



Department for
Communities and
Local Government

Mr Paul Coales
Earthmill Ltd
Equinox 3
Audby Lane
Wetherby
West Yorkshire

Our Ref: APP/Z4718/A/14/2219268
Your Ref: Grange Ash Farm

29 September 2015

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY MR STUART SEARBY
PROPOSED INSTALLATION OF 2 NO. ENDURANCE 50 KW WIND TURBINES
25 WAKEFIELD ROAD, GRANGE MOOR, WAKEFIELD, WF4 4BG
(APPLICATION REF: 2013/62/91655/E)**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Clive Nield BA (Hon), CEng, MICE, MCIWEM, C. WEM, who made a site visit on 17 February 2015 to inform his consideration of your client's appeal against the refusal of Kirklees Council ("the Council") to grant planning permission for the installation of 2 No Endurance 50 Kw wind turbines at 25 Wakefield Road, Grange Moor, Wakefield.
2. On the 3 July 2014 the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990 on the grounds that it involves a renewable energy development.

Inspector's recommendation and summary of the decision

3. The Inspector, whose report is enclosed with this letter, recommended that the appeal be dismissed and planning permission refused. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and recommendation, dismisses the appeal and refuses planning permission. All paragraph numbers, unless otherwise stated, refer to the Inspector's report (IR).

Procedural matter

4. As stated at IR3, the proposed development has been assessed as being EIA development within the scope of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 and that sufficient information has been provided for him to assess the environmental impact of the proposal.

Matters arising following the closure of the inquiry

5. Following the close of the inquiry the Secretary of State wrote on 19 June 2015 to you, the Council and other interested parties inviting further information for the purposes of his consideration of the appeal. This matter was: the implications of the terms of the Written Ministerial Statement (WMS) of the Secretary of State on local planning of 18 June 2015 for the proposed scheme.
6. As the responses were circulated to all the main parties the Secretary of State does not consider it necessary to summarise the responses here or attach them to this letter.
7. The Secretary of State has received a number of representations following the closure of the inquiry from local residents, but he does not believe that they raise new issues which would require him to refer back to the parties. The Secretary of State has taken all representations into account in reaching his decision. Copies of all representations are available on written request to the address at the foot of the first page of this letter.

Policy and Statutory Considerations

8. In deciding the 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. In this case, the development plan comprises the saved policies of the Kirklees Unitary Development Plan adopted in September 2007 (UDP).
9. The Secretary of State has had regard to his WMS of 18 June. The statement explained that the Secretary of State was setting out new considerations to be applied to proposed wind energy development. Subject to a transitional provision, the statement explained that the new considerations had immediate effect. Given its relevance to this case, the Secretary of State attaches substantial weight to the statement as the most recent expression of government planning policy for onshore wind development.
10. The statement includes a transitional provision for where a valid planning application for wind energy development had already been submitted to a local planning authority at the date on which the statement was made and the development plan does not identify suitable sites. In such instances, local planning authorities can find the proposal acceptable if, following consultation, they are satisfied it has addressed the planning impacts identified by affected local communities and therefore has their backing. In applying the transitional provision to this appeal proposal the Secretary of State has considered the representations reported in the Inspector's Report and the correspondence referred to in paragraphs 5 to 7 above.

11. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (“the Framework”) and the planning guidance published in March 2014; the National Policy Statements (NPS) for Energy (EN-1) and Renewable Energy (EN-3); the Community Infrastructure Levy (CIL) Regulations 2010 as amended and Planning Practice Guidance for Renewable and Low Carbon Energy (2013). The Secretary of State has also taken into account the Written Ministerial Statements on renewable energy published in June 2013 by the Secretaries of State for Energy and Climate Change and for Communities and Local Government and the Written Ministerial Statement on renewable energy published by the Secretary of State for Communities and Local Government in April 2014.

Main Considerations

12. The Secretary of State concludes that the main issues in this case are those set out by the Inspector at IR69, and the provisions of the WMS on Local Planning of 18 June 2015.

Effect on the Green Belt

13. The Secretary of State agrees with the Inspector at IR70 that the proposal would be inappropriate development in the Green Belt, and by definition harmful to the Green Belt. For the reasons given at IR70 he agrees that the proposed turbines would significantly detract from the openness of the Green Belt.

Effect on landscape and visual amenity

14. For the reasons given at IR71-73 the Secretary of State agrees with the Inspector that the proposal would be detrimental to the open character and the appearance of the landscape and would harm the recreation value of the local rights of way network. He further agrees that the cumulative effect of wind turbines in the area has the potential to further harm the character of the area (IR74).

Benefits of the scheme

15. The Secretary of State agrees with the Inspector at IR75 in his assessment of the benefits of the scheme in terms of the provision of renewable energy, and in terms of improving the viability of a farming enterprise, in line with the Framework and national policy.

Other matters

16. The Secretary of State agrees with the Inspector at IR76 that no evidence has been put forward that would lead him to disagree with the Council’s assessment of other matters raised by local residents.

Planning Balance and Conclusion

17. Having regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, the Secretary of State has concluded that the proposal does not accord with the development plan taken as a whole, in particular owing to the clear conflict with UDP Policy EP8 arising from the serious harm that would be caused to the Green Belt and the impact on the visual amenity of the landscape. The

Secretary of State has therefore gone on to consider whether there are any material considerations which might nevertheless justify allowing the appeal.

18. The Secretary of State agrees with the Inspector's conclusions that the harm to the Green Belt by inappropriateness of harm to openness should attract substantial weight. He gives considerable weight, in agreement with the Inspector, to the harm to visual amenity and visual appreciation. Against these he weighs the benefits of the generation of renewable energy and support for the rural economy, which attract substantial weight.
19. In addition, having applied the transitional provision set out in the June 2015 WMS, the Secretary of State is not satisfied that all the planning impacts identified by affected local communities have been addressed. While the Secretary of State has received a number of responses to his letter of 19 June 2015 both supporting and opposing the development, he is not satisfied that all the planning impacts identified by the affected local communities have been addressed. This is demonstrated in particular by the Inspector's conclusions at IR70 on the proposal's impact on the openness of the Green Belt; and by his conclusions at IR74 on the harm to the character and appearance of the landscape and the recreational value of the local rights of way network. As those planning impacts as identified by the affected communities have not been addressed, the proposed scheme would not meet the transitional arrangements set out in the WMS of 18 June 2015; and the Secretary of State gives significant weight to this non-compliance.
20. He concludes, in agreement with the Inspector, that the benefits are not sufficient to clearly outweigh the harm to the Green Belt and other harms, and that as such very special circumstances justifying development in the Green Belt do not exist. He further concludes that as such the proposal would not be in accord with Chapter 9 of the Framework.
21. Having weighed up all relevant considerations, the Secretary of State concludes that the factors which weigh in favour of the proposed development do not outweigh its shortcomings and the conflict identified with the development plan and national policy. He considers that there are no material considerations of sufficient weight which would justify allowing the appeal.

Conditions

22. The Secretary of State has had regard to the schedule of conditions at Annex A to the IR. He is satisfied that the Inspector's proposed conditions are reasonable and necessary and would meet the tests of the paragraph 206 of the Framework. However, he does not consider that they would overcome his reasons for dismissing this appeal.

Formal Decision

23. 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.

Right to challenge the decision

24. 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.
25. A copy of this letter has been sent to the Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Philip Barber

Authorised by the Secretary of State to sign in that behalf

Report to the Secretary of State for Communities and Local Government

by Clive Nield BSc(Hon), CEng, MICE, MCIWEM, C.WEM

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

Date: 24 March 2015

TOWN AND COUNTRY PLANNING ACT 1990

SECTION 78

Kirklees Council

Appeal by Mr Stuart Searby

Proposed Installation of 2 No. Endurance 50 kW Wind Turbines

Site visit made on 17 February 2015

25 Wakefield Road, Grange Moor, Wakefield, WF4 4BG

File Ref: APP/Z4718/A/14/2219268

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File Ref: APP/Z4718/A/14/2219268

25 Wakefield Road, Grange Moor, Wakefield, WF4 4BG

- 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 Stuart Searby against the decision of Kirklees Council.
- The application Ref 2013/62/91655/E, dated 16 May 2013, was refused by notice dated 22 April 2014.
- The development proposed is the installation of 2 No. Endurance 50 kW wind turbines.

Summary of Recommendation: The appeal be dismissed.

Preamble

1. This report includes descriptions of the site and surrounding area, the proposed development, the relevant planning policies, and the gist of the representations made, as well as my conclusions and recommendations. In my conclusions the numbers in square brackets indicate the relevant paragraphs of the report, and possible conditions are attached as an Annex.

Procedural Matters

2. On 3 July 2014 the appeal was recovered for determination by the Secretary of State rather than an Inspector. The direction was made because the appeal involves a renewable energy development that was subject to very substantial local objections at the application stage.
3. The Council undertook a screening opinion of the application, and a screening direction has been carried out on behalf of the Minister at the appeal stage. The conclusion is that the proposed development is not EIA development within the scope of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011.

Site and Surroundings

4. The wind turbines would be sited in a field currently used for grazing as part of Grange Ash Farm, a dairy and arable farm comprising some 120 hectares (300 acres). The 2 turbines would be located more than 50 metres from any trees or hedgerows on land at an elevation of about 230 metres AOD. The farm complex and several houses are situated just to the south of the site alongside Wakefield Road (the A642).
5. The surrounding landscape is gently undulating and falls to a valley to the north, to Flockton at about 150 metres AOD to the south, and towards Kirklees Way at about 190 metres AOD to the east. The village of Grange Moor lies immediately to the west at about the same level as the appeal site, with Ben Booth Lane running north/south in between. A number of public rights of way run close to the site, the nearest being approximately 75 metres from the southern turbine location.
6. The site is located within the Green Belt.

Proposed Development

7. The proposed development would comprise 2 No. Endurance 50 kW wind turbines and associated cabinets. Connections to the national grid would run underground. Each wind turbine would be some 34.2 metres high to the tip of the blades,

which would be 19.2 metres diameter. Each turbine would sit on a 6 metres square reinforced concrete foundation.

8. A previous application for 2 No. 47.5 metre wind turbines was made in 2010 (Ref 2010/91553) and was also refused.

Planning Policy

9. The Council's reasons for refusal referred to Unitary Development Plan Policy EP8 and Chapter 10 of the National Planning Policy Framework (NPPF).
10. The adopted development plan is the Kirklees Unitary Development Plan (UDP), with certain policies "saved" beyond September 2007 under the direction of the Secretary of State. Policy EP8 reads:

"Wind turbines will be permitted provided the development, including ancillary buildings, access tracks and connections to the electricity supply grid, will not cause serious harm to:

- (i) the character, recreational value and visual amenity of the Green Belt or landscape;*
- (ii) the character, appearance or setting of a listed building or conservation area;*
- (iii) the amenity of occupiers of land in the vicinity;*
- (iv) the ecology of the area;*
- (v) areas designated at national, regional or local level as of nature conservation, scientific or archaeological interest;*
- (vi) highway safety; or*
- (vii) existing transmitting or receiving systems by reason of electromagnetic disturbance;*

and provided special regard is paid to the visual relationships with other existing or proposed wind turbines.

11. The Council has also made reference to the following UDP policies:
- Policy BE1, which says *"All development should be of good quality design such that it contributes to the built environment"*, and lists several criteria;
 - Policy EP6, which says that existing and projected noise levels will be taken into account in considering applications for developments that may give rise to noise;
 - Policy T10, which deals with effects on highway safety and use; and
 - Policy R13, which takes into account effects on users of the public rights of way network.
12. Chapter 10 of the NPPF deals with "Meeting the challenge of climate change, flooding and coastal change". In particular, paragraph 93 recognises the importance placed on the key role of planning in, amongst other things, "supporting the delivery of renewable and low carbon energy and associated

infrastructure", which is "central to the economic, social and environmental dimensions of sustainable development". Paragraph 97 says *"To help increase the use and supply of renewable and low carbon energy, local planning authorities should recognise the responsibility on all communities to contribute to energy generation from renewable or low carbon sources"*, and it lists several forward planning principles.

13. Paragraph 98 deals with the determination of planning applications and says, amongst other things, that local planning authorities should *"recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions"*, and that they should approve applications for energy developments if their impacts are (or can be made) acceptable.
14. The Council has also drawn attention to Chapter 9, "Protecting Green Belt Land", and Chapters 11 and 12, "Conserving and Enhancing the Natural Environment" and "Conserving and Enhancing the Historic Environment" respectively. Chapters 11 and 12 require no further explanation. However, Chapter 9 is worth attention.
15. Paragraph 80 lists the 5 purposes served by Green Belt land. Paragraph 87 confirms that *"inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances"*, and paragraph 88 sets out the standard Green Belt test: *"When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. '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"*.
16. Paragraph 90 illustrates the importance attached to preserving the openness of the Green Belt, and paragraph 91 provides particular guidance on renewable energy. It reads: *"When located in the Green Belt, elements of many renewable energy projects will comprise inappropriate development. In such cases developers will need to demonstrate very special circumstances if projects are to proceed. Such very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources"*.
17. Mention is also made of NPPF paragraph 14, which starts by saying *"At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking"*.
18. The Appellant makes some reference to policies in the Council's emerging Local Development Framework Core Strategy, which was referred to the Secretary of State in April 2013. However, it was withdrawn in October 2013 and so warrants little weight in these considerations.
19. The Julie Martin Associates Report "Landscape Guidance for Wind Turbines up to 60m high in the South and West Pennines", dated January 2013, provides useful guidance. The report was prepared for 8 local planning authorities in the South and West Pennines in response to the NPPF's encouragement for authorities to have a positive strategy to promote energy from renewable and low carbon sources. It presents generic advice on the landscape and visual issues associated with the smaller classes of wind turbines, including good practice guidance on location, siting, layout, design and cumulative impacts.

Case for Mr Stuart Searby

The Appellant's case relies on the Grounds of Appeal Statement submitted for the appeal, and no further statement has been submitted. The material points are:

Introduction

20. In the light of the recent economic situation in dairy farming, farmers need to look at profitable ways of maintaining and growing their enterprises if they are not to be forced out of business. It is important that development proposals such as this are considered favourably to support and enhance a sustainable rural farming community. The appeal proposal would support the ongoing viability of the existing rural enterprise.
21. The proposed turbines have been kept a suitable distance from the farm buildings and other obstacles so that they would have an uninterrupted wind and would operate effectively. Consideration has been given to the proximity of Grange Moor to the east, where the nearest property is more than 250 metres from the site, thus ensuring there would be no noise or shadow flicker impact on residential amenity. In addition, the trees along Ben Booth Lane would act as a significant visual buffer.
22. The proposed site is not designated as or in close proximity to any National Park, Site of Special Scientific Interest (SSSI), Conservation Area, Listed Building, Area of Outstanding Natural Beauty (AONB) or other sensitive feature. However, it is acknowledged that it is within an area of Green Belt, and that the proposed turbines would be inappropriate development. Thus, by definition, it would be harmful to the Green Belt and should not be approved except in very special circumstances. It would affect the openness of the Green Belt and would cause a degree of harm to the landscape. However, the production of renewable energy is a benefit that attracts significant weight, and that would be further supported by the benefits to the rural enterprise.
23. It is noted that the local planning authority has not referred specifically to Green Belt harm. Its refusal has concentrated on impacts on visual amenity, landscape character and the recreational value of the public rights of way network, and the cumulative effects of wind turbines in the area. The Appellant addresses these in more detail.

Effect on Landscape, Visual Amenity and Local Public Rights of Way

24. The key issues under this heading are the extent to which the proposal would intrude into existing views experienced by residents and regular users of the area and the impact on tourists and visitors passing through or visiting the area. An assessment of the visual impact has been carried out based on the Guidelines for Landscape and Visual Impact Assessment 3rd Edition 2013 (GLVIA), and a series of photomontages and a Zone of Theoretical Visibility (ZTV) map have been provided. These enable a robust assessment of the visual and landscape character impact to be carried out.
25. The turbines would be unavoidably visible in the immediate area around the site. However, visibility would vary from areas further afield, and the turbines would not be prominent from the nearby core settlements. Only smaller settlements such as Emley, Grange Moor and Flockton fall within the ZTV.

26. In terms of character the site lies within the Emley Moor landscape character area, an elevated landscape comprising Grange Moor, Flockton Moor and Emley Moor, which has lost its original moorland character as a result of enclosure with stone walls and hedges and its use as pasture and arable land. Woodland is scarce, and the area has an open and exposed character, though the television tower on Emley Moor is a dominant vertical feature that diminishes the apparent size of the features around it. In terms of sensitivity, the local landscape is considered to be of "low to moderate" value, and there is continuing development of various types in the area. In this context, the proposed wind turbines would be proportionate to other vertical features in the landscape, such as overhead power lines and large trees, and its association with the agricultural development nearby would define the purpose of the turbines in the landscape.
27. Reference is made to a recent appeal decision (Ref APP/Z4718/A/13/2202153) for a similar wind turbine at Emley where the Inspector assessed the proposal in relation to the character and appearance of the area. He concluded that *"the wind turbine proposed would be readily apparent as a man-made imposition on the landscape,"* and *"However, given the obvious influence of humanity on the landscape, in terms of use as pasture, field boundaries, buildings, and roads, it would not appear particularly incongruous. Neither, given the wide views available across the landscape, and the obvious presence of the very much taller Emley Moor mast, would the wind turbine appear out of scale"*.
28. There are direct comparisons with the current appeal scheme which shares the same characteristics and relationships. In a similar way the proposed turbines would not be a dominant feature and would not cause significant harm to the visual amenity or character of the area.
29. Turning to the rights of way network, there are a number of public rights of way in the area, mainly to the east of the site, including the Kirklees Way about 1.25 km away. However, these local routes are of low sensitivity in comparison with more popular national routes as they are not identified as key walking routes used by a large number of people. This limited use, coupled with limited views due to the topography and intervening trees, leads to the conclusion that the visual impact on users would not be unacceptable. This is illustrated by Photomontage 1 taken from Denby Grange Lane about 450 metres to the east of the site, which shows a worst case scenario and is comparable to the Emley appeal decision detailed above. Even when the turbines can be seen in such views they are not unacceptably harmful to visual amenity.
30. The temporary nature of the turbines should also be taken into account, as there would be no permanent access track and, when the turbines reach the end of their operation life, they could be decommissioned and removed from the site. The Emley appeal decision recognised this, stating *"It is correct to note too that the harmful impact would be both temporary and reversible. As a consequence of the limited harm that would be caused, there would be no great diminution in the recreational value of the nearby footpath"*.
31. In conclusion, the scale of the landscape effects would be low and the turbines could be accommodated without significant harm to the visual amenity of the area.

Cumulative Impact

32. It is acknowledged that the presence of a number of wind turbines in a geographic area can create an issue due to their cumulative impact. However, the proposal is for 2 relatively modest turbines with no other structures in the immediate vicinity, and they could be accommodated adequately within the landscape. Whilst the turbines would be visible from Whitley, Bristfield and Thornhill Edge, it is necessary to properly appreciate what the cumulative effects would be.
33. The Landscape Institute defines cumulative landscape and visual effects as *"Additional changes to landscape and visual amenity caused by the proposed development in conjunction with other developments (associated with or separate to it) or actions that have occurred in the past or are likely to occur in the foreseeable future"*. Factors affecting the cumulative effects include: the scale of development; the proportion of view occupied by the developments; and the composition of the combined scheme.
34. In this case there are 4 existing wind turbines within a 2 km radius (1 similar to those currently proposed and 3 smaller units with 15 metre hub heights), and the turbine granted in the Emley appeal decision referred to above is just over 2 km away. In that same appeal decision the Inspector concluded *"As well as the mast, there are other wind turbines visible from the appeal site. There have been others approved by the Council but yet to be erected too. Nevertheless, the degrees of separation involved would be of a magnitude such that there would be no sense of the landscape being dominated by wind turbines, and other man-made impositions upon it, and no harmful impact as a result of the proposal, therefore"*.
35. That Inspector's conclusions are the key. Even though visible from nearby settlements, the cumulative effects would not be so substantial as to warrant refusal. Whilst the 2 proposed turbines would have a limited visual impact and there would be consolidation of the perception that the wider area is being exploited for wind energy, the additional effect would not materially change the appearance of the landscape. They would be just a minor addition to the few that exist.
36. There would also be an element of consistency in the models and sizes of turbines in the area, which in some views would give an impression of a cluster rather than separate schemes. This would further alleviate any cumulative effect. If considered acceptable individually, multiple wind turbines in the area may be sited in a manner that presents order to their appearance in the landscape. In this case, the choice of a turbine size and type comparable with some of the other existing and proposed turbines in the area gives support to this principle.
37. It should also be noted that in another part of the Council's area, where there are already a large number of wind turbines, the Council has recently refused a number of applications for agricultural scale turbines which have then been allowed on appeal. There is a pattern in this that indicates the Council is continuously emphasising the cumulative effects with little robust evidence to support its stance.

38. In conclusion, it is unreasonable to argue that the proposed scheme would tip the total number of turbines in the landscape to an unacceptable level. As such, the proposal would not conflict with the objectives of UDP Policy EP8 or Chapter 10 of the NPPF, which support renewable energy production so long as there is no significant harm to the character or appearance of the landscape. In this location the landscape has the capacity to accommodate the additional wind turbines proposed without causing unacceptable harm.

Balancing Considerations in Favour of the Scheme

39. The first benefit is the generation of renewable energy for use on the farm and export to the grid. The importance of this is illustrated by the support provided by the NPPF, where paragraph 93 explains the importance of planning decisions in securing radical reductions in greenhouse gas emissions, and paragraph 98 demonstrates the overall need for renewable or low carbon energy, the valuable contribution made by small-scale projects, and that schemes should be approved if their impact would be acceptable.
40. The proposed scheme would generate an estimated 420,000 kWh of electricity per year (based on a conservative estimate of likely wind speeds). This would make a significant contribution in support of the Government's renewable energy targets, which include the production of 15% of all energy use from renewable sources by 2020 (EU Renewable Energy Directive). If this is to be achieved it is vital that schemes like the appeal proposal are supported.
41. The second benefit is the contribution towards maintaining the viability of the existing farming enterprise. Income from the Feed in Tariff (FiT) would be more than sufficient to fund the significant capital investment required and would provide a positive financial benefit over the next 20 years.
42. Farming in this Country is faced with high production costs, and Grange Ash Farm has a sizeable dairy unit which has a substantial electricity usage. The wind turbines would generate much of the electricity used on the farm and, together with the financial income generated, this would offset current energy costs, prolonging the longevity of the enterprise in line with the aims of NPPF paragraph 28 to provide support for economic growth in rural areas and promote a strong rural economy.
43. Together, these benefits warrant significant weight in favour of the proposal in the balance of considerations.

Overall Conclusion

44. The proposal is a form of sustainable development which, according to the NPPF, should be approved if its impacts would be acceptable. The NPPF provides a presumption in favour of sustainable development.
45. In this case, whilst there would be some visual impact, its limited magnitude would not materially alter the existing situation, and it would not cause any significantly harmful effects on the character and appearance of the landscape. As such, it would not conflict with the aims of UDP Policy EP8 or Chapter 10 of the NPPF (which were cited in the reasons for refusal).
46. There are several public rights of way near to the site but the effects on these would not be unacceptable. Views would often be only from short sections of the

routes and limited by trees and the natural topography, and the routes are considered to be of only low sensitivity as they are not key walking routes used by a large number of users.

47. It is acknowledged that there would be harm to the Green Belt. However, the strong policy support for renewable energy, reductions in greenhouse gases, and diversification to strengthen the rural economy is enough to clearly outweigh the harm by inappropriateness and any other harm. Thus the proposal would be in line with development plan and national policy.

Case for Kirklees Council

The Council's case relies on the Statement submitted on 8 July 2014 and the Officer's Delegated Decision Report. The material points are:

Introduction

48. The Council refused the application for 2 reasons:

- the erection of 2 wind turbines in such a prominent plateau location would represent an intrusive structure which would have a detrimental impact on the visual amenity and landscape character of the area, and on the recreational value of the local public rights of way network; and
- the proposal would extend the cumulative impact of wind turbines beyond the high plateau of Grange Moor towards the settlements of Whitley, Briestfield and Thornhill Edge, and the additional turbines in this area would result in unacceptable harm to the openness and visual amenity of the area.

49. The Council takes no issue on any other matters. The nearest heritage asset is over one kilometre away, and the proposed turbines would have minimal effect on its setting. The Council's Ecologist reviewed the ecological assessment submitted by the Appellant and agreed that impacts would be unlikely to be adverse. Implications for highway and aviation safety were also considered acceptable.

50. The nearest houses to the site are: the farmhouse and 2 other connected properties 160 metres to the south; a public house 190 metres to the south east; houses on the edge of Grange Moor 260 metres to the west; and several isolated houses on Denby Lane to the north (the nearest about 170 metres from the northern turbine site). The proposed turbines would have a detrimental impact on the visual outlook of the latter but, as only a few houses would be affected, the impact is not considered to be significant.

51. The Council has assessed the proposal against the ETSU-R-97 standard for noise and reached the conclusion that it would be unlikely to cause any significant nuisance to the occupiers of these properties. Similarly, there is unlikely to be any impact on them from shadow flicker.

Impact on Visual Amenity and Landscape Character

52. The site lies within the designated Green Belt, and the proposal would fall within the definition of inappropriate development in the Green Belt. By definition, inappropriate development is harmful to the Green Belt and the harm attracts considerable weight. For development to be acceptable it must be demonstrated that very special circumstances exist to outweigh the harm caused.

53. At 34.2 metres tall, the proposed turbines would be substantially taller than any other nearby structures and would detract from the openness of the Green Belt. Given the scale and nature of the development, it would also be seen as an encroachment into the countryside, and would conflict with one of the 5 purposes of the Green Belt, *"to assist in safeguarding the countryside from encroachment"* (NPPF paragraph 80).
54. The wider landscape is characterised as being part of a rolling, wooded farmland area adjacent to an area of rural fringe with a low/moderate overall sensitivity. However, the site has relatively long distance views, particularly to the east, and is within an attractive landscape, which is of relatively high value locally and so moderately sensitive to change.
55. The "Landscape Guidance for Wind Turbines up to 60m high in the South and West Pennines" indicates that skylines are highly sensitive to change and that wind turbines of this scale should be located where they are generally viewed against a backdrop of higher hills and on open ground where there are few obvious scale comparators, so that they will be seen as a relatively smaller part of a simpler, larger scale landscape. However, in this case the site is fairly open but with man-made influences nearby, including small pylons and patterns of enclosed fields. Much of the immediate area can be seen in views from the surrounding landscape, and the wind turbines would be seen as inappropriately sited with a significant negative effect on the local landscape.
56. The Appellant has carried out a simple landscape and visual impact assessment and has submitted a map of the Zone of Theoretical Visibility and 8 viewpoint analysis photomontages. These illustrate that the turbines, located on a plateau and surrounded by agricultural land, would be highly visible in both short and long distance views from the north and east and would not be seen against a background of higher land. To the west they would be seen from Grange Moor but not from further away, and from the south they would be seen from the A642 Wakefield Road and from the higher areas of Emley Moor further away.
57. There is also a network of footpaths and bridleways close to the site, many of which are well used by horse riders and walkers, and the turbines would be prominent in views from these. Due to the open nature and hill-top location of the site the proposed turbines would have a significant impact on the recreational value of the area, adding weight to the case against granting permission for the turbines.
58. The combination of the height and location of the turbines would cause them to appear as an incongruous feature in an elevated position. Due to the relationship with nearby settlements, open fields and important recreational interests, and its wide visibility, the development would unacceptably detract from the quality and character of the surrounding landscape.
59. It is indicated in Chapter 9 of the NPPF that the wider environmental benefits associated with the increased production of renewable energy can constitute "very special circumstances" which outweigh the harm by reason of inappropriate development, and Chapter 10 reinforces the value of those benefits. However, in this case, the turbines would be so intrusive and so detrimental to the openness and visual amenity of the Green Belt that the benefits would not amount to very special circumstances and the development would be contrary to UDP Policy EP8 and NPPF Chapter 9.

Cumulative Impact

60. Government National Planning Practice Guidance suggests (with reference to wind turbines) that *“Cumulative visual impacts concern the degree to which proposed renewable energy development will become a feature in particular views (or sequence of views), and the impact this will have on the people experiencing these views. Cumulative visual impacts may arise where two or more of the same type of renewable energy development will be visible from the same point, or will be visible shortly after each other along the same journey”*. This is an important factor in this case.
61. Within a 2km radius of the appeal site 11 wind turbines of various types and sizes have been erected or granted planning permission, and applications for several more have been refused. There are an increasing number of wind turbines in the area around Grange Moor, and the impact of this is a visible sequence of turbines as one passes through the area. Although transitory for those passing through in vehicles, the impact is quite pronounced for users of the public rights of way. The erection of the 2 proposed wind turbines in this prominent location would extend this impact beyond the high plateau of Grange Moor towards the settlements of Whitley, Bristfield and Thornhill Edge, exacerbating the cumulative impact contrary to national policy guidance.

Overall Conclusion

62. The proposed development would unacceptably affect the landscape character and the visual and recreational amenity of the area, and this would be exacerbated by the cumulative impact with other wind turbines in the area. Whilst there would be undoubted benefits due to the production of renewable energy, they would not be sufficient to outweigh the harm to the character and amenity of the landscape and the significant harm to the openness and character of the Green Belt. Very special circumstances do not exist to justify the proposed development in this Green Belt location.

Written Representation from Member of Parliament

63. Mr Simon Reeve MP, the constituency Member of Parliament wrote to the Minister on 12 June 2014 asking for consideration to be given to recovering the appeal for determination by the Secretary of State. No views were expressed on its merits.

Other Written Representations

In addition to those submitted to the Council at the time of its consideration of the planning application, 13 written representations were submitted to the Planning Inspectorate (or Secretary of State) by local residents. The material points are:

64. The wind turbines would be large, industrial eyesores, harmful to the character and appearance of the countryside and inappropriate in a Green Belt area. They would overshadow the neighbouring village of Grange Moor, where some 400 people opposed the scheme at the application stage. Houses in close proximity to the turbines would see significant reductions in value, as evidenced by surveys carried out at sites elsewhere.

65. The turbines would have implications for noise and vibration at houses nearby with associated effects on the health and wellbeing of local residents. There are also concerns about the stability of the ground as a result of mining activities in the area in the past and about effects on wildlife and the loss of agricultural land. There are already a substantial number of wind turbines around the village, and the 2 additional ones now proposed further exacerbate that.
66. There would be no benefits to the community. The benefits would be purely commercial, providing income to the farmer concerned and to the "faceless organisation" supporting him. There would be little, if any, electricity exported to the national grid.

Conditions

67. The Council has suggested 5 conditions be attached to any permission granted. These are detailed in the Council's statement and cover the following matters:
- 1) commencement of development within 3 years;
 - 2) development to be in accordance with plans and specifications;
 - 3) control over the colour of the mast and blades;
 - 4) prior investigation of possible mine working beneath the site; and
 - 5) removal of the wind turbines and clearance of the site when operation ceases.
68. The Appellant has not commented on these.

Conclusions

[The numbers in square brackets indicate the relevant paragraphs of the report.]

69. The main considerations in this case are; the implications of the location of the site with the Green Belt; the effects of the proposed development on the Green Belt, on the character and appearance of the landscape, and on the recreational value of the public rights of way network; the benefits of the scheme; and whether or not those benefits clearly outweigh the harm to the Green Belt and other harm.

Effect on Green Belt

70. It is common ground that the proposal would be inappropriate development in the Green Belt and, by definition, harmful to the Green Belt. It is also acknowledged that the development would affect the openness of the Green Belt, which is one of the essential characteristics of Green Belts (the other being permanence). In view of the substantial height of the proposed turbines (albeit classed as small-medium in wind turbine terms), which would be considerably higher than any other structures in the vicinity, I consider they would significantly detract from the openness of the Green Belt. The NPPF directs that substantial weight should be attributed to any harm to the Green Belt. [6, 15, 23, 52]

Effect on Landscape and Visual Amenity

71. The proposed development would also affect the appearance of the landscape and visual amenity experienced in some views. Obviously the turbines would be clearly visible and prominent in short distance views from all directions, but longer distance views would be partially limited by the natural topography and intervening trees and hedges. Nevertheless, I consider the turbines would appear out of place in many of the possible views due to their scale and elevated location so that they would often be seen against the sky line rather than a hillside background. For similar reasons, they would also be frequently seen from the local network of public rights of way and would look dominant and out of place in those views, to the detriment of recreational enjoyment of those footpaths and bridleways. [4, 5, 19, 24-26, 31, 45, 48, 53-58]
72. The Appellant says these routes are not key routes used by a large number of people and should be taken to be of low sensitivity. However, the Council says they are regularly used and warrant greater consideration. Similarly, the Appellant argues that the landscape as a whole should be taken to be of low-moderate sensitivity. However, in view of the attractive open nature of the landscape in this area and the undoubted regular use of many of the rights of way, I consider these assessments to be underestimated. [29, 46, 57]
73. The Appellant has drawn my attention to the conclusions reached by another Inspector in connection with an appeal for a similar wind turbine at Emley. Whilst those conclusions may have been appropriate for that particular case, which was closer to the imposing television mast on Emley Moor, the current appeal has to be assessed on its own particular circumstances, and I find those conclusions to be of limited help. The question of scale has to be judged in the context of each site and its surroundings, as do the impacts on the nearby footpath and bridleway network. [27, 28, 30]

74. I conclude that the proposed wind turbines would be detrimental to the open character and the appearance of the landscape and would harm the recreational value of the local rights of way network. As to the cumulative effects of wind turbines in the area, whilst I do not consider this to warrant refusal in its own right, it does have the potential to further harm the character of the area, and it serves to reinforce my main conclusion on harm to the landscape and visual amenity. [32-38, 60, 61]

Benefits of Scheme

75. Other than from third parties, there is no dispute on the benefits of the proposed scheme in terms of the generation of renewable energy and the policy support for this contained within the NPPF. The benefits would be gained both by the use of some of the generated electricity on the farm itself and by export of the rest to the national grid. Both of these are valuable benefits. The “free” electricity used on the farm and the Feed-in-Tariff income would both help to support and improve the viability of the farming enterprise, which is again in accordance with the aims of national policy to improve the rural economy. Several local residents have commented on this but appear not to be aware of the policy support for it. [7, 12, 13, 20, 39-43, 66]

76. Local residents have also commented on several other matters but have not put forward any evidence that would lead me to disagree with the Council's assessments of these matters, and I give them little weight, though I am aware of the widespread opposition to the scheme amongst most local residents. [21, 49-51, 64, 65]

Overall Conclusions

77. I come now to the Green Belt balancing test, which requires that other considerations (i.e. in this case the benefits of the scheme) should clearly outweigh the harm to the Green Belt and any other harm. I attribute substantial weight to the Green Belt harm (both that due to inappropriateness and due to harm to openness) and considerable weight to the harm to visual amenity and visual appreciation of the landscape. On the other hand, the benefits of the scheme in terms of the generation of renewable energy and support for the rural economy also warrant substantial weight. However, I do not consider it sufficient to meet the Green Belt test of clearly outweighing the harm to the Green Belt and any other harm. Nor can it be considered to amount to very special circumstances, the second part of the test. [15-17, 22, 43, 47, 52, 59, 62]

78. I conclude that the proposal would not be in accord with UDP Policy EP8 or Chapters 9 and 10 of the NPPF, and that the appeal should be dismissed. [10, 44, 45]

Conditions

79. Notwithstanding my conclusion above, I have considered the conditions it would be appropriate to apply should the Secretary of State be minded to allow the appeal and grant planning permission. The conditions suggested by the Council are suitable and adequate, and they are listed in the attached Annex (with limited appropriate amendments). They would be necessary in order to minimise the visual impact of the turbines, to ensure land stability, and to ensure restoration of the site when the use of the turbines expires. [67, 68]

Recommendations

80. I recommend that the appeal be dismissed.
81. However, if this recommendation is not accepted and it is proposed to grant planning permission, then I recommend the conditions in the attached Annex be applied.

Clive Nield

Inspector

Annex of Planning Conditions.

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule included in the Council's Refusal Notice dated 22 April 2014.
- 3) Neither the masts nor the turbines shall be painted or given an external application of colour other than in accordance with the details in the approved plans and specifications, including at any time in the future, unless otherwise approved in writing by the local planning authority.
- 4) No development shall commence until an intrusive site investigation has been carried out to determine the extent of any coal workings on the site. In the event of the site investigations identifying the need for any remedial works to treat areas of surface or shallow mine workings, these works shall be undertaken before the development hereby permitted is commenced.
- 5) If the wind turbines hereby permitted cease to operate for a continuous period of 6 months, unless otherwise approved in writing by the local planning authority, a scheme for the decommissioning and removal of the wind turbines and all other ancillary equipment and structures relating solely to the wind turbines shall be submitted to and approved in writing by the local planning authority within 3 months of the cessation period. The scheme shall include details for the restoration of the site. The scheme shall be implemented within 3 months of the date of approval by the local planning authority.



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.