



Department for
Communities and
Local Government

Mr Peter Fusco
TGC Renewables
100 Albert Drive
Glasgow
G41 2SJ

Our Ref: APP/Q9495/A/12/218858
Your ref:

11 February 2014

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)
APPEAL BY MR G R YOUNG
LINSKELDFIELD FARM, ISEL, COCKERMOUTH, CUMBRIA
APPLICATION REF: 7/2012/2156**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, J P Watson BSc MICE FCIHT MCMI, who undertook a site visit on 11 September 2013 as part of his consideration of your client's appeal under Section 78 of the Town and Country Planning Act 1990 against the decision of the Lake District National Park Authority to refuse planning permission for the erection of a 1x100kW 37m to hub, 47m to tip wind turbine plus associated works, dated 28 June 2012, in accordance with application ref: 7/2012/2156.
2. The appeal was recovered for the Secretary of State's determination on 11 October 2013, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, following the Secretary of State's announcement on 10 October 2013 of his intention to consider for recovery appeals for renewable energy developments to enable him to consider the extent to which the new practice guidance (referred to in paragraph 6 below) is meeting the Government's intentions.

Inspector's recommendation

3. The Inspector recommended that the appeal be dismissed. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Policy Considerations

4. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires that proposals

be determined in accordance with the development plan unless material considerations indicate otherwise.

5. In this case, the development plan comprises the Lake District National Park Local Development Framework (LDF) adopted in October 2010 (IR5); and the Secretary of State agrees that the most relevant policies are those referred to by the Inspector at IR5-6.
6. Other material considerations which the Secretary of State has taken into account include section 11A(2) of the National Parks and Access to the Countryside Act 1949, the National Planning Policy Framework (the Framework – March 2012); the National Policy Statement (NPS) for Renewable Energy Infrastructure (EN-3); the Overarching NPS for Energy (EN-1); the Written Ministerial Statements on ‘Local Planning and onshore wind’ (DCLG) and ‘Onshore wind’ (DECC); the Planning Practice Guidance for renewable and low carbon energy; and Circular 11/1995: Use of Conditions in Planning Permission. The Secretary of State has had regard to the fact that on 28 August 2013 Government opened a new national planning practice guidance web-based resource. However, given that the guidance has not yet been finalised, he has attributed it limited weight.

Main issues

7. The Secretary of State agrees with the Inspector that the main considerations are those set out at IR10.

Effect on the character and quality of the local landscape

8. For the reasons given at IR11-17, the Secretary of State agrees with the Inspector’s conclusion at IR18 that the appeal turbine would be harmful to the character and quality of the landscape to a significant degree, thereby failing to comply with LDF policies CS16, CS01 and CS25. Furthermore, like the Inspector, the Secretary of State attaches great weight to conserving the landscape and scenic beauty of the National Park, having regard to paragraph 115 of the Framework and section 11A(2) of the National Parks and Access to the Countryside Act 1949.

Other considerations

9. The Secretary of State agrees with the Inspector (IR19) that the appeal scheme’s effects on wildlife and habitat and on residential amenity would all be acceptable but, like the Inspector and for the reasons given at IR20, he does not consider that an increase in the farm income should weigh in the planning balance. He also agrees with the Inspector (IR21) that substantial weight should be attributed to the valuable contribution which the appeal proposal would make to cutting greenhouse gas emissions.

Conditions

10. The Secretary of State has considered the Inspector’s recommended conditions, as set out in the Annex to the IR. He is satisfied that they are reasonable and necessary and would meet the tests of Circular 11/95 and paragraph 206 of the Framework. However, like the Inspector, he does not consider that they overcome his reasons for dismissing the appeal.

Overall conclusions

11. As the appeal scheme does not comply with the LDF, the Secretary of State has gone on to consider whether there are any other material considerations which might outweigh that. However, having regard to the policies of the Framework taken as a whole, the Secretary of State concludes that the weight to be attributed to the scheme's delivery of renewable and low carbon energy, and associated reduction in greenhouse gas emissions, is exceeded by the weight of the effects it would have on the character and quality of the landscape in this part of the Lake District National Park.

Formal Decision

12. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the erection of a 1x100kW 37m to hub, 47m to tip wind turbine plus associated works, dated 28 June 2012, in accordance with application ref: 7/2012/2156.

Right to challenge the decision

13. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.
14. A copy of this letter has been sent to the Lake District National Park Authority. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Jean Nowak

Authorised by the Secretary of State to sign in that behalf



Report to the Secretary of State for Communities and Local Government

by J P Watson BSc MICE FCIHT MCMI

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

Date: 6 January 2014

Town and Country Planning Act 1990

Lake District National Park Authority

Appeal By

Mr G R Young

Site visit made on 11 September 2013

Linskeldfield Farm, Isel, Cockermouth, Cumbria CA13 5SR

File Ref(s): APP/Q9495/A/12/2188858

File Ref: APP/Q9495/A/12/2188858

Linskeldfield Farm, Isel, Cockermouth, Cumbria CA13 5SR

- 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 G R Young against the decision of Lake District National Park Authority.
- The application Ref 7/2012/2156, dated 28 June 2012, was refused by notice dated 12 November 2012.
- The development proposed is described as: Erection of 1x100kW 37m to hub, 47m to tip wind turbine plus associated works.

Summary of Recommendation: That the appeal be dismissed.

The Site and Surroundings

1. The un-numbered submitted drawing "Zone of Theoretical Visibility" illustrates the context of the site in the northern part of the Lake District. The site is on a gently rolling elevated plateau that extends south-eastwards toward Bassenthwaite Lake. The area is contained by ridges including that known as Sunderland Heads and Clints Crag to the north west (reported to be 1.3km away), the fell known as Binsey to the north east (reportedly 3.5km), the upland edge of the Skiddaw Massif to the south east (reportedly 7km) and Sale Fell to the south (some 5km).
2. The submitted drawing "Key Visual Receptor Locations" shows the area within about 3km of the site on an Ordnance Survey base reproduced at a scale of 1:15,000. The appeal development would be on Cross Hill, a little way from the summit of this gentle undulation in the land form and about a kilometre south of the small village of Sunderland.
3. This is a medium scale pastoral landscape with irregular field boundaries and large blocks of mostly mixed woodland. The landscape is punctuated with thinly-scattered farmsteads and country lanes. At the time of my visit the landscape was tranquil. The wind farm at Wharrels Hill is south of Bothel (a village some 5km to the north of the appeal site) and has 8 wind turbines, reportedly some 30m taller than the appeal turbine and on higher ground.¹
4. The submitted site plan shows the site of the turbine to be within some 180 metres of the road between Bank Head and Isel Old Park.

Appraisal

Planning Policy

5. The site is in the Lake District National Park. The development plan comprises the Lake District National Park Local Development Framework adopted October 2010 ("the LDF"). In its decision notice the local planning authority ("the LPA") refers to the following policies of the LDF:

Policy CS01: "National significance and distinctive nature of the Lake District". Development proposals will only be supported if they are consistent with National Park purposes and duty, and if they conserve and enhance the special qualities of

¹ Grounds of appeal, page 6

the Lake District National Park. If there appears to be a conflict between National Park purposes, greater weight should be attached to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the National Park.

Policy CS02: "Achieving vibrant and sustainable settlements in the National Park". Among its other provisions, Policy CS02 considers development in the open countryside. Such development will only be supported where it demonstrates an essential need for a rural location, or where it will help to sustain an existing business (including farm diversification schemes), or where it would provide for a proven and essential housing need, or where it would be an appropriate reuse, redevelopment or extension of an existing building.

Policy CS11: "Sustainable development principles". Among other things, development should conserve and enhance the character and quality of the local landscape, of the wider countryside and of the built environment.

Policy CS16: "Generating renewable and low carbon energy". Renewable energy developments will be supported but they should not adversely affect the landscape character or its special qualities. The cumulative effect of additional renewable energy development in the locality should be taken into account. Wind energy developments should be assessed in accordance with the Cumbria Wind Energy Supplementary Planning Document.

Policy CS25: "Protecting the spectacular landscape". Development management will be guided by the Lake District Character Assessment recognising the distinctive characteristics identified in the Landscape Character Types and Areas of Distinctive Character. Development should maintain and, where possible, enhance local distinctiveness, sense of place and tranquillity. In assessing development proposals, the highest level of protection will be given to the landscape.

6. The parties both also refer to LDF Policy CS23: "Farm Diversification". Farm diversification proposals will be supported where they demonstrate sustainable practices and outcomes, and where they sustain or maintain the core farm business, do not compromise the working of the farm, are located within or near the existing farm complex, and (where the proposal involves the use of buildings) they reuse or extend existing buildings.
7. My attention was also drawn to the National Planning Policy Framework ("the Framework"), and particularly to paragraphs 93 and 98, and to section 3.

Planning History

8. No relevant planning history was drawn to my attention.

The Proposal

9. The appeal proposal includes a wind turbine, an access track and an equipment cabin. The track and cabin are not contentious. Drawing number 000/P00001 rev 00 illustrates the proposed turbine, which would have a 23.6 metre diameter rotor mounted on a hub whose axis would be 36.8 metres above the tower foundation. The tower would have a circular cross-section and would taper from 2 metres in diameter at the base to 1.22 metres at the top. The submitted site plan shows the turbine to be located close to the 145 metre contour, on the

south-western side of Cross Hill – an undulation whose summit is shown by the Ordnance Survey mapping to be 149 metres above datum.

Main Issues

10. The main issues are:

- i) The effect the appeal scheme would have on the character and quality of the local landscape; and (if that effect would be harmful),
- ii) Whether other considerations are such as to outweigh the harm to the character and quality of the local landscape.

Effect On The Character And Quality Of The Local Landscape

- 11. The area's exceptional landscape, shaped by natural processes and human activities, was the principal reason for designation of the National Park².
- 12. The appellant's landscape assessment is incorporated in the Design and Access Statement. It identifies 9 viewpoint locations on the appellant's property or on public roads and considers the landscape effects and the visual effects the appeal scheme would have at each location. The assessment methodology is not disclosed and there is no explanation of the meanings to be ascribed to the adjectives applied to the significance of each reported landscape effect and visual effect. Nevertheless, it is clear that the appellant envisages that there would be some harm to the landscape and the appearance of the area. The significance of such harm at each location is reported to be variously moderate, moderate/minor or minor. Overall, the appellant finds that the visual impact would not be overly-significant³. Small photomontages are provided.
- 13. The National Park Authority provides images too, in the form of photographs taken when a marker balloon was flown from the site. These lack precision and no indication is given of the positions of the viewpoints.
- 14. LDF policy CS16 refers to the Cumbria Wind Energy Supplementary Planning Document ("the SPD"), which was adopted by the National Park Authority in 2007 following a period of public consultation. It refers to policies from the former Regional Guidance and the Joint Structure Plan which are no longer extant, but nevertheless it seems to me that in view of policy CS16 weight should be given to the SPD. Among its provisions is the observation in paragraph 1.16 that, in the National Park, a turbine with a ground to hub height of 25 metres or more is unlikely to be acceptable.
- 15. The appellant draws attention to the Wharrels Hill wind farm and says that this confirms that the wider area is not free from turbine development. The National Park Authority's observation that the wind farm can be seen from parts of the road network local to the site matches my own. The Wharrels Hill site is not in the National Park. Its presence would not mitigate the visual effect the appeal turbine would have. The cumulative effect of the wind farm and the appeal turbine would be little different from their individual effects.

² Core strategy, 4.51.2

³ Grounds of appeal, 3.2

16. Having considered the various submissions made and my observations at the site, my findings are as follows.
17. The appeal site is of a pastoral nature and is in the National Park. It is on relatively low land with higher ground in the middle distance. It is common ground that the turbine would be harmful to the character and quality of the local landscape, but the parties differ as to the degree of that harm. The turbine's position would give it prominence in some local views, and in longer views (celebrated by Arthur Wainwright) from footpaths on the slopes of Sunderland Heads and Clints Craggs toward Bassenthwaite Lake and the south and south-east. When viewing the site at relatively close quarters, one is aware of the enclosing effect of the ridges mentioned in my paragraph 1, and that gives a feeling of intimacy to the landscape as experienced near the site to which a turbine of the relatively large scale proposed is poorly suited. In longer views across the site the turbine would catch the eye by virtue of its size and movement, thereby reducing tranquillity, and would be noticeable as a disproportionately tall artificial feature in a landscape that is dominated by the natural landform and that has the rural characteristics I have described. Landscape of this character type is judged in the officer report to have a moderate capacity to receive "micro scale" wind turbines, but no definition of that expression is provided and I do not accept that it can be applied to a turbine of the size proposed.
18. I conclude that the appeal turbine would be harmful to the character and quality of the local landscape to a significant degree, and therefore would not be compliant with LDF Policy CS16. It would neither conserve nor enhance the special qualities of the Lake District National Park, and therefore would not be compliant with LDF Policy CS01. It would neither maintain nor enhance local distinctiveness, sense of place and tranquillity, and therefore would not be compliant with LDF Policy CS25. I attribute great weight to conserving landscape and scenic beauty in the National Park, and in so doing am mindful of paragraph 115 of the Framework and section 11A(2) of the National Parks and Access to the Countryside Act 1949.

Other Considerations

19. The scheme's effects on wildlife and habitat and on residential amenity would all be acceptable.
20. The appeal scheme would generate electricity for the grid, and the appellant would receive an extra income from that to help offset Linseldfield Farm's increasing energy costs. In that regard, the appeal proposal would comply with LDF Policy CS23. But there is no evidence of any wider benefit consequent upon the generation of income for the farm, or that the viability of the farm is currently at risk. Therefore, an increase in the farm income should not weigh in the planning balance.
21. The importance of supporting the delivery of renewable and low carbon energy and associated infrastructure is explained in Framework paragraph 93. It is central to the environmental dimension of sustainable development. The appeal proposal would make a valuable contribution to cutting greenhouse gas emissions. I attribute substantial weight to that effect of the scheme.

Conclusion

22. Paragraph 98 of the Framework says that a planning appeal such as this should be allowed if its impacts are (or can be made) acceptable. I have identified that the proposal would not comply with the development plan. The Framework presents other considerations, from which I find that the weight to be attributed to the scheme's delivery of renewable and low carbon energy, and the associated reduction in greenhouse gas emissions, is exceeded by the weight of the effects the scheme would have on the character and quality of the landscape in this part of the Lake District National Park. The impacts would therefore not be acceptable and the appeal should therefore be dismissed.

Conditions

23. Should the Secretary of State not accept my recommendation, and allow the appeal, the suggested conditions in the Annex to this report are drawn to his attention.

Recommendation

24. The appeal should be dismissed.

J.P. Watson

INSPECTOR

ANNEX

Suggested Planning Conditions, should the Secretary of State be minded to allow the appeal

The LPA has recommended conditions, should the appeal be allowed. I recommend that a full list of approved drawings be incorporated, to define the permission; and that the external finishes of the turbine be regulated by condition so as to minimise the visual effect of the turbine. I recommend the following conditions:

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.

Reason: to comply with the Town and Country Planning Act 1990.

- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:

Drawing number 000/P00001 rev 00: Northwind 100kW 24m rotor dia., 37m tower.

Un-numbered site plan, revision 1, date 24 April 2012.

Un-numbered location plan. Revision R1 Initial release, date 24/04/2012.

Reason: to define the permission.

- 3) The local planning authority shall be notified (within one week of the event) in writing of the date when electricity from the development is first supplied. The development hereby permitted shall be removed from the site within 20 years and 3 months of the date when electricity from the

development is first supplied. Not later than three months following the removal of the turbine and structures, the land shall be reinstated in accordance with a scheme that has first been approved in writing by the local planning authority.

Reason: The development is acceptable only on the basis of its energy generation potential. The turbine has a design life of 20 years. This condition is necessary to avoid the presence of redundant artificial elements in the landscape.

- 4) The foundation of the turbine hereby permitted shall be set below existing ground level and, following installation of the turbine, shall be kept earth and sod covered except during essential maintenance. Prior to excavation, turves on the site of the foundation shall be cut and stored. Not later than one week following installation of the turbine the foundation shall be covered, with turves cut to the base of the turbine.

Reason: To minimise landscape and visual harm.

- 5) All cabling, apart from stream crossings, shall be laid underground.

Reason: To minimise landscape and visual harm.

- 6) No development shall take place until samples of the materials and finishes to be used in the external surfaces of the turbine and building hereby permitted have been submitted to and approved in writing by the local planning authority. The turbine and building shall not bear any logos or other forms of advertisement. Development shall be carried out in accordance with the approved details.

Reason: To minimise landscape and visual harm.

- 7) No external lighting is to be installed on the turbine hereby permitted.

Reason: To minimise visual harm and loss of tranquillity.



Department for Communities and Local Government

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.