proposed by the original application was found to be inappropriate development in the Green Belt and therefore harmful to the openness of the Green Belt (see paragraph 6.13 of the original report). However, the permission was granted on the basis that very special circumstances existed to outweigh the harm to the Green Belt (see paragraphs 6.70-6.73 of the original report for a full discussion of this matter). Local Plan policy DES9 states that proposals for renewable energy generation will be supported, provided they do not cause significant adverse impact on [inter alia] the openness of the Green Belt. This proposal would cause harm to the Green Belt as identified. However, the original Committee report went on to assess the proposal using the tests set out in the NPPF, those of very special circumstances, which policy DES9 does not do. Under the tests of the NPPF the report found that very special circumstances did exist and that planning permission should be granted. At the Planning Committee meeting on 15 December 2021 members resolved to grant planning permission subject to the referral to the Secretary of State in accordance with the requirements of Section 77 of the Town and Country Planning Act 1990.

6.6 In considering the current proposal, to increase the life of the temporary planning permission for the permitted solar farm to 40 years, this is again assessed under national and local policy. The development itself remains “inappropriate” when assessed against Green Belt Policy and is by definition harmful to the openness of it, thereby contrary to Policy DES9 of the South Oxfordshire Local Plan, However the Council are obliged also to consider the policy set out in the national planning guidance in the NPPF and whether the very special circumstances previously accepted in consideration of the original consent continue to apply. To confirm, the solar farm would

remain temporary, albeit for five years longer than originally granted, for a period of 40 years rather than 35 years, and my conclusion on the exceptional circumstances follows the consideration of the material planning considerations below.

Landscape Impact

- 6.7 The development proposed by the original application was considered to be acceptable in terms of its landscape impact. Paragraphs 6.28 - 6.34 of the original report discuss this matter in detail, however, to summarise, the solar farm would have no significant visual effects outside the boundaries of the site. With the exception of field 4, the site is well screened from the surrounding area and views from surrounding public vantage points are limited to glimpses. Within the site, two public rights of way cross the site, the experience of travelling these footpaths will be altered by the development, but not detrimentally so due to the large landscape offset areas between the footpath and panel areas and the proposed planting of a “wildflower avenue”.
- 68 The current proposal to extend the temporary life of the solar farm would not alter the landscape impact of the solar farm from either within or outside of the site. The original report details the landscape harm that will result from the application, this will remain for a further five years as a result of the additional time, albeit that is balanced with an additional five years of maturation of the planning proposed as part of the mitigation. The only change is that the landscaping planted as part of the mitigation will have five additional years to mature, with the respective benefits to the landscape and wildlife that would bring.

Agricultural Land

- 6.9 The impact of the loss of agricultural land would be extended by five years from that already permitted. This is a concern which was raised in relation to the original application. The land on which the proposal is located is of a moderate agricultural quality and is not Best and Most Versatile (BMV) agricultural land, save for a small area as detailed in the original report. Members will recall that panels were removed from field 6, some 19.1ha of Grade 2 land, to enable that land to remain as part of the working agricultural holding. This proposal is in accordance with planning policy as it avoids the use of BMV land as far as practicable.

Other Material Planning Considerations

- 6.10 The applicant has put forward a case for the extension to the existing consent as follows:
- An extended operational life maximises the period within which the Solar Farm can generate renewable electricity and contribute to carbon reduction and Net Zero targets beyond 2050.
 - The greater operational period of the development represents no materially greater harm and will provide a greater contribution to the UKs low carbon energy needs for a longer period.
 - Landscaping will already be well established, and will benefit from continuous management
 - The proposal will not alter the fact that the scheme is reversible and would be removed after 40 years.
- 6.11 The technical consultees advise that there would be no greater impact in terms of heritage, drainage, highways or ecology. Neither would there be any greater impact on residential amenity as a result of the additional 5 years.
- 6.12 Comments from the CPRE, which are endorsed by Garsington Parish Council, have pointed out that the applicants could apply to renew the application after the 35 years

and the issues would be re-assessed at that time. This is of course correct, and a possible course of action open to the applicants. However, as the application has been submitted the Local Planning Authority is required to assess it on its merits.

- 6.14 As advised above, an EIA addendum has been submitted. Since the time of the original permission there have been no material changes to the environment nor proposals for development which would affect the cumulative impact assessment.

7.0 CONCLUSION

- 7.1 The factors that weighed in favour of the proposal in the consideration of the original application are still applicable, including the need for renewable energy which is reflected in national and local policy. An additional five years would enable the generation of further renewable energy. This proposal therefore remains acceptable since very special circumstances exist which in this case outweigh the harm to the openness of the Green Belt.
- 7.2 In conclusion it is considered that the granting an additional 5 years will not result in any significant additional adverse impacts on the openness of the Green Belt, nor the wider landscape. There will be a further five years where the land could not be utilised for arable agriculture however when balanced against the need for renewable energy this is not considered significant. Additionally, there are no technical reasons such as drainage, highways or ecology which raise concerns. Accordingly, the application is recommended for approval.

8.0 RECOMMENDATION

Grant planning permission for the variation of condition 3 subject to:

- (i) Referral to the Secretary of State under the terms of the Town and Country Planning (Consultation) (England) Direction 2009; and**
- (ii) Subject to the application not being called-in by the Secretary of State for determination, grant planning permission subject to the following conditions**

1) Planning permission is hereby granted for a temporary period of 40 years from the date of the first commercial export of energy. No later than one month after the first commercial export of energy the applicant shall supply written notice to the local planning authority. Following the expiry of the 40 years temporary period all ancillary equipment and structures shall be decommissioned and removed from the site within 12 months in accordance with the Decommissioning Method Statement agreed pursuant to Condition 19.

2) and conditions as summarised below:

- 1. Time Limit for commencement**
- 2. Approved Plans**
- 3. Temporary permission (40 years)**

Pre-commencement

- 4. Landscaping details**
- 5. Landscape Management Plan**
- 6. Vehicular access improvements**
- 7. Construction Traffic Management Plan**
- 8. Archaeological watching Brief**
- 9. Implementation of Archaeological works**

- 10. Construction Environmental Management Plan**
- 11. Tree Protection**
- 12. Visibility Splay**

Prior to first use

- 13. Sustainable Drainage Scheme**

Compliance

- 14. Archaeology protection**
- 15. Flood risk**
- 16. Wildlife Protection measures**
- 17. External lighting**
- 18. Removal of unused panels**

End of the temporary period

- 19. Decommissioning method statement**

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