

**STAFFORDSHIRE MOORLANDS DISTRICT COUNCIL  
PLANNING APPLICATIONS COMMITTEE**

Date 17<sup>th</sup> October 2024

<b>Application No:</b>	SMD/2023/0568	
<b>Location</b>	CELLARHEAD ELECTRICITY SUBSTATION ROWNALL ROAD WETLEY ROCKS	
<b>Proposal</b>	APPLICATION FOR A LAWFUL DEVELOPMENT CERTIFICATE FOR EXISTING OPERATIONAL USE OF LAND BY AN ELECTRICITY STATUTORY UNDERTAKER	
<b>Applicant</b>	National Grid Electricity Transmissions	
<b>Agent</b>	Denise Shaw	
<b>Parish/ward</b>	Cheddleton	<b>Date registered 14<sup>th</sup> November 2024</b>
<b>If you have a question about this report please contact: Jane Curley</b> <a href="mailto:Jane.curley@staffsmoorlands.gov.uk">Jane.curley@staffsmoorlands.gov.uk</a>		

**REFERRAL**

The application is locally contentious

**1. SUMMARY OF RECOMMENDATION**

<b>Grant a Certificate of Lawful Development</b>
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**2. DESCRIPTION OF THE SITE AND ITS SURROUNDINGS**

The site consists of the Cellarhead substation together with surrounding land and is shown edged in red on the submitted Site Plan.

The land beyond the substation to the north, north west is in agricultural use, some of which was used for grazing of sheep at the time of the Officer's site visit. Screen planting encloses many of the outer boundaries. The smaller parcel of land to the south is wooded. All of the land is undeveloped, securely fenced off from the substation and contains no electrical infrastructure.

The land is said to now be in the ownership of National Grid Electricity Transmission (formerly Central Electricity Generating Board) an electricity statutory undertaker. Evidence of the purchase of all parts of the land which make up the red edge application site are provided. All conveyances confirm that the purchaser was the Central Electricity Generating Board and the land transfers took place between June 1964 and March 1965

**3. DESCRIPTION OF THE PROPOSAL**

The application seeks to demonstrate that the land is operational land and therefore benefits from permitted development rights provided for in Schedule 2, Part 15, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (hereto referred to as the GPDO).

The applicant's case can be summarised as follows:-

(a) all land within the site meets the definition of 'operational land' as laid out in Section 263 and 264 of the Town and Country Planning Act 1990 (as amended); and

(b) is therefore land where development can be carried in accordance with electricity undertaker permitted development rights as laid out in the Town and Country Planning (General Permitted Development) (England) Order 2015.

c)Electricity undertaker permitted development rights are laid out in Schedule 2, Part 15, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (hereto referred to as the GPDO).

d)Permitted development rights under GPDO Part 15 Class B (d), (e) and (f) only apply where the development is to take place on 'operational land'.

e)The GPDO (Part 15, para B.5) gives a definition of 'operational land' for the purposes of Class B (d), (e) and (f), it states that:

f)Section 263(1) of the Town and Country Planning Act 1990 (as amended) (hereto referred to as the TCPA 1990) provides the following definition of operational land in relation to statutory undertakers such as NGET: (a) *"land which is used for the purpose of carrying on their undertaking"* [i.e., land currently used for purposes of the undertaking concerned]; and

(b) *"land in which an interest is held for that purpose"* [ i.e., land which the undertaker now owns and is retained for safeguarding land and / or future operational use.]

g)The TCPA 1990 at 263(2) then states that *"paragraphs (a) and (b) of subsection (1) do not include land which, in respect of its nature and situation, is comparable rather with land in general than which is used, or in which interests are held, for the purpose of the carrying on of statutory undertakings"*.

h)It is NGET's assertion that this exclusion is intended to rule out premises such as showrooms, offices, dwelling houses etc. which may be owned by a statutory undertaker, but which are not used or retained for purposes of the undertaking (i.e., the transmission of electricity). The TCPA 1990 therefore seeks to draw a distinction between land held by an undertaker for general purposes, and land which is used or retained specifically for the carrying on of the undertaking.

i)However, land owned by NGET around a substation, which was acquired for its construction and is held for possible substation expansion, or to ensure that neighbouring development does not encroach too near to the substation would clearly fall within category (b) above as it is land which was acquired and retained solely for purposes relating to the undertaking. This definition would apply whether or not the land is fenced.

j)Section 264 of the TCPA 1990 defines cases in which land is not to be treated as operational land. This section has the effect of narrowing the categories of operational land defined in section 263 by excluding land acquired by a statutory undertaker since 6 December 1968, unless it has planning permission for operational development.

The application, the details attached to it, including the plans, any comments made by residents and the responses of consultees can be found on the Council's website at: - <http://publicaccess.staffsmoorlands.gov.uk/portal/servlets/ApplicationSearchServlet?PKID=175705>

#### **4. RELEVANT PLANNING HISTORY**

SM 5236 Planning permission by Cheadle Rural DC on behalf of Staffs CC for the erection of a sub station 27<sup>th</sup> January 1966. No conditions or plans listed on the copy provided

Other applications of relevance in the wider area:

##### Land Adjacent to Cellarhead Substation

SMD/2022/0548 – Erection and operation of a Battery Energy Storage System and associated infrastructure and equipment – Approved – 27/06/2023

##### Land East of Cellarhead Substation, and West of Rownall Road, Wetley Rocks, Staffordshire

SMD/2022/0444 – Erection of a Flexible Energy Facility – Approved – 22/12/22

##### Land Adjacent to Armshead Farm, Armshead Road

SMD/2022/0574 – Erection of storage containers, support infrastructure and security fencing for battery energy storage facility along with landscaping and all associated works – Refused – 26/06/2023. Appeal Allowed

##### Land South of Cellarhead Substation and West of Rownall Road

SMD/2024/0055 - Erection of a Flexible Energy Facility, associated works, landscaping and habitat creation – Under Consideration

##### Land At Rownall Farm, Rownall Road, Wetley Rocks

SMD/2023/0523 - Installation of a solar farm comprising ground mounted solar PV panels with a generating capacity of up to 49.99MW including mounting system, underground cabling, stock proof fence, CCTV, internal tracks and associated infrastructure, landscaping, biodiversity net gain and environmental enhancements for a temporary period of 40 years – Under Consideration

##### Land at Newfields Farm

SMD/2024/0019 - Development of a Battery Energy Storage System (BESS) with ancillary infrastructure, security fence, access, landscaping and biodiversity enhancements, to provide balancing services to the local electricity grid – Refused – 19/09/24

#### **5. PLANNING POLICIES RELEVANT TO THE DECISION**

Town and Country Planning (General Permitted Development) Order 2015 (As amended)

#### **6. CONSULTATIONS CARRIED OUT**

##### **Publicity**

Site Notice expired

##### **Public Comments**

62 households have objected raising the following issues:-

- This is Green belt land and an area of outstanding natural beauty
- The scheme has avoided scrutiny by the secretary of state by cynically making multiple applications on what is essentially a single scheme.
- These developments are a cause for concern relating to criminal activity. It is known that thieves target transformers and other items of high value. We already suffer from rural crime in the area this development can only increase that risk.
- There is no need for all of these applications, they should all be refused end of.
- We all know why these have been put in and that's money. The applicants concerned have no respect for the area whatsoever and are just wanting to make money. As usual, down to greed.
- Apart from green belt being ruined, noise pollution will be an issue along with traffic congestion on single track country lanes. Also fire safety is a big issue which I believe hasn't been taken into account. Perhaps the applicants would like to have dangerous battery storage built on their doorstep.
- I have lived in the area my entire life and I'm very concerned about the affect it will have on the wildlife especially the curlews and ground nesting birds.
- Recycling brownfield sites is the most sustainable option and is especially suitable for developments of an industrial nature such as this. NPPF section 15 para 174(b) states that planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside and the wider benefits from natural capital and ecosystem services.
- I object because collectively all the battery stores in this area will create an adverse noise impact to residents in the area. This is an exceptionally quiet area and there should be a limit on how many are approved in this area.
- It is with sadness I find myself having to object to yet another planning application on the same green belt area. There are 7 planning applications now in for this area and together will destroy over 250 acres of greenbelt. There has been no coordination or consideration given to the cumulative effect of these developments on the vicinity overall. Why is that?
- It will destroy the living conditions of the few inhabitants who have resided here for many years. It will also destroy an area of natural beauty enjoyed by many who walk, run and cycle round here.
- The development will destroy wildlife in the area
- Reading the Staffordshire Moorlands Tourism Strategy that was approved in February 2023 I feel that these planning applications are very much contrary to this strategy. The village of Bagnall is visited by people outside the area as it is a quaint and picturesque village. It won't be if it is surrounded by solar panels, battery storage and more substation, destroying all views and vibe of the area. Again, it will mean people from the conurbation of Stoke on Trent having to get in their cars and drive much further for the experience they want.
- The exceptional powers of the National Grid as an Essential National Utility, greatly compromise the public's ability to input and influence but, that is no reason for the Council to discharge their responsibility to protect the Green Belt and the immediate residential community.
- This is clearly part of the greater overall plan to build a substantial sustainable energy generation and storage hub relating to 4 other associated developments on up to 250 acres of presently GreenBelt land at Rownall.
- This proposed further enlargement of the National Grid facility presumably to occupy the remaining undeveloped area within the existing compound, has the potential to double the size of this unsightly and very noisy facility which will also doubtless add considerably to residents existing levels of significant suffering?

- In recent years the growth of this once small sub transformer station already equals a major National Grid facility, and clearly now this planned further extension adds to the cumulative local residential impact which includes, the recent 2 adjacent major Battery storage site approvals each occupying 10 acres and the 150acre Rownall Solar Farm application.
- Local residents and daily commuters between Bagnall, Werrington and Cellarhead have already suffered lengthy delays and significant inconvenience over the last year as a result presumably, of the first preparatory phase of this overall greater plan being, the laying of high-capacity cabling along the entire length of Bagnall Road from this facility down into Milton, connecting into the greater Potteries network!
- The Landscape Visual impact is already becoming seriously a much bigger undesirable issue in this Green Belt area which is not so far from the doubly protected western boundary of the Staffordshire Masterplan. The rural residential community will once again be seriously permanently affected by greatly damaged views to the rural landscape. The original site location decided upon in the 1960s, was carefully selected as it sat in a natural hollow somewhat hidden from view but its expansion over recent years has already varied in structural design and height, and now features very high overhead cathedral like gantries which being so tall already protrude well above the natural hollow and are now clearly visible from Rownall Road and Thorney Edge Road. If this facility is set to double in size, then the prominence of this site locally can only become much more dominant and unsightly carbuncle.
- Noise Sustained expansion of this site over the years, has already resulted in a marked increase in transformer noise, now audible throughout the night inside local residential homes up to a 1/2 mile away. The nauseating continuous transformer hum has become much louder as additional banks of transformers have been added and now the cumulative noise level is most intrusive and on occasions dependent upon the weather, wind direction, and presumably the operational activity levels, the noise can become intolerable. The noise levels now seem to peak at night resulting in challenging sleeping conditions even inside near homes. This highly irritating transformer noise also features frequent extremely arresting loud bangs presumably being the associated discharge of static electricity? Each disturbing event is preceded by a sudden loud audible warning siren to personnel which, is also loudly heard over the neighbouring residential community in Rownall. This siren being almost as loud as the discharge bangs, disturbs wildlife and clearly irritates our local residents. One assumes that all of this, is going to become much worse?
- The existing intrusive impact from this facility must be measured then added to that envisaged resulting from this new planned development and then again added to the overall cumulative (yet to be estimated) impact of all the other 4 major related neighbouring new proposals, i.e. the two already approved Battery Storage developments, the likely 3rd Battery Storage site at Newfields Farm and the impact of the recently submitted huge 170-acre 49.99MW Rownall Solar Farm application.
- Once again, its timely now to consider and control the overall anticipated detrimental environment and residential community impacts of all these colossal major developments before continuing to consider this application in isolation. There is obviously now a very clear urgent need for the Council to immediately commission an overall independent professional impact assessment to identify the likely cumulative effects on the immediate environment and residential rural residential community.
- (2 photographs posted separately on the Council application portal taken from my own home at Rownall Ridge shows not only the already extremely close proximity but also the unsightly towering overhead Concrete Gantries).

- In 2022 the National Grid paid £215m\* (and £650m\* in the last decade) to Wind Generating operators for surplus electricity generated which exceeded the current receiving capacity of the National Grid and could not be accommodated.

- These Constraint Payments paid to essentially turn off these very many wind turbines, are set to only

increase, forecasted to be as much as £2.5bn\*, as more and more Government subsidised wind generation investment is planned in the coming years.

Who pays for this outrageous and still building annual cost, we do! Every UK household currently pays around £150\* per year and its likely to rise well above inflation each year for the foreseeable future in order to fund this colossal out of control annual Constraint Payment.

On top of this Constraint Payment levy, every UK household also pays around a further £200\* per year in Green Levies designed to encourage the development of sustainable energy generation.

If this highly destructive huge Solar Farm proposal were to receive planning consent from our own LPA by some wholly unjust means, decided in the same manner driven by the assumed precedent having previously approved two local Battery Storage developments in Green Belt, then our local residents will ¿pay¿ the ultimate cost. Most unfairly, each highly disadvantaged long embedded local resident would still have to continue to pay £350\* per year in these green levies for the privilege of living on the doorstep of the largest Solar Farm in the in the Country in Green Belt approved by an LPA. If this isn't enough our long-suffering residents will also have to endure all of the highly negative impacts of the two already approved neighbouring 20 acres of highly dangerous Battery Storage installations, with the prospect of perhaps another two in Rownall, soon to receive consent, as already two more validated Battery Storage applications remain currently pending. The logical assumption would be to believe that the National Grids first priority should be to invest in developing their own infrastructure and increase their capacity to receive all of the country's wind power generation bringing an end to all ¿Constraint Payments! However, it seems the National Grid have an alternative lower cost, short term strategy, involving the encouragement of third-party private investment backed amazingly, by continuing Government subsidies to build Solar Farms and Battery Storage facilities as close as possible to the point of high demand. In this case, close to the city of Stoke on Trent, even if it means positioning such invasive installations within highly rural agricultural communities wholly inside our own Green Belt.

Solar Farms being so very much less efficient are very poor substitutes for highly efficient wind generation and if the National Grid were to decide to step up their own investment, these leased Solar Farms could well become absolutely redundant long before the end of their 40-year leases. By that time who pays the restorative costs, most probably not the operators who by then would have declared indemnity bankruptcy¿ having made all of their windfall profits in the previous years. One day, it might dawn on the local planners that the real long term sustainable power generation potential lies already on our doorstep, in harnessing all of our own free waterpower. In the Staffs Moorlands waterpower is just the obvious choice, and with one of the positive impacts of global warming being increased rainfall, it's going to become even more available, unobtrusive, abundant and low cost. It's nothing new, our past generations did so very successfully right here in the Staffs Moorlands, and we could still capture the free enormous power reserves of the river Trent, Churnet, Manifold, and Dove.

The real irony of this situation is, my grandfather did just that, operating half a dozen water mills in North Staffs, the biggest being Consall Mill which delivered 12,000HP night and day, 365 days of the year!

\*The source of all above quoted monetary values believed accurate, is the Internet, as of January 2024, the detailed information being readily available online

for public verification. If the Local Planning Authority were to grant consent to this abhorrent application remaining blinkered and continuing to act only reactively in decision making and taking no comprehensive account of all the cumulative adverse consequences, then I would suggest that the closest residential properties, most impacted, justify significant appropriate compensation. The huge negative overwhelming impact to this rural community means that a realistic compensation would still only represent a very very small part of the operator's huge profit generation. This is more than affordable given that the Government is presently considering the exceptional introduction of an industry sector windfall tax in recognition of the very high profit creation capability of such projects

**Cheddleton Parish Council – Do not object**

## **7. POLICY AND MATERIAL CONSIDERATIONS AND PLANNING BALANCE**

### **Main Issues**

Whether the submitted factual information/evidence provided demonstrates that the existing use of the land as operational land is lawful for planning purposes

The NPG says that in the case of applications for existing use, if a Local Planning Authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

### **Analysis**

1. This Certificate of lawful use seeks to establish that the land edge red in the application is 'operational land' and consequently benefits from permitted development rights prescribed by Schedule 2, Part 15, Class B d), e) and f). of the Town and Country Planning (General Permitted Development) (England) Order 2015. This application involves consideration of a highly technical legal nature upon which legal advice has been sought. The technical nature of the application means that consideration of policy matters relating to green belt or other matters raised by consultees on the planning merits is not something that may be taken into account. The application either does or does not comply with the legislation; if it does comply then a certificate must be granted.

2. Within Schedule 2, Part 15, Class B and under the heading, "Interpretation of Class B", B5 states as follows:-

*For the purposes of Class B(d), (e) and (f), the land of the holder of a licence under section 6(1) of the Electricity Act 1989 (licensing of supply etc.) is treated as operational land if it would be operational land within section 263 of the Act (meaning of "operational land") if such licence holders were statutory undertakers for the purpose of that section.*

3. Section 263 of the Town and Country Planning Act 1990 defines the meaning of "operational land" as follows:-

*(1) Subject to the following provisions of this section and to section 264, in this Act operational land" means, in relation to statutory undertakers—*

*(a)land which is used for the purpose of carrying on their undertaking; and*

*(b)land in which an interest is held for that purpose.*

4. Legal advice has confirmed that the 'and' in subsection (1) is adjunctive; in other words, the definition includes both land that is used for the purpose of carrying on an undertaking, and it includes land in which an interest is held for that purpose.

The insertion of the word 'land' at the start of each subsection supports this. It is also logical because it is hard to imagine a situation (albeit not impossible) whereby a piece of land was used for the purpose of carrying on an undertaking but where the undertaker had no interest in the land for that purpose

5. The land is said to now be in the ownership of National Grid Electricity Transmission NGET (formerly Central Electricity Generating Board) an electricity statutory undertaker. Evidence in the form of conveyances is provided for the purchase of all parts of the land which make up the red edge application site All conveyances confirm that the purchaser was the Central Electricity Generating Board and the land transfers took place between June 1964 and March 1965

It is evidenced therefore that the land in question is land in which an interest is held by NGET for the purpose of their undertaking.

6. For these reasons it is agreed that Section 263 subsection (1) of the 1990 Act is satisfied

7. Subsection (2) of Section 263 says that paragraphs (a) and (b) of subsection (1) do not include land which, in respect of its nature and situation, is comparable rather with land in general than with land which is used, or in which interests are held, for the purpose of the carrying on of statutory undertakings.

8. The land in question is situated immediately adjacent to the substation but it is fenced off from the substation and comprises agricultural land, some of which is currently grazed by sheep and woodland. In a letter dated 4<sup>th</sup> March 2024 from National Grid it is confirmed that the land surrounding Cellarhead substation is managed by BNP PRE, who it says are Land Agents and responsible for agreeing agricultural tenancies, grazing tenancies, easements, wayleaves etc on behalf of National Grid. It says that any new agricultural tenancies agreed on the land surrounding an operational substation will include a break clause which allows National Grid to end the tenancy, for any reason, should the land be required for operational use.

Despite requests the LPA has not been provided with copies of any such agreements in place for the subject land but aerial photos held by the Council show that the land had remained as agricultural grazing land and woodland, at least since 2003.

9. For further analysis of subsection 2 of S263 both the Council's lawyer and the Barrister acting for the applicant have pointed to the Planning Encyclopaedia which provides the following guidance with regard to S263 (2) at B-1519:

*"The limits of this exclusion may be difficult to draw in practice: presumably it applies to premises such as offices, shops, showrooms and dwellinghouses owned by statutory undertakers, at any rate where such premises are separate from the "works" of the undertaking"*

10. Both have then gone on to refer to the case of R. v Minister of Fuel and Power Ex parte Warwickshire CC [1957] W.L.R. 861; 8 P. & C.R. 305 which sheds some light on the meaning of section 263(2). In that case, land was held by a gas board for the purpose of its undertaking. It applied for planning permission to erect a gasification plant on the land.



In the application, the land was described as in agricultural use. Permission was refused and the gas board appealed the decision to the Minister of Fuel and Power who allowed the appeal on the basis that the land was 'operational land'. In so doing, the Minister found that the land was not land which, in respect of its nature and situation, was comparable rather with land in general than with land which is used, or in which interests are held, for the purpose of the carrying on of statutory undertakings. The LPA applied to the High Court to quash the decision of the Minister and lost. The Court held as follows:

a)The definition of 'operational land' does not only include land which statutory undertakers have already begun to use for the purpose of the undertaking, but land which they intend to use in the future;

b)It may often be the case that statutory undertakers acquire more land than they actually require at the moment. They may hold land which they intend to use in the future for the purpose of their undertaking

c)The question of whether land is comparable with land in general is obviously a question of fact.

d)Whilst there was no question that the land was agricultural land, seeing the situation of the land which was on the edge of a large industrial area, the Inspector and Minister concluded that it was not land that was comparable with land in general. †

e)On that basis, the finding of the Minister that the land was operational land and the grant of planning permission was upheld

11. There are many similarities between the Warwickshire case and the subject application. Applying the principles held in that judgement to the application the following conclusions stem.

The definition of 'operational land' does not only include land which statutory undertakers have already begun to use for the purpose of the undertaking, but land which they intend to use in the future, as in the case here. There is as such no need for land to be used at present by a statutory undertaking for it to qualify as 'operational land'. Evidence provided by the applicant is that the land is retained by NGET in the long term for future development of the operational estate at Cellarhead. It further confirms that any lease agreements on the land include a break clause which allows NGET to end the tenancy, for any reason, should the land be required for operational use (letter dated 4<sup>th</sup> March 2024 from National Grid). Evidence of all conveyances of the land making up the red edge site are provided. All conveyances confirm that the purchaser was the Central Electricity Generating Board and the land transfers took place between June 1964 and March 1965 – noteworthy all at the same time as the land on which the substation was built and is presently used for NGET's undertaking . As the Warwickshire case held, it may often be the case, as here, that statutory undertakers acquire more land than they actually require at the moment. They may hold land which they intend to use in the future for the purpose of their undertaking. The point here is that the land has remained in the same state as it was when acquired. It hasn't been developed in any way that would be inconsistent with its future use for the purpose of NGET's undertaking

Whilst the Court held that the question of whether land is comparable with land in general is obviously a question of fact, there are similarities between that case and the subject application. In Warwickshire it was held that although there was no question that the land was agricultural land, '*...seeing the situation of the land which was on the edge of a large industrial area.*', the Inspector and Minister concluded that it was not land that was comparable with land in general. In the case of the application under consideration, the land is clearly agricultural or woodland but it does directly adjoin an existing and not insubstantial substation used for the purpose of its undertaking

12. For these reasons it is agreed that the provisions of Section 263 subsection (2) do not exclude the subject land from the definition of 'operational land'

13. It is agreed that Section 264 does not apply because the land was acquired before 6<sup>th</sup> December 1968 and therefore satisfies 264 (1). For completeness the applicant has also referenced S264 (4) however the Council does not rely on this.

Finally it is noted that there have been a number of letter of representation received for this application. The letters are summarised above. They all however relate to the planning merits of the use of the land by the applicant for electricity infrastructure rather than providing any facts or evidence to either support or dispute the applicant's case

## **CONCLUSION / PLANNING BALANCE**

Based on the evidence and facts it is concluded that the land is 'operational land' in relation to statutory undertakers as defined in Section 263 of the Town and Country Planning Act 1990 and therefore the application for a certificate of lawfulness must be granted.

## **9. RECOMMENDATION**

**A. That a Certificate of Lawful Development be granted**

**B. In the event of any changes being needed to the wording of the Committee's decision (such as to delete, vary or add conditions/in formatives/planning obligations or reasons for approval/refusal) prior to the decision being issued, the Head of Development Services has delegated authority to do so in consultation with the Chairman of the Planning Applications Committee, provided that the changes do not exceed the substantive nature of the Committee's Decision.**

