Neutral Citation Number: [2025] EWHC 2360 (Admin)

Case No: AC-2025-BHM-000085

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/09/2025

Before :

HIS HONOUR JUDGE JARMAN KC
Sitting as a judge of the High Court
Between :

WALSALL METROPOLITAN BOROUGH COUNCIL	**Claimant**
- and -	
(1) SECRETARY OF STATE FOR HOUSING COMMUNITIES AND LOCAL GOVERNMENT **(2) ANESCO LIMITED** **(3) STAFFORDSHIRE GARDENS & PARKS TRUST COMPANY LIMITED**	**Defendants**

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Dr Ashley Bowes (instructed by **Anthony Collins Solicitors LLP**) for the **claimant**
Mr Nick Grant (instructed by **Government Legal Department**) for the **first defendant**
Ms Stephanie Hall (instructed by **Burges Salmon LLP**) **second defendant**
The third defendant did not appear and was not represented

Hearing date: 26 August 2025
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Approved Judgment

This judgment was handed down remotely at 10.30am on 16 September 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HIS HONOUR JUDGE JARMAN KC

HHJ JARMAN KC:

Introduction

1. The claimant as local planning authority (the authority) renews its application for permission to pursue a planning statutory review to challenge a decision of a planning inspector dated 14 February 2025 appointed by the first defendant, the Secretary of State. Such permission was refused by Pepperall J on consideration of the papers. By that decision, the inspector allowed the appeal of the second defendant (the developer) against the refusal by the authority to grant planning permission for development of a site at Chapel Lane , Great Barr, Walsall for a temporary 49.35MW battery energy storage facility, with security fencing, access and associated works. Such a facility is otherwise known as a freestanding battery energy storage system (BESS). The site falls within the Walsall Green Belt (GB).

2. There are four grounds of challenge, each of which is disputed by the Secretary of State and the developer, based on alleged failings by the inspector:

> a. Ground 1: failed to supply legally adequate reasons for his conclusion that the developer's alternative sites analysis (referred to as ASA) was a robust assessment and/or acted irrationally by implicitly accepting its conclusions.
>
> b. Ground 2: proceeded without evidence to conclude that there would be a 15dB reduction in sound pressure levels between façade level noise and internal noise.
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> c. Ground 3: failed to supply adequate reasons for his reliance on the developer's August 2023 noise impact assessment and/or failed to have regard to it as an obviously material consideration.
>
> d. Ground 4: failed to supply adequate reasons for his conclusion that the policy at [198] of the National Planning Policy Framework (NPPF) was met.

Legal principles

3. Accordingly the challenge is essentially a reasons and/or irrationality challenge. The principles for such challenges are now well established and dealt with in many authorities, several of which were cited before me. There was no real dispute about such principles, as opposed to their application on the facts of this case, so I do not repeat all these authorities, but I have taken them into account. It suffices for present purposes to summarise the relevant principles as follows.

4. In *St Modwen Developments Ltd v SSCLG* [2018] PTSR 746 at [6.2] it was said by Lindblom LJ:

> "(2) The reasons for an appeal decision must be intelligible and adequate, enabling one to understand why the appeal was decided as it was and what conclusions were reached on the "principal important controversial issues". An inspector's reasoning must not give rise to a substantial doubt as to whether he went wrong in law, for example by misunderstanding a relevant policy or by failing to reach a rational decision on

> relevant grounds. But the reasons need refer only to the main issues in the dispute, not to every material consideration."

5. There is no need for an inspector in the decision letter to rehearse every piece of evidence and submission or to give reasons for reasons (*SSCLG v Allen* [2016] EWCA Civ 767 at [19]). The extent to which it is necessary to explain the reason will depend on what is required in the individual case (*NG8 2RJ Ltd v SSHCLG* [2025] EWHC 470 (Admin) [36]).

Background

6. The decision letter in the present case came after an inquiry was held on 5 November 2024 at which Ms Hall represented the developer, as she did before me, and Dr Bowes represented the authority, as he did before me. The third defendant was represented by its chair and 15 interested parties appeared. The inspector attended a site view on 20 November 2024 and then issued the decision letter (DL) running to some 124 paragraphs.

7. At DL17, the inspector identified the main issues as follows:

> "1. whether the proposal would be inappropriate development in the GB having regard to the Framework and any relevant development plan policies,
>
> 2. the effect on openness,
>
> 3. the effect on the character and appearance of the area,
>
> 4. the effect on heritage assets,
>
> 5. the effect on the living conditions of residents with particular reference to noise,
>
> 6. the effect on the supply of agricultural land, and
>
> 7. whether the harm by reason of inappropriateness, and any other harm would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal."

8. At DL27, the inspector considered that the site in question falls within the Grey Belt, and for the proposed development to be considered as not inappropriate it must satisfy all of the criterion in NPPF [155]. The Grey Belt is defined therein as land in the Green Belt comprising previously developed land and/or any other land that does not strongly contribute to any of the specified purposes of the Green Belt. One criterion in NPPF [155] is that the proposed development would not fundamentally undermine the purposes, when taken together, of the remaining Green Belt across the area of the development plan. One of the purposes is to encourage urban regeneration.

9. The inspector considered each of these purposes. At DL30, the inspector referred to a study which showed that all parcels of land assessed, excluding the site, made an equal and strong contribution to this purpose, referred to as purpose e, but found that the

manner in which the study was undertaken, did not assist in assessing the effect of the proposed development on this purpose.

The ASA

10. The inspector continued in the following paragraphs:

> "31. What is more useful, is the Alternative Sites Assessment (ASA) prepared by the applicant in September 2023 and updated for the appeal in October 2024. The development of a BESS has one key locational requirement. That is the availability of and proximity to a grid connection. Access to the local grid is the biggest constraint facing the alternative energy supply and associated infrastructure industries. Sites need to be located close to a point of connection (POC) to the grid, so as to minimise the loss of energy during transmission and the grid must have capacity to absorb the electricity discharged at times of peak demand. The intended point of connection to the grid is some 550m from the site and then by existing underground cable to the Bustleholme sub-station.
>
> 32. The ASA considered a search area of some 2km from the POC. In my experience, this is generally the maximum distance for a connection before its viability, both in terms of electricity transmission and cost, becomes questionable. Undertaking what I consider a robust assessment, the ASA concludes that there are no alternative sites suitable for this scheme. I have no reason to dispute that conclusion, and no one presented the inquiry with an alternative location for consideration. In the absence of an alternative site, there would be no conflict with Purpose e to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.
>
> 33. Drawing all of the above together, I conclude that the development would not fundamentally undermine, the purposes when taken together of the remaining GB in the plan area. Criterion A of Framework paragraph 155 is met."

11. The introduction in the ASA includes the following;

> "1.2 The site is located in the Walsall Green Belt. Whilst there is no explicit test for the location of battery energy storage systems in the Local plan, the National Planning Policy Framework (the 'Framework') or Planning Practice Guidance (PPG), this Alternative Site Assessment ('ASA') seeks to identify if there are any potentially more suitable sites situated on non-Green Belt or brownfield land.
>
> 1.3 There is no set guidance at a local or national level as to how the ASA should be undertaken and the methodology used."

12. At section 2 in the ASA, the methodology was set out as follows:

> "2.1 As noted in Section 1 of this report, there is no guidance at a local or national level as to how the ASA should be approached or the methodology that should be followed. However, there is a generally accepted approach (that has been agreed with the local planning authority) which follows the following steps:
>
> 1. Defining the grid connection opportunity and identification of the study area;
>
> 2. A sieving exercise based on the network capacity and suitable powerlines;
>
> 3. Formulation of a short-list of sites; and
>
> 4. Assessment of the short-list of sites based on the agreed parameters.
>
> 2.2 The details of the methodology were agreed with the Local Planning Authority, as below:
>
> • Search area to cover Walsall and the wider Black Country;
>
> • Sites to be sourced from the Black Country and Local Authorities Brownfield Land Register, Strategic Housing Availability Assessment, Employment Land Stud and Local Plan, and EGi.
>
> • A minimum site threshold of 1.97ha as this amount of land is required to sufficiently accommodate a 49.35MW BESS.
>
> 2.3 Within the methodology, there are several locational constraints of BESS that are necessary to ensure that a BESS can be deployed and operated effectively."

13. At [3.13] the ASA set out several requirements of a BESS site, including:

> "Land that is available for development, with no other planning applications or permissions over it, and land that is not competing for use for higher-value developments such as residential or commercial."

14. One of the sites assessed was one referred to by Dr Bowles east of Longwood Lane, Daisy Bank, Walsall in respect of which the ASA concluded as follows:

> "The site is currently primarily agricultural use though proposed uses for the site include private market housing and affordable housing. Based on a density of 30 dwellings per ha it is anticipated that the site will deliver c.81 dwellings. The site has current access to services including mains water supply, sewage,

> electricity, gas and broadband internet…There is known developer interest in the site."

15. The overall conclusions included the following;

> "4.4 Consequently, it has been demonstrated that there are no brownfield or other alternative sites on non-Green Belt land which are known to be available and are suitable to accommodate the proposed development. The proposed site is ready, available, and suitable for a BESS and as such, is the most preferable site for development, as demonstrated through this ASA.
>
> 4.5 As required in paragraph 151 of the NPPF, developers must demonstrate very special circumstances to locate renewable energy projects in the Green Belt. This ASA supports the case highlighting that no other non-Green Belt sites are available for this development within the Black Country."

16. The ASA was prepared by planning consultants instructed by the developer, who also gave evidence at the inquiry, including an updated ASA, as noted by the inspector. That written evidence included the following:

> "There is no requirement in local or national planning policy or statute to undertake an alternative or sequential site assessment… Furthermore, the suite of NPSs do not mandate a sequential search for low carbon project in the context of BMV or Green Belt…Nevertheless, in order to demonstrate the absence of non Green Belt alternatives and to support the Very Special Circumstances an updated Alternative Sites Assessment is provided, which shows there are no non-Green Belt alternatives. The ASA is included at Appendix 1 of this evidence."

17. The updated ASA included this:

> "2.3.1 Walsall Council previously commented on the scope of previous Alternative Site Assessment work and, although the council queried the approach taken, no alternative sites were identified by the council in their response."

18. It also referred to the issue of deliverability of sites as follows:

> "3.2.2 In order for a site to be considered as deliverable, a site must be suitable, available and achievable. The Site is considered to be: "
>
> - Suitable – The Site is suitable for the Proposed Development in terms of its size, accessibility, topography, location and network connection.

> - Available – The Site is entirely within the same ownership and is available for development immediately.
>
> - Achievable – Upon receipt of planning permission, development of the Site would be achievable within the timeframes set by the DNO in relation to the grid connection."

19. After referring to the to the ASA in the context of whether the proposed development would undermine the purposes of the remaining GB, the inspector went on to consider another criterion of NPPF [155], namely a demonstrable unmet need for the proposed development. The conclusion on this point at DL38 included:

> "One of the constraints to the early development of renewable and low carbon energy and associated infrastructure is the ability to access the local grid. In some places, notwithstanding the appetite to develop projects, grid connections are not available until the mid to late 2030s. This project has a grid connection offer of 2028. Thus, given the imperative of mitigating climate change and achieving net-zero, this project has the ability to make an early and material contribution to the clean power pathway required to achieve net zero. Whilst the appellant has not provided "…quantifiable evidence…" of an unmet need, the above context provides reason to show that the requirement of criterion B of Framework paragraph 155 is met."

Ground 1

20. It is not in dispute that the robustness of the ASA was clearly in issue at the inquiry, nor that the authority did not put forward an alternative site. Rather, Dr Bowes submits that this reasoning of the inspector was inadequate given that the ASA excluded alternative sites such as those with potential for housing. The inspector did not explain therefore why he concluded that the ASA was robust. Alternatively, if the inspector accepted the reasoning of the ASA, that was irrational because the ASA wrongly excluded sites with the potential for higher value development such as housing and commercial.

21. Mr Grant for the Secretary of State, supported by Ms Hall, submits that it is clear from the ASA why sites with developer interest for housing, for example, did not comply with one of the requirements of a BESS site, namely that the site is not competing for use for higher value developments such as housing. Given the inspector's conclusion, which is not challenged, that the proposed site has the ability to make an early and material contribution to the clean power pathway to net zero, it is not irrational to conclude that other sites in respect of which there may well be competing interest for higher value developments are not considered viable alternatives.

22. I accept those submissions. In my judgment the DL read fairly as a whole shows clearly that the inspector accepted that the proposed site had the ability to make an early contribution to clean power. Further it is tolerably clear why in that context the inspector found that the ASA was robust in concluding that there were no alternative sites, given the grid connection requirements. It must also be borne in mind that DL31-

31, which are the focus of the challenge under ground 1, are in the context of considering whether the proposed development would conflict with the purpose of urban regeneration. The inspector was, in my judgment, clearly entitled in the circumstances to conclude that there was no conflict, in not encouraging the use of derelict or other urban land, as there was no such land identified which was deliverable within the grid connection offer.

Noise

23. The remaining grounds relate to noise. The inspector dealt with this at DL81-96, the material paragraphs of which are as follows;

> "81. UDP Policies GP2 -Environmental Protection and ENV 10 – Pollution, seek to prevent unacceptable adverse effects from, amongst other things, noise. Framework paragraph 198 indicates that decisions should mitigate and reduce to a minimum potential adverse impacts resulting from noise and avoid noise giving rise to significant adverse impacts on health and quality of life. Reference is made to the Noise Policy Statement for England (NPSE) - Explanatory Note14. The Note recognises that noise exposure can cause annoyance and sleep disturbance both of which impact on quality of life and can give rise to adverse health effects…
>
> 87. I consider, after reviewing all the evidence, that the background noise levels set out in the August 2023 Noise Impact Assessment Report for the 3 nearest residential properties, Noise Sensitive Receptors (NSR) are a reasonable starting point. There are no issues between the parties regarding day-time noise, the concern relates to night time noise levels. The key concerns relate to, the predicted night-time sound levels after mitigation based on, the absence of Acoustic Feature Corrections (AFC), and the application of a 15dB attenuation for a partially open window. The AFCs relate to intermittency and low frequency noise (LFN).
>
> 88. Paragraph BS 8233:201416 indicates that for steady external noise sources, the desirable indoor ambient noise levels for sleeping between 2300 to 0700 hours should not exceed 30 dB LAeq.8hours (Table 4). Table 4 relates to noise without character. Paragraph 7.7.1 notes that noise has a specific character if it contains features such as a distinguishable discrete and continuous tone, is irregular enough to attract attention, or has strong low-frequency content in which case lower noise limits might be appropriate. Annex G, G.1 indicates that if partially open windows are relied upon for background ventilation, the insulation factor would be reduced to approximately 15 dB. This reference is subject to a footnote indicating that the level difference through a window partially open for ventilation can vary significantly depending on the window type and the frequency content of the external noise. If

> the specific details of the window and external noise are known, the value for insulation may be adjusted; either up or down. The World Health Organisation (WHO) Guidelines for Community Noise notes that if negative effects on sleep are to be avoided the equivalent sound pressure level should not exceed 30 dBA indoors for continuous noise…
>
> 91. I am conscious of the advice in BS8233 regarding the 15 dB ascribed to the attenuation achieved by a partially open window and the note relating to the potential variations relating to window type. I acknowledge that the applicant has not provided any detail regarding the nature of the windows at the NSRs; but neither has the lpa. The 15 dB allowance is used universally in Noise Assessments, and I have yet to come across an assessment that included adjustments for window type. Indeed, it would be almost impossible for an applicant or indeed a lpa to undertake that type of detailed assessment given, as here, the affected properties would mostly be private dwellings. As such, I consider that it is reasonable to use 15 dB as a benchmark for determining the potential impact on bedrooms.
>
> 92, On the above basis, only one dwelling, NSR 1, would potentially be subject to an internal noise level above the BS8233 guideline value of 30 dB LAeq.8hours. Here, the calculated level would be 31 dB LAeq.8hours. However, a 1 dB difference is generally regarded as imperceptible, and as such any adverse impact would be marginal resulting in limited harm to residential amenity. Such an approach would be consistent with the NSPE, whose policy vision is to enable decisions to be made regarding what is an acceptable noise burden to place on society. Moreover, a condition is suggested that would provide for final approval of the proposed acoustic fence before development could commence, which would allow for the potential for disturbance to be further mitigated. On this basis there would be limited conflict with UDP Policies GP2 and ENV 10."

24. The conditions imposed by the inspector in relation to noise included the following:

> "13. No development shall take place until a detailed specification of acoustic boundary treatment in general conformity with Typical Acoustic Fence Details Plan No. C0002457-09 Rev A has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and retained for the lifetime of the development.
>
> 14. The development shall meet the following external acoustic criteria at any occupied premises used for residential purposes, determined by measurements, calculations and/or procedures agreed in writing by the local planning authority.

> Between the hours 23.00 and 07.00 at a position 1 metre from any façade, excluding corrections for facade reflection effects -
>
> - LAeq,15 minutes 45 dB
> - Noise Rating NR 40 over any 15-minute period
>
> Within 4 months of the development being brought into operational use, compliance with the stated criteria shall be verified to the local planning authority in writing and compliance shall be maintained thereafter."

Grounds 2 and 3

25. Dr Bowes submits under ground 2 that it was irrational for the inspector without evidence to conclude that there would be a 15dB reduction in sound pressure levels between façade level noise and internal noise. He further submits under ground 3 that the inspector failed to give adequate reasons for his conclusion to rely on the developer's August 2023 noise impact assessment and/or failed to have regard to it as an obviously material consideration, when there was no evidence of window types in nearest residences, some of which date back hundreds of years. It follows that the conditioned 45 dB (achieved by adding the allowance of 15dB to the guideline value of 30 dB) is similarly flawed, or that the reasoning was inadequate.

26. Mr Grant, again with the support of Ms Hall, submits that the inspector's reasoning amounts to a permissible, if not necessary, exercise of planning judgment in the absence of specific evidence.

27. Again, I accept those latter submissions. The inspector was clearly aware of the limitations of the advice and lack of specific evidence, but was clearly entitled to use his experience and planning judgment in determining what weight in all the circumstances to give to the advice. The inspector was also entitled, in my judgment, to conclude as he did, as to the difficulties of obtaining specific evidence for the reasons given. In those circumstances the inspector was entitled to proceed without further inquiry.

Ground 4

28. As for ground 4, failure to give adequate reasons for his conclusion that NPPF [198] was met, the inspector made specific reference to the policy and the requirements. In my judgment the reasoning, having regard to the conditions imposed, was adequate. Those conditions, as set out above, clearly met NPPF requirements in mitigating and reducing to a minimum the potential adverse impacts of noise.

Conclusions

29. Accordingly, notwithstanding Dr Bowes strongly presented submissions to the contrary, in my judgment none of the grounds is arguable and permission is refused.

30. That being so, there is also an issue whether the authority should pay the costs of the developer's acknowledgement of service. In my judgment it is fair and proportionate that it pay such costs of the developer, as well as those of the Secretary of State. It was

the developer's evidence which was at the heart of this application, and the developer was a party at the inquiry leading to the decision challenged.

31. I would be grateful if the parties could agree a draft minute of order and file the same within 14 days of hand down of this judgment, together with written submissions on any consequential matter which cannot be agreed, which will then be determined on the basis of such submissions.