

# Appeal Decision

Site visit made on 16 July 2014

**by S R G Baird BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 13 November 2014**

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**Appeal Ref: APP/P2365/A/14/2212590**

**Land east of Wrights Covert, Toogood Lane, Wroughtington, Lancashire.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr D Culshaw against the decision of West Lancashire Borough Council.
  - The application Ref 2013/0300/FUL, dated 20 March 2013, was refused by notice dated 29 July 2013.
  - The development proposed is the erection of a single wind turbine with a maximum blade to tip height of 90m, micro-siting and associated infrastructure including access tracks, areas of hardstanding, control buildings and cabling.
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## Preliminary Matters

1. Following a revised noise assessment, the local planning authority (lpa) indicated that, subject to the imposition of appropriate conditions, the turbine would not have an unacceptable impact on living conditions and as such would not conflict with development plan<sup>1</sup> Policy GN3.
2. In reaching conclusions on the matters at issue in this appeal, I have had regard to the decision in the Court of Appeal (CoA)<sup>2</sup> which overturned the decision of Patterson J in the case of, Redhill Aerodrome Ltd v Secretary of State for Communities and Local Government, Tandridge District Council and Reigate and Banstead Borough Council [2014] EWHC 2476 (Admin). I also considered whether it was appropriate to give the parties an opportunity to comment on the decision of the CoA and concluded there was no such need as the matters were already covered in the evidence.

## Decision

3. The appeal is dismissed.

## Main Issues

4. The site is located within the Green Belt and the appellant acknowledges that, for the purposes of LP Policy GN1 (b) and paragraph 89 of the National Planning Policy Framework (Framework), the proposed turbine would be inappropriate development in the Green Belt. Accordingly, the main issues are:
  - (1). the effect on the openness of the Green Belt and the purposes of including land within it;

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<sup>1</sup> West Lancashire Local Plan 2012-2027 (LP).

<sup>2</sup> [2014] EWCA Civ 612

- (2). the implications for neighbours' living conditions with particular reference to visual impact and noise;
- (3). the effect on heritage assets;
- (4). the effect on ecology and the implications for protected species;
- (5). landscape and public visual impact;
- (6). whether the harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations, so as to amount to very special circumstances (the Green Belt Balance);

## **Reasons**

### **Issue 1 - The Effect on Openness and Green Belt Purposes**

5. LP Policy GN1 (b), says that development proposals in the Green Belt will be assessed against national policies in the Framework. Paragraph 79 of the Framework says that openness is one of the most important attributes of the Green Belt. Here, whilst the underlying landscape would remain visible, the turbine would be an interruption to visibility and, therefore by definition, an interruption to openness. However, given the height of the proposed turbine to the hub at some 60m, the slim nature of the monopole and diameter of the blades at 60m, the harm to openness would be limited.
6. One of the purposes of including land within the Green Belt is to assist in safeguarding the countryside from encroachment. Whilst the Framework does not define encroachment, the normal definition is, "to intrude". The footprint of the proposed turbine would be small and the degree of intrusion/encroachment would be slight. However, that only looks at the impact in 2-dimensions. As a major engineered and dynamic structure, the turbine would be materially taller than anything else in the area and would be seen in 3-dimensions over a wide area. In this context, the degree of intrusion/encroachment would be significant and would conflict with and harm one of the key purposes of including land within the Green Belt.

### **Issue 2 - Living Conditions**

7. LP Policies GN3-1 and EN1 seek, amongst other things, to ensure that reasonable levels of amenity are retained by neighbouring occupiers.

#### *Noise*

8. Planning Practice Guidance (PPG) says that "ETSU-R-97 - The Assessment and Rating of Noise from Wind Farms" and current good practice, which includes, "A Good Practice Guide to the Application of ETSU-R-97 For the Assessment and Rating of Wind Turbine Noise" produced by the Institute of Acoustics should be used when assessing noise from wind energy developments. NPS-EN3<sup>3</sup> indicates that where the correct methodology has been followed and a turbine is shown to comply with ETSU-R-97 recommended noise limits, little or no weight may be given to the adverse noise impacts from the operation of a wind turbine. Here, I have no reason to conclude that the noise study on which the noise immissions levels are based is not ETSU compliant.

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<sup>3</sup> Paragraph 2.7.58 of the National Policy Statement for Renewable Energy Infrastructure (EN-3)

9. Here, concerns relate to potential adverse health effects and the potential for the phenomenon referred to as Excess Amplitude Modulation (EAM). Whilst I do not seek to downplay residents' concern, a link between the operation of a wind turbine and serious health problems continues to be unproven. Thus, there is nothing of substance to justify departing from Government advice on health matters relating to the operation of wind turbines.
10. Although there is a considerable body of on-going research into EAM, to date, as I understand it, there is no universally accepted definition of EAM. Moreover, what causes EAM is not fully understood and as its occurrence is infrequent and dependent on a number of interacting factors specific to a location it is not feasible to reliably predict the likelihood of EAM occurring at any particular turbine site.
11. Here, based on a specific modulation range, the lpa proposes a condition that would determine when complaints relating to noise from the operation of the turbine were the result of EAM and would control or limit its operation. The setting of a threshold at which a problem is deemed to occur and is then mitigated is the basis behind many planning conditions. However, given that current research indicates that there was no evidence of a clear onset of increased annoyance at any particular modulation depth, I have reservations about the approach and the specific modulation range proposed by the lpa. Thus, without an agreed robust methodology for measuring EAM, it would be unreasonable to impose a condition on such an uncertain basis.

#### *Outlook*

12. NPS EN3 recognises that wind energy developments can result in significant visual effects that would change the outlook of dwellings. In this context, the identification of a significant change is not, on its own, necessarily harmful. Therefore, in deciding whether, in the public interest, there is a case to resist a scheme, the assessment of the impact on residential visual amenity has gone beyond that of identifying significant visual impact. Thus, after assessing the visual component of residential amenity in the round, an approach commonly adopted, is to determine whether the presence of the turbine would be so unpleasant, overwhelming and oppressive, that the dwelling would become an unacceptably unattractive place in which to live. This is an approach that strikes the right balance between the objective of ensuring adequate protection for residents and the deployment of renewable energy developments.
13. The nearest dwellings comprise a group of houses at Hill House Fold some 450m to the south, several detached and terraced houses on Toogood Lane some 480m to 650m to the east and detached properties to the north-west and north at some 750 to 950m. Whilst in all cases the lower part of the turbine would be screened by intervening planting, the majority of the dwellings would have uninterrupted views of the upper part of the turbine and the revolving blades, which would result in a significant change to their outlook both from habitable rooms and the garden areas. However, given the degree of separation ranging between 450m and 950m, the slim nature of this single turbine and its height at some 90m to blade tip, I consider that this proposal would not appear so unpleasant, so overwhelming or oppressive, such that that any dwelling would become an unacceptably unattractive place in which to live.

### *Shadow Flicker*

14. At this latitude, only properties within 130 degrees either side of north, relative to the turbine and within 10 rotor diameters of it could be affected in this way. Here, the gap to potentially affected dwellings would be such that shadow flicker would not unacceptably affect residents.
15. In light of the above, I conclude that this turbine would not unacceptably affect the living conditions of nearby residents through disturbance by noise, shadow flicker or loss of outlook. As such, the proposal would not conflict with the relevant objectives of LP Policies GN3 and EN1.

### Issue 3 - Heritage Assets

16. Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard is had to the desirability of preserving the building or its setting or any features of special architectural or historic interest it possesses. LP Policy EN4 establishes a presumption in favour of the conservation of heritage assets (HAs) and development that adversely affect such assets will not be permitted. Within 500m to 1km of the site there are several Grade 2 Listed Buildings and beyond there are several Scheduled Ancient Monuments (SAMs), Grade 1, 2 and 2\* Listed Buildings. My visit to the area left me with the very strong impression that the settings of the Listed Buildings within the immediate and wider area were tightly defined and limited to their immediate curtilages. Thus, the presence of the turbine would not have an adverse effect on their significance or settings. Similarly, given the degree of separation between the turbine and the SAMs and Conservation Areas, I conclude that there would be no adverse effect on their settings or significance as HAs. Accordingly, having regard to the duty placed on me by S66 (1), I conclude that the proposal would not conflict with the objectives of LP Policy EN4.

### Issue 4 - Protected Species

17. On the evidence before me, I have no reason to conclude that the appellant's survey work was inadequate. For breeding and migratory birds, the evidence indicates that the potential for disturbance, loss of habitat and unacceptable collision risk is low. Moreover, the potential for disturbance/loss of habitat, including that for foraging newts, could be mitigated by planning conditions limiting on-site activity during the breeding season and the creation of additional habitats through, amongst other things, hedgerow planting.
18. The evidence suggests that there is a low level of bat activity on and over the site. The surveys identified low numbers of a variety of bat species, including Noctule bats, listed by Natural England as uncommon and subject to a high collision risk from turbines, using the site. However, the number of Noctules recorded was so few that, on balance, the risk of collision would be minimal. The Ipa refer to The Habitats and Species Regulations 2010 (SI 2010/490), which indicates that it is an offence to deliberately injure or kill any wild animal that is a European protected species. However, recent case law<sup>4</sup> held that the operation of wind turbines in circumstances whereby it had been predicted that there may be a certain number of collisions in a year did not constitute the deliberate injuring or killing of a species.

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<sup>4</sup> Eaton v natural England & RWE NPower [2012] EWHC 2401 (Admin); [2013] 1 C.M.L.R 10.

19. Drawing these matters together, I conclude that the proposed development would not have a significant adverse or unacceptable impact on the ecology of the area or protected species. Accordingly, this proposal would not conflict with the objective of LP Policy EN2, which seeks to protect biodiversity.

Issue 5 - Landscape and Public Visual Impact

20. LP Policy EN1 (3) says that wind energy development will be given positive consideration where, amongst other things, any adverse singular or cumulative impact on landscape character and value can be satisfactorily addressed. LP Policy GN3-4 (i) seeks to maintain or enhance the distinctive character and visual quality of the Landscape Character Area (LCA) in which a proposal is located. Policy EN2 (6) says that development will be required to take advantage of its landscape setting and historic landscapes. Development likely to affect landscapes or their key features will only be permitted where it makes a positive contribution to them.
21. In 2005, the County Council (CC) commissioned a study on Landscape Sensitivity to Wind Energy Development in Lancashire to assist in the production of Supplementary Planning Guidance (SPG) on landscape and heritage matters. This study locates the appeal site in an area of moderate-low sensitivity to wind energy development and the capacity to accommodate small and possibly medium scale wind energy developments.
22. The supporting text to Policy EN2 at paragraph 9.27 indicates that, amongst other things, proposals should have regard to the landscape character assessments contained in the lpa's Natural Areas and Areas of Landscape History Importance Supplementary Planning Guidance (SPG) updated in 2007 and CC's Landscape and Heritage SPG adopted in 2006. The key characteristics of the landscape are locally prominent hills; a complex mosaic of topography, pastures and woodland, rounded ridge profiles from where there are long views over the surrounding lowlands. In addition, the lpa's SPG highlights this character area as one of County Importance in terms of landscape history. The landscape strategy for the area seeks, amongst other things, to conserve the smooth, uncluttered skyline of the ridges through minimising/avoiding the introduction of tall vertical structures on the skyline and conserving views over the surrounding lowlands.
23. Wind turbines are no longer an unusual or unique feature in the rural landscape. However, as a tall, engineered structure with a blade tip height of 90m and rotating blades, the proposed turbine would be out of scale with the natural and built environment of the locality and would be an intrusive form of development. Moreover, given its nature and scale, a wind turbine is a form of development whose impact cannot be easily mitigated. Thus, the turbine would have an adverse effect on landscape character. In terms of its landscape and public visual impact, I agree with the conclusions of the appellant's Environmental Report that the turbine would have a slight/moderate level of landscape impact. Although the harm to the character and appearance of the area would not be very great, it would nevertheless cause some harm and in failing to conserve the smooth, uncluttered skyline of the ridge the turbine would not make a positive contribution to the local landscape character. Accordingly, the proposal would be contrary to the objectives of LP Policies GN3-4 and EN2.

### Other Considerations

24. On the evidence before me, I have no reason to conclude that the proposal would materially affect the operation of telecommunications equipment or equine and other businesses or that adverse ground conditions would militate against this scheme.
25. The promotion of renewable energy projects and tackling the effects of climate change are key Government policies and a statutory requirement. One of the Framework's core principles is that planning should support the transition to a low carbon future through, amongst other things, the development of renewable energy and recognises that small-scale projects provide a valuable contribution to cutting harmful emissions. The turbine has an assumed rating of 500kw and based on a reasonable load factor and average annual domestic electricity use, it is estimated that it could generate sufficient electricity to power around some 285 homes. Similarly, it is predicted that the turbine would reduce carbon emissions by some 520 tonnes per annum and contribute to reductions in sulphur dioxide and nitrogen oxide. Given the thrust of national policy, these are public benefits that attract some weight.

### Issue 6 – The Green Belt Balance

26. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The Framework identifies that very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable resources.
27. Paragraph 88 of the Framework says that substantial weight attaches to any harm to the Green Belt and very special circumstances will not exist unless the potential harm to the Green Belt, by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. In carrying out this exercise, the absence of harm relating to living conditions, heritage assets, ecology, ground conditions and telecommunications do not weigh in favour of the proposal. Here, whilst some weight attaches to the contribution this proposal would make towards increasing the supply of renewable energy and tackling the adverse effects of greenhouse gases, I conclude that these considerations do not clearly outweigh the totality of the harm to the Green Belt through inappropriateness, the harm openness of and the purposes of including land within it and the harm to the landscape character of the area. Accordingly, in this case, very special circumstances do not exist and as such the proposal would conflict with the objectives of the development plan and the Framework. Accordingly, the appeal is dismissed.

*George Baird*

INSPECTOR