

DELEGATED REPORT

FILE REFERENCE: SMD/2015/0541

MAIN ISSUES:

Whether the proposed development is Permitted Development in accordance with The Town and Country Planning (General Permitted Development) (England) Order 2015

PUBLICITY/REPRESENTATIONS:

Leekfrith Parish Council – Fully Support proposals

CASE OFFICER ASSESSMENT:

The consideration of this application is whether the proposals as set out in the application submission would be permitted development as set out in The Town and Country Planning (General Permitted Development) (England) Order 2015. The application proposals are for an array of free standing solar panels on land within the ownership of Severn Trent Water at their Tittesworth Reservoir site. Schedule 2 Part 14 of the GPDO 2015 sets out the permitted development requirements for proposals which relate to renewable energy. The proposals are of a scale which would be deemed to be not permitted under the restrictions set out under this Part of the GPDO. Notwithstanding this, the application proposals purport to be development by a statutory undertaker and therefore Schedule 2 Part 13, which relates to Water and Sewerage undertakers is a relevant consideration. Severn Trent Water are a statutory undertaker and it is therefore relevant to consider the proposals under this Part of the GPDO.

Part 13 Class A (Water or hydraulic power undertakings) states that Permitted Development under this class is ***“Development for the purposes of their undertaking by statutory undertakers for the supply of water or hydraulic power”***.

The application proposals are for the provision of a solar array of free standing solar panels. The application submission confirms that the proposed solar panels will contribute towards powering the clean water treatment operation. The solar array would generate approximately 218,124kWh of energy. The energy consumed by the works amounts to 3,800,968kWh per annum. The proposals would contribute 6% of the current off grid energy imports. As the energy generated by the solar array will directly contribute towards the operations of the site, rather than be directed into the grid, it is considered that the proposals will be for the purposes of the undertaking.

Part13 Class A confirms that development is permitted development where it consists of:

a) *Development not above ground level required in connection with the supply of water or for the conserving, redistributing or augmenting water resources, or for the conveyance of water treatment sludge.*

The proposals do not fall under this requirement

b) *Development in, on or under any watercourse and required in connection with the improvement or maintenance of that watercourse*

The proposals do not fall under this requirement

c) The provision of a building, plant, machinery or apparatus in, on, over or under land for the purpose of survey or investigation

The proposals do not fall under this requirement

d) The maintenance, improvement or repair of works for measuring the flow in any watercourse or channel

The proposals do not fall under this requirement

e) The installation in a water distribution system of a booster station, valve house, meter or switch-gear house

The proposals do not fall under this requirement

f) Any works authorised by or required in connection with an order made under section 73 of the Water Resources Act 1991 (power to make ordinary and emergency drought orders)(a)

The proposals do not fall under this requirement

g) Any other development, in, on over or under operational land other than the provision of a building but including the extension or alteration of a building

Building or Plant and Machinery

The proposals relate to the installation of a solar array. Consideration therefore needs to be had as to whether the proposed solar array would be considered to be a “building” for the purposes of the GPDO. The application has been supported by a Legal Opinion on the matter stating why they consider the proposals to be “plant and machinery” rather than a building. The LPA and councils legal representative are satisfied with the opinion set out that the proposals should be considered to be installation of plant and machinery rather than the erection of a building.

Operational Land

It is therefore necessary to consider whether the land on which the proposals would be sited could be considered to be operational land. Operational land for the purposes of statutory undertakers is defined by sections 263 and 264 of the Town and Country Planning Act. Section 263 deals with the meaning of operational land and Section 264 deals with the cases in which land is to be treated as not operational land. S.263 (1) confirms that operational land is a) land which is used for the carrying out of their undertaking and b) land in which an interest is held for that purpose. S.264 (2) states that this does not include “*land which, in respect to its nature or situation, is comparable rather with land in general than with land which is used, or in which interests are held*”.

S.264 states that land should not be treated as being operational land where an interest in land is held by statutory undertakers for the purposes of carrying on their undertaking and a) the interest was acquired by them on or after 6th December 1968; or b) it was held by them immediately before that date but the circumstances were then such that the land did not fall to be treated as operational land for the purposes of the 1962 Act.

The application has confirmed that the land in question was purchased by the Staffordshire Potteries Water Board in 1956 who were the statutory undertaker for water supply and predecessor to Severn Trent Water. As the land in question was acquired by a statutory undertaker prior to 6th December 1968 it is necessary to consider whether the land would be treated as operational land under 1962 Act.

S.221 of the 1962 sets out the interpretation for operational land and confirms that the operational land is considered to be “*land which is used for the purposes of the carrying on of their undertaking and land in which an interest is held for that purpose, not being land which in respect to its nature or situation, is comparable rather with land in general than with land which is used, or in which interests are held, for the purposes of the carrying on of statutory undertakers*”. The definition is similar to that contained within S.263 (1) and (2) of the 1990 Act.

The application has been supported by an Ordnance Survey Plan dated 1969. That plan shows the land on which the solar panels are to be sited to be separated from the buildings of the water works by the River Churnet and its weir. There is an indication on the OS plan that the land in part is covered in rough grass land, the situation and nature of the land based on that evidence alone would appear to indicate, on the balance of probabilities, that this is comparable to land in general rather than operational land or land held for that purpose.

This observation was raised with the applicants agent. The applicants agent has stated that the land has been engineered as lower dam wall with the course of the River Churnet re-routed prior to the date of 6th December 1968 and that these engineering operations, in association with the dam and operations at the site. Further evidence has since been provided showing OS plans of the land prior to the 1969 plan. A plan dated 1937/38 shows the course of the River Churnet travelling southeast across the site from the western side of the dam. Other OS Plans (taken from on-line searches) dated between 1946 and 1954 also show the land in question to be as shown in the 1937/38 plan.

The 1969 OS Plan shows the route of the River Churnet crossing the site in a south-westerly direction from the eastern end of the dam wall. It is therefore likely that since the Staffordshire Potteries Water Board acquired the land in 1956, they have carried out significant engineering operations both to the dam wall and on the land to the south of the dam, re-coursing the route of the River Churnet, this is the land to which the proposals relate. Therefore, on the balance of probabilities, these engineering operations carried out by the statutory undertaker would demonstrate that the land in question was operational land for the purposes of the definition of operational land under the 1962 Act and 1990 Act.

The LPA is satisfied in this instance that the land would be considered to be operational land as it has been used for operational purposes by a statutory undertaker for the carrying on of their undertaking on the balance of probabilities.

Other Restrictions

Part 13 A.1(d), which relates to where development is not permitted states that in the case of Class A(g) development, which is the case in this instance, the proposal would ***“consist of the installation or erection of any plant or machinery exceeding 15 metres in height or the height of anything it replaces, whichever is the greater”***.

Plans submitted to support the application demonstrate that each of the solar panel installations would be 2.4m in height and as such would clearly be below 15m in height. The application proposals do not seek to replace another installation.

Conclusion

The LPA is satisfied that the proposed installation of solar panels would be related to the operations carried out by the statutory undertakers. The LPA is also satisfied that, on the balance of probabilities, the land on which the development would be carried out would constitute operational land given the historic works that have been carried out on that land. The proposed development would satisfy all of the restrictions, limitations and conditions set out in Schedule 2 Part 13 Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015.

RECOMMENDATION:

Issue Lawful Development Certificate

Date 10/02/2016

Signed

Declan Cleary

DEVELOPMENT CONTROL MANAGER COMMENTS:

Date

Signed _____