

Application Details	
Application Reference Number:	3/39/21/028
Application Type:	Full Planning Permission
Earliest decision date:	02 nd May 2023
Expiry Date	24 th March 2022
Extension of Time Date	24 th March 2023
Decision Level	Planning Committee
Description:	Installation of a ground mounted solar farm with battery storage and associated development
Site Address:	Land to the north of the Transmitting Station, Washford, Williton.
Parish:	39
Conservation Area:	Not applicable
Somerset Levels and Moors RAMSAR Catchment Area:	Not applicable
AONB:	Quantock Hills
Case Officer:	Mr J Holbrook
Agent:	Mr S Chapman, RPS Consulting UK & Ireland Ltd
Applicant:	Mr D Meehan, Elgin Energy EsCo Ltd
Committee Date:	18 th July 2023
Reason for reporting application to Committee	Deferred from Planning Committee – West meeting on 20 th June due to the large amount of recent additional information received from interested parties and the lack of time for members of the planning committee to read and consider this information.

Cover Report for original officers report for 3/39/21/028 (attached as an appendix)

This planning application (Application Reference Number: 3/39/21/028) was originally included as agenda item no.5 for the Planning Committee – West held in Deane House on Tuesday 20 June 2023 at 2.00pm.

In advance of the presentation from officers, it was proposed by the Chair to defer the application due to the large amount of additional information that was received

from interested parties and the lack of time for members of the Planning Committee to read and consider this information. On being seconded and being put to a vote, this was carried by eight in favour, one against and one abstention.

Late representations had been received between the publication of the original committee agenda and report for the 20 June Planning Committee – West and the meeting itself.

These representations were sent through by a variety of communication methods including the use of the electronic forms on the Council website, emails to officers in Development Management (Planning) and Democratic Services, and emails to the Chair and members of Planning Committee - West. In total eleven additional representation were received.

Exmoor National Park Authority submitted an additional letter, dated 15 June 2023 providing final comments. They made reference to Paragraph 176 of the National Planning Policy Framework (NPPF) which states that “...development within their setting (*‘national parks’ Exmoor National Park’s emphasis*) should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas.’

Exmoor National Park Authority have expressed ‘strong reservations’ in relation to this application since August 2022 due to the ‘anticipated’ harm that the development may cause to the setting of the National Park and views from it.

Following additional information submitted by the agent for this scheme in August 2022 and January 2023, the additional Landscape Visual Assessment (LVA) work has not changed the position held by the National Park, in relation to how the scale of the development and its massing would adversely affect views from within the National Park. Exmoor National Park consider that the proposed development would be harmful to the setting of the National Park and the special qualities of the landscape in this area would be harmed by inappropriate development in this location. Exmoor National Park Authority have asked members ‘to give due consideration to the anticipated harm that this development may cause to the National Park and its setting’.

Nine additional late representations have been received from individuals (some of whom have commented on this planning application before) objecting to the proposed scheme. Points raised include:

- Supportive of Solar PV but not at the detriment to farmland

- The cumulative impact due to its close proximity to Higher Bye Farm Solar PV.
- Adverse impact on visitors' perception of the area.
- Concerns that Watchet Conservation Society's letter of objection from February 2022 had not been published and uploaded on to the Public Access website.
- Objecting to all of the reasons summarised on pages 12-16 of the 52 page committee report (originally an agenda item (No.5) for the Planning Committee West meeting, dated 20 June).
- Object to the siting of PV's on the ground that they will be visible from the only/main tourist route into Watchet and the loss of good quality agricultural land.
- Disagree with the weights that have been attributed to the benefits and harm of the proposed scheme.
- Food security
- Statutory consultees and lack of responses.
- Local Plan Policy not given correct consideration.
- Fire Risk.
- The need for an Environmental Impact Assessment (EIA).
- Tenant farmers personal circumstances are a material consideration.
- Loss of Best and Most Versatile (BMV) Agricultural Land.

It should be noted that some of these late representations included video evidence (notably video filmed by drone across the site) which, as per the guidance on the Council website, the Local Planning Authority is unable to accept.

Submissions have also included hyperlinks to external documents or evidence hosted on third party websites. The Local Planning Authority cannot rely on documents or evidence that it cannot directly control in respect of availability and content.

The Local Planning Authority has sought to ensure that any comments that could be construed as offensive, inflammatory or libellous have not been considered.

Whilst the majority of the points raised have been considered in great detail and depth by Officers over the last eighteen months and summarised in the appended committee report from the 20th June Planning Committee West, the following points have been expanded upon to provide members of the Planning Committee with confidence that these issues have been considered. They are as follows:

1. Tenant Farmers Personal Circumstances
2. Food Security
3. Fire Risk

4. The Environmental Impact Assessment (EIA) process.
5. Statutory consultee and lack of responses

1. Tenant Farmers Personal Circumstances

CPRE Somerset provided a letter on the 20 June making reference to a High Court Judicial Review case (R v Vale of Glamorgan D.C, High Court, case no. CO/2775/99), which they considered established that tenant farmer's personal circumstances are a material planning consideration, contrary to the officer's report from the 20 June 2023.

Paragraphs 10.13.1 and 10.13.2 within the appended 20 June 2023 report have sought to succinctly summarise that planning permission runs with the land as opposed to named applicants, landowners or operators. The report highlighted that individual personal circumstances should be afforded 'little or no weight in the planning balance'

The case referred to above has been reviewed by the Local Planning Authority and Legal and it is considered that the advice in the appended report remains correct. Officers have expanded upon this advice below.

In the above case from Wales, the Court held that committee members were not fully informed prior to making a decision and that paragraphs within the Planning Guidance (Wales): Planning Policy (PGWPP) and the draft Unitary Development Plan were incorrectly interpreted. The case related to the loss of agricultural buildings to residential use.

This case law states that the personal circumstances of an occupier of land can be taken into account as material considerations, but only exceptionally. The case further refers back to the established case law in England for this issue (Westminster City Council v. Great Portland Street Estates Plc (1985) which states (with emphasis added):

*"Personal circumstances of an occupier, personal hardship, the difficulties of businesses which are of value to the character of a community are not to be ignored in the administration of planning control. It would be inhuman pedantry to exclude from the control of our environment the human factor. The human factor is always present, of course, indirectly as the background to the consideration of the character of land use. It can, however, and sometimes should, be given direct effect as an exceptional or special circumstance. **But such circumstances, when they arise, fall to be***

considered not as a general rule but as exceptions to a general rule to be met in special cases. If a planning authority is to give effect to them, a specific case has to be made and the planning authority must give reasons for accepting it. It follows that, though the existence of such cases may be mentioned in a plan, this will only be necessary where it is prudent to emphasise that, notwithstanding the general policy, exceptions cannot be wholly excluded from consideration in the administration of planning control."

Whilst the personal circumstances of the tenant farmers are capable of being material considerations, , in the view of officers, these should be afforded little or no weight in the planning balance in this application, as per Paragraph 10.13.2 of the committee report from 20 June 2023. However, it is ultimately for the committee members to decide whether these personal circumstances are sufficiently exceptional or special to justify taking them into account and, if so, the weight to be afforded to them in the planning balance.

2. Food Security

A number of individuals have raised the issue of food security and the potential loss of agricultural land. This has been referred to within Paragraph 10.13.12 of the appended report from 20 June 2023.

However, an additional point has been raised as to why the appended report has not focussed on the food security issue, in as much detail as the Energy crisis. Quite simply, national and local planning policy provides a detailed steer on energy and the need for renewables. Whilst there are groups lobbying central government seeking to ensure that the issue of food security is enshrined in the new National Planning Policy Framework (NPPF), this issue is not captured in planning policy, at this moment in time. Therefore, it cannot be afforded similar weight.

3. Fire Risk

A number of individuals have sent the Local Planning Authority, a copy of the National Fire Chiefs Council (NFCC) guidance for the Fire and Rescue Service. The ten-page document is titled 'Grid Scale Battery Energy Storage System Planning'.

The note correctly identifies that the Fire and Rescue Service may be engaged throughout the planning process but that this is not a statutory requirement. The NFCC's expectation is that a comprehensive risk management process must be undertaken by operators to identify hazards and risks specific to the facility and develop, implement, maintain and review

risk controls. From this process a robust Emergency Response Plan should be developed.

The Local Planning Authority (LPA) are therefore proposing a condition (No. 16) within the appended report which would ensure that a detailed Battery Safety Management Plan (BSMP) is submitted to and approved in writing by the LPA. It will be at this point with the comprehensive details that the FRS can be consulted.

4. The Environmental Impact Assessment (EIA) process

A late representation was received by members of the Planning Committee on the 19 June 2023, by email, raising the potential non-compliance with the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. The individual considered that members will be unable to weigh all the benefits and harm of the project in the planning balance without reflecting on the material considerations contained in an Environmental Impact Assessment (EIA), and that the application is incomplete and misleading without an EIA.

This issue has been captured and summarised in Section 6 of the appended committee report. Officers dealing with this application have considerable expertise in relation to the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and have sought to succinctly summarise that whilst this proposed scheme is classed as 'Schedule 2', the proposed works would not have 'significant environmental effects' and so would not require an Environmental Impact Assessment (EIA). That is not to say that the proposed scheme would not have any environmental effects and these have been considered, as part of the normal processes of dealing with a planning application of this nature.

Paragraph 6.4 of the appended committee report was specifically included to reassure members that Central Government have published indicative criteria and thresholds for this type of development, as to when an EIA may be required, and it would usually be where energy generation outputs are more than 50MW (i.e. double the generation of this proposed scheme).

5. Statutory consultee and lack of responses

Individuals have raised concerns that some bodies that have been consulted have not responded. For the benefit of members, this is not out of the ordinary and there will be instances where consultees do not respond as they have no comments (either positive or negative to make).

Statutory consultees have twenty-one days to respond on the first round of consultation (and fourteen days for any subsequent consultations).

In preparing this report the planning officer has considered fully the implications and requirements of the Human Rights Act 1998 and the Equality Act 2010.