



Department for
Communities and
Local Government

Julian Atanasiu
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Lengericher Landstrasse 118
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49078

Our Ref: APP/K3415/A/13/2205526

14 March 2016

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY PROWIND (UK) LTD:
HAUNTON MANOR FARM, HAUNTON, STAFFORDSHIRE, B79 9HN**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Mr A Thickett BA (Hons) BTP MRTPI DipRSA, in relation to your appeal against a decision of Lichfield District Council to refuse planning permission for the erection of two 500Kw wind turbines with associated crane hardstandings at Haunton Manor Farm, Haunton, Staffordshire, B79 9HN in accordance with application ref 12/00078/FULM dated 19 January 2012.
2. The appeal was recovered for the Secretary of State's determination on 10 March 2015 in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990 because the appeal involves a renewable energy development.

Inspector's recommendation and summary of the decision

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

Procedural matters

4. In reaching this position the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011 (IR35). Like the Inspector, the Secretary of State is content that the Environmental Statement complies with the above regulations and that sufficient

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information has been provided for him to assess the environmental impact of the application.

Policy considerations

5. In deciding the application, 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 adopted development plan for the area comprises the 2015 Lichfield Local Plan (LP). The Secretary of State considers that relevant development plan policies in this case include those set out in IR2. For the reasons below, the Secretary of State considers that the proposal conflicts with policies NR1, SC2, NR5 and Core Policy 14 of the LP. Consequently he considers that the proposal conflicts with the development plan as a whole.
6. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework, March 2012 (the Framework), the associated planning practice guidance (the guidance) and the Written Ministerial Statement of 18 June 2015 which concerns wind farms.
7. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the appeal scheme or their settings or any features of special architectural or historic interest which they may possess. The Secretary of State has also paid special attention to the desirability of preserving or enhancing the character or appearance of conservation areas, as required by section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Main issues

8. The Secretary of State considers that the main considerations in this case are renewable energy and those set out in IR36.

Renewable energy

9. National guidance states that even small renewable energy projects contribute to reducing carbon emissions and help combat climate change [IR3]. The proposed turbines would generate renewable energy and in this regard contribute to the objectives of sustainable development (IR57).

Character and appearance

10. The Secretary of State agrees with the Inspector that in long distance views the visual effect of the turbines is unlikely to be significant (IR37). However, like the Inspector, with regard to their more immediate surroundings he does not share the appellant's view that the site has the capacity to absorb the turbines without adverse effects. He agrees with the Inspector that, due to their height and appearance, the turbines would stand out as alien industrial features which would have a detrimental impact on a pleasing rural landscape, and therefore concludes that the proposed turbines would have an adverse impact on the character and appearance of the area and conflict with LP Policies SC2, NR1 and NR5 (IR38).

Heritage assets

11. The Secretary of State agrees with the Inspector's reasoning and conclusions at IR39-42 regarding heritage assets. He agrees that, although no longer a farm, the surrounding fields are integral to the setting of Dunimere Farmhouse and the immediate surroundings are also important historically and their contribution to the setting of the farm must be considered. Like the Inspector and Historic England, he considers that, due to their size and modern appearance the turbines would have an adverse effect on this historic landscape which, in turn, would have a detrimental effect on the setting of the listed building (IR40). The Secretary of State agrees that the harm would be less than substantial, but that a finding of less than substantial harm carries considerable weight (IR58).
12. The Secretary of State agrees with the Inspector's findings at IR41 that there would not be a material impact on Haunton Conservation Area and that the turbines would not compete with the spire of the Church of St Andrew at Clifton Campville and its importance and setting would not be undermined. Nevertheless he also agrees that these findings do not diminish the Inspector's conclusion that the proposed development would have an adverse impact on Dunimere Farmhouse and therefore conflicts with LP Core Policy 14 (IR42).

Living conditions

13. The Council assessed the impact of the proposed turbines on a number of dwellings within 750m to 1km from the site of the proposed turbines. For the reasons given in IR43-46, the Secretary of State acknowledges that the turbines would inevitably have an effect on views from these properties but, like the Inspector, does not consider that the impact would be significant. The Environmental Statement concludes that the noise generated would not have an adverse impact on local residents, and nor would any be affected by shadow flicker. The Secretary of State therefore agrees with the Inspector's conclusion that the proposed development would not have an adverse impact on the living conditions of nearby residents (IR46).

Protected species

14. For the reasons given in IR47 the Secretary of State agrees with the Inspector that the proposed development would not have an adverse impact on protected species.

Other matters

15. The Secretary of State agrees with the Inspector's assessment regarding the matters covered at IR48. He does not consider that any of these matters adds weight either for or against the appeal proposal.

Conditions

16. The Secretary of State agrees with the Inspector's comments at IR49-56 on planning conditions and is satisfied that the conditions recommended at IR pages 16-17 (Annex B Schedule of Conditions) are reasonable and necessary, and would meet the tests in paragraph 206 of the Framework. However, the Secretary of State does not consider that the recommended conditions would overcome his reasons for dismissing the appeal.

The planning balance and conclusions

17. The Secretary of State considers that the proposal conflicts with the development plan as a whole and he agrees with the Inspector's conclusions at IR57-58.
18. Weighing in favour, the proposal would generate renewable energy and help combat climate change. The Secretary of State places significant weight on these benefits.
19. However the harm to Dunimere Farmhouse, though less than substantial, nevertheless carries considerable weight against the proposal. The Secretary of State also places significant weight on the adverse impact of the proposed turbines on the character and appearance of the area. He concludes that the adverse impacts outweigh the benefits and finds no reason to determine the appeal other than in accordance with the development plan.

Formal decision

20. 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 two 500Kw wind turbines with associated crane hardstandings in accordance with application ref 12/00078/FULM dated 19 January 2012.

Right to challenge the decision

21. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within six weeks from the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
22. A copy of this letter has been sent to Lichfield District Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Julian Pitt

Julian Pitt

Authorised by Secretary of State to sign in that be

Report to the Secretary of State for Communities and Local Government

by Mr A Thickett BA(Hons) BTP MRTPI DipRSA

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

Date: 19 January 2016

Town and Country Planning Act 1990

Appeal by Prowind (UK) Ltd

Lichfield District Council

Site visit made on 3 December 2015

Haunton Manor Farm, Haunton, Staffordshire, B79 9HN

File Ref(s): APP/K3415/A/13/2205526

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Haunton Manor Farm, Haunton, Staffordshire, B79 9HN

- 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 Prowind (UK) Ltd against the decision of Lichfield District Council.
- The application Ref 12/00078/FULM, dated 19 January 2012, was refused by notice dated 9 April 2013.
- The development proposed is the erection of two 500Kw wind turbines with associated crane hardstandings.

Summary of Recommendation: That the appeal be dismissed.

The Site and Surroundings

1. The proposed turbines would be sited in two fields to the south of Main Road, an unclassified road which links the villages of Harlaston and Haunton. Harlaston and Haunton lie about 1.5km to the north west and 1km to the north east of the appeal site. The site is located within an area of mainly arable farmland with irregular shaped fields bounded by mature trees and hedges. Farms and other buildings are dotted sporadically in the surrounding countryside. In the immediate vicinity of the site one can see a large modern barn in a field to the south east of Harlaston. About 1km from the site a line of electricity pylons marches roughly southwest to northeast.

Planning Policy

2. The development plan for the area is the Lichfield District Local Plan Strategy adopted February 2015. Policy NR1 'Countryside Management' supports the sensitive use of renewable energy resources subject to the provisions of Policy SC2. Policy SC2 seeks to make provision for renewable energy whilst minimising any local adverse impacts. Under Policy SC2 proposals for renewable energy schemes will be assessed having regard to, amongst other things, impact on the landscape, residential amenity, ecology and the historic environment. The need for decision makers to consider these matters is also highlighted in Policies NR3, NR4 and NR5 which respectively seek to protect habitats, trees and the landscape. Policy NR8 states that development will only be permitted where it can be demonstrated that there would be no adverse impact on the Mease Special Area of Conservation (SAC). Core Policy 14 sets out the Council's aim to preserve and enhance historic assets including listed buildings and conservation areas.
3. The National Planning Policy Framework (NPPF) states that one of the core planning principles is to support the transition to a low carbon future by, amongst other things, encouraging the development of renewable energy. It goes on to say that; *'Planning plays a key role in helping shape places to secure radical reductions in greenhouse gas emissions, minimising vulnerability and providing resilience to the impacts of climate change, and supporting the delivery of renewable and low carbon energy and associated infrastructure. This is central to the economic, social and environmental dimensions of sustainable development'*. Decision makers should recognise that even small scale projects provide a valuable contribution to cutting green house gas emissions and applications should be approved if the impact of development are (or can be) made acceptable.

4. The NPPF states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Any harm should require clear and convincing justification and substantial harm should be exceptional. Where a proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.
5. National Planning Practice Guidance (PPG) was amended in June 2015 to state that, other than where transitional arrangements apply, planning permission may only be granted for wind turbines where; the site is identified as suitable for wind energy development in a local or neighbourhood plan and it can be demonstrated that the planning impacts identified by local communities has been fully addressed. Where, as in this case, a valid planning application was submitted before the amendment to the PPG, planning permission may be granted for wind turbines if the decision maker is satisfied that the planning impacts identified by affected local communities have been addressed and the scheme, therefore, has their backing.

Planning History

6. Planning permission was given for a temporary period on 15 October 2008 for a 80m high monitoring mast. An application for 4 turbines followed in 2010 but was withdrawn in March 2011.

The Proposals

7. The two wind turbines would be 75m to hub with blades of 25 or 27m giving a maximum height of 102m to tip of blade. Turbine 1 would be about 800m south of Main Road, the second would lie to the south close to the end of Twizles Lane¹. The hardstandings at the base of each turbine to be used to support cranes during construction would be retained for repair and decommissioning (permission is sought for 25 years). Access would be gained from Main Road. A temporary track would be constructed alongside Twizles Lane, joining Twizles Lane close its junction with Main Road. The track would also provide access to a temporary construction compound and both the compound and the track would be removed once the turbines have been installed. A sub station would be built at the end of Twizles Lane and cables would be run underground from the turbines.

The Case for Lichfield District Council

8. The Council objects on 4 grounds:

Landscape

9. The local landscape is categorised by large nucleated villages occupying a rolling lowland landscape of mixed farming and cropping in a semi-regular pattern of medium and large hedged fields. It is a well ordered landscape of open views and quiet rural character, with many large farmsteads, village church spires and long views. It is regarded as a generally high quality landscape with few limiting factors.

¹ A farm track and public right of way which runs southwards from Main Road

10. It is accepted that in long distance views the visual effect of the turbines is unlikely to be significant. They would not appear significantly larger than the pylons and areas of vegetation and, as such, would be satisfactorily absorbed into the landscape. However, in local views their impact would be considerable. The large turbines, due to their scale and the movement of the blades would appear as intrusive and alien features, incapable of being satisfactorily absorbed into the local landscape.

Heritage assets

11. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard be given to the desirability of preserving listed buildings or their settings. Section 72 requires that special attention be given to the desirability of preserving or enhancing the character or appearance of a conservation area. There are a number of heritage assets in the area. However, it is the impact of the proposed turbines on Dunimere Farmhouse (listed Grade II) and Haunton Conservation Area which the Council considers to be unacceptable.
12. Dunimere Farmhouse dates back to the 18th century. It has a complex of outbuildings which have been converted to residential use and are regarded as curtilage listed. The complex is about 1km west of turbine 1 and 1.15km south west of turbine 2. The buildings are surrounded by the prominent earthworks of earlier ridge and furrow ploughlands indicative of a farmed landscape of long historic origins. The proposed turbines would erode the sense of remoteness of the Farmhouse and due to their proximity, their industrial scale and moving blades would cause significant harm to the setting of the listed building.
13. Haunton retains an unspoilt rural character. There are clear views from within the village to the agricultural land to the south and, again, due to their proximity, their industrial scale and moving blades would cause significant harm to the setting of the Conservation Area.

The outlook of neighbouring residents

14. The residents most affected would be the occupiers of Dunimore Farm, Acacia Grove Farm, Haunton Hall, St Mary's Cottage and St Michael's Convent, Ivy Cottage, Dale Farm and Pinfurlong. All these properties are between 750m to 1km from one or other of the proposed turbines. The visual impact of the turbines would be mitigated to varying degrees by intervening hedges and trees. Nevertheless, the turbines due to their size and movement of the blades would materially detract from the level of amenity enjoyed by the occupiers of these properties.

Ecology

15. Insufficient information was provided on the impact of the proposal on bats and birds during the construction and operation of the proposed turbines to enable the Council to conclude that there would be no harm to protected species.

Other matters²

16. The Council's noise consultants have considered the noise report supporting the proposed development and are satisfied that noise levels at the dwellings closest to the proposed turbines would meet the daytime and night time noise limits proposed in ETSU-R-97. There are no properties within the zone wherein nuisance through shadow flicker could occur.
17. Save for a section of the permissive footpath linking Twizles Lane and Syerscote Lane, the proposed turbines would be set back a distance at least equivalent to their height from a highway or footpath. Given the low probability of accidents their location is considered to be acceptable. The Council carried out its own consultations with aviation authorities. Subject to the installation of aviation lighting no objections were received.

The Case for Prowind (UK) Ltd

18. Prowind (UK) Ltd has not submitted a statement in support of the appeal. It has produced an Environmental Statement (ES) which considers the environmental impact of the proposed development.

Landscape

19. The ES includes a Landscape and Visual Impact Assessment (LVIA). The LVIA includes an assessment of the impact of the turbines from 14 viewpoints in the surrounding area. The LVIA considers the site to be of low sensitivity to change due to its current use as intensive arable farming. The LVIA concludes as follows: *'Any wind turbine application has the ability to affect the potential appreciation of the landscape, in our opinion, based on accepted methodology, we believe that the site has the capacity to absorb the turbines without generic adverse effects'*.

Heritage assets

20. The Cultural Heritage chapter of the ES describes how historic assets were identified and their significance assessed. The assessment includes over 100 listed buildings and all the conservation areas within 5km of the site. The ES concludes that views from within Haunton Conservation Area towards the site of the proposed turbines are limited. The turbines would be visible from the footpath that skirts the southern boundary of the Conservation Area and *'would be conspicuous in the sight lines and would form a new landscape feature, but not a prominent or dominant one'*.
21. The ES recognises that it is likely that the hubs and blades of both turbines would be visible from Dunimere Farmhouse. The ES finds that due to local topography and because it is surrounded by mature trees and hedgerows, the farmhouse is not readily visible or a dominant feature in the landscape. However, it is accepted that the proposed turbines would erode its sense of remoteness. It also states that; *'The setting of the building has a relationship with Hog Hill to the west and whilst the proposed turbines would not sever, fragment or dislocate the functional connections between this building and Hogs Hill, they would slightly*

² This section briefly summarises matters considered in the officers report to committee which were not deemed by the Council to justify a reason for refusal

dilute these connections as they would represent a new and visually distracting element in the landscape’.

22. The Church of St Andrew at Clifton Campville (Grade I) would be about 2.6km from the proposed turbines. The ES concludes that; *‘The proposed turbines would not sever, fragment or dislocate the functional and visual connections between the setting of this building and the other historic buildings in Clifton Campville. Therefore, there is no change to the setting of the church’.*

Ecology

23. The ES includes an ecological assessment of the site. It found 4 species of bat, great crested newts and water voles. The ES concludes that, given the design of the turbines and mitigation measures proposed, the proposed development would be unlikely to result in negative ecological impacts beyond a minor magnitude at the local level. The ES also included an assessment in relation to birds and concludes that precautionary measures can be taken to avoid any adverse effects.

Other matters

24. With regard to noise, the ES describes how the impact of the proposed turbines was assessed, the methodology and the locations where measurements were taken. The assessment concludes that noise levels at all the dwellings closest to the proposed turbines would meet the daytime and night time noise limits proposed in ETSU-R-97. Shadow flicker can only occur within properties which are to the north of and within a distance of 10 times the rotor diameter from a wind turbine. The rotors in this case would have a diameter of 54m. There are no properties within 540m of the location of the proposed turbines. The ES estimates that the proposed turbines would generate enough electricity to supply 484 households per year and offset between 808 and 979 tonnes of carbon dioxide per annum.

Written Representations

English Heritage

25. Does not disagree with the conclusions of the Cultural Heritage chapter of the ES that the development would have a moderate to low impact on most heritage assets in the vicinity. However, English Heritage objects to the proposed turbines on the grounds that they would cause harm to the setting of Dunimere Farmhouse and harm views looking south from Haunton Conservation Area. It is also considered that the development may intrude into views towards the spire of St Andrew’s Church at Clifton Campville.
26. With regard to Dunimere Farmhouse, English Heritage expands on its objection as follows: *‘It is surrounded by the prominent earthwork remains of earlier ridge and furrow ploughlands indicative of a farmed landscape of long historic origins. In addition to the particular historic features of the landscape immediately surrounding the farmhouse the wider landscape context of the application site is, as the EIA acknowledges, one of small scale fields divided by hedges and mature hedgerow trees. The visualisation provided by the applicants makes very clear that the erection of two wind turbines in the vicinity of the listed farmhouse and its historic farmland setting will be generally intrusive and cause harm to its*

significance by introducing features of an industrial mechanical character, insistent motion, and very divergent large scale’.

Natural England

27. Is satisfied that the proposed development would not harm the River Mease SSSI/SAC and that any impact on protected species can be satisfactorily mitigated.

Staffordshire County Council (Highways)

28. Consider the appellant’s traffic and transport assessment to be sound and has no objection subject to the imposition of conditions and the implementation of a Traffic Management Plan.

Ministry of Defence

29. No objection but request the imposition of a condition requiring the installation of suitable aviation lighting.

Parish Councils

30. Clifton Campville with Thorpe Constantine and Harlaston Parish Councils commissioned their own landscape assessment which concludes that the proposed turbines would have a detrimental impact on the local landscape and historic environment. Edingale Parish Council shares this view and also considers that the proposed turbines would have an adverse impact on local residents with regard to noise and shadow flicker and be a threat to wildlife and health and safety.

Local residents and others

31. The Council for the Protection of Rural England consider that the impact of the proposed turbines on the landscape would be unacceptable. Staffordshire Ramblers are concerned that one of the turbines lies close to a public footpath.
32. The planning application attracted 167 letters of objection and many of the authors of those letters have also submitted representations opposing this appeal. Most share the concerns expressed by the Council, Parish Councils and English Heritage. Other matters include; highway safety and loss of agricultural land.
33. One letter of support was submitted in response to the application and another supporting the appeal.

Inspector's Conclusions and Recommendation

34. The references in brackets [x] are to the principal paragraphs in my report of the cases from where my conclusions are drawn.

Environmental Impact Assessment

35. I am satisfied that the Environmental Statement supporting the appeal application and referred to in various places above, adequately describes the proposed development and its surroundings and its likely significant effects on the environment.

Main Considerations

36. The main considerations in this case are:

- The impact of the proposed development on the character and appearance of the area
- The effect of the proposed wind turbines on the setting of Dunimere Farmhouse, a Grade II listed building and Haunton Conservation Area
- The visual impact of the proposed development on the living conditions of nearby residents
- The impact of the proposed wind turbines on protected species

Character and appearance

37. Having considered the LVIA and visited the site and surrounding area, I agree with the Council that in long distance views the visual effect of the turbines is unlikely to be significant [10]. However, with regard to their more immediate surroundings, I do not share the appellant's view that the site has the capacity to absorb the turbines without adverse effects [19].

38. The area is characterised by gently undulating landscape. Fields are lined with mature trees and hedges which also frame the isolated houses and small villages which dot the countryside [9]. Other than the line of electricity pylons to the west and a very large agricultural building to the south east of Harlaston [1], there are few overtly modern features visible in the landscape. The proposed turbines would be at least 100m high and would be significantly larger than the electricity pylons and any other feature in the local landscape. In my view, they would, due to their height and appearance, stand out as alien industrial features which would have a detrimental impact on this pleasing rural landscape. I conclude, therefore, that the proposed turbines would have an adverse impact on the character and appearance of the area and conflict with Policies SC2, NR1 and NR5 of the Local Plan insofar as they are relevant to this issue.

Heritage Assets

39. Dunimere Farmhouse dates back to the 18th century. The outbuildings associated with the farmhouse have been converted to residential use and are listed as curtilage buildings [12]. Although no longer a farm the surrounding fields are integral to the setting of Dunimere Farmhouse, both with regard to the appreciation of a historical functional relationship (the reason why it is there) and its remoteness. Further, as explained by English Heritage, the immediate

surroundings are also important historically [25] and one must consider their contribution to the setting of the farm.

40. Dunimere Farmhouse would be about 1km from the proposed turbines and this would limit their impact on its setting. Nevertheless, as accepted by the ES they would erode its sense of remoteness. Further, from my observations, I agree with English Heritage that, due to their size and modern appearance they would have an adverse effect on this historic landscape which in turn would have a detrimental impact on the setting of the listed building [26].
41. Haunton is an attractive village which nestles comfortably into the surrounding countryside. The fields immediately surrounding the village contribute to its rustic appearance and setting. Having visited Haunton, I agree with the findings of the ES there are few opportunities to look out to the south and views of the turbines would be limited and at a distance [19]. The turbines would be visible from the footpath that skirts the southern edge of the village [19]. However, in view of the distance between them and intervening mature trees and hedgerows, I do not consider that there would be a material impact on the appreciation of the rustic setting of the village or the Conservation Area. The spire of the Church of St Andrew at Clifton Campville is an important local landmark. However, it would be 2.6km from the proposed turbines [21]. From my observations, the distance is such that they would not compete with the spire and its importance and setting would not be undermined by the proposed development.
42. My findings with regard to Haunton Conservation Area and the Church of St Andrew do not outweigh my conclusions with respect to the impact of the proposal on Dunimere Farmhouse. I conclude that the proposed development would have an adverse impact on that heritage asset and that it conflicts with Core Policy 14 of the Local Plan [2].

Living conditions

43. The Council's objections appear to be based on the assumption that if a turbine can be seen from a residential property it will have an unacceptable impact on the people living there [14]. However, one must consider things such as the height of the turbines, their proximity, whether there are any intervening features such as buildings and trees and what other features there are in the landscape.
44. The Council assesses the impact of the proposed turbines on a number of dwellings within 750m to 1km from the site of the proposed turbines³. The proposed turbines would be visible to some degree from all these properties and in some cases there would be no intervening features to shield views of the turbines. However, the distance between these properties and the proposed turbines would be such that they could not be said to be overbearing or overwhelming when viewed from within the houses or their gardens.
45. As stated above there are no other wind turbines in the immediate area and the electricity pylons are smaller and would not be in the same view from many properties. The turbines would occupy only part of the field of view from any of the properties considered by the Council and there would be no sense of being

³ See paragraphs 5.2.1 to 5.2.9 of the Council's statement.

hemmed in by the turbines or living in a 'wind farm environment'. I acknowledge that the turbines would inevitably have an effect on views from these properties but do not consider that the impact would be significant.

46. The ES concludes that the noise generated by the proposed turbines would not have an adverse impact on local residents nor would any be affected by shadow flicker [24]. Neither finding is disputed by the Council [16] and I have seen no technical evidence to lead me to a different view. I conclude, therefore, that the proposed development would not have an adverse impact on the living conditions of nearby residents and that it complies with Policy SC2 of the Local Plan insofar as it is relevant to this issue [2].

Protected Species

47. The Council does not consider that sufficient information has been submitted to conclude that there would be no harm to protected species [15]. Local residents and Parish Council's are certain that harm will arise [30, 32]. However, I have neither seen nor read anything to suggest that the appellant's consultants are not appropriately qualified or that their assessments and conclusions are not based on robust evidence. Natural England is satisfied that the proposed development would not harm the River Mease SSSI/SAC and that any impact on protected species can be satisfactorily mitigated [27]. I see no reason to take a different view and conclude that the proposed development would not have an adverse impact on protected species and that it complies with Policies SC2 and NR3 of the Local Plan insofar as they are relevant to this issue.

Other matters

48. The Highway Authority is satisfied with the assessment and mitigation proposal contained in the ES [28]. But for a short stretch of the permissive footpath linking Syerscote Lane and Twizles Lane, the turbines are located well in excess of their topple distance from any road or right of way [17]. I have no reason to consider that the turbines would not be erected and maintained in accordance with manufacturer's instructions. Given the unlikely possibility of failure, I do not consider that the relationship between the turbines and the permissive footpath justifies withholding planning permission. I have seen nothing to suggest that the agricultural quality of the land is classified as best and most versatile and it would continue to be farmed once the turbines were installed.

Conditions

49. The Council has submitted a list of conditions it suggests should be imposed should the Secretary of State decide to allow the appeal (Appendix A). Conditions 1 and 2 are the standard time limit for implementation and plans conditions. Condition 3 limits the permission to 25 years, condition 10 requires the submission of a decommissioning scheme. Conditions 4, 5, 6, 7, 8 and 9 require details of the construction and removal of the temporary track, construction compound, access and highway reinstatement, a traffic management plan and wheel washing.
50. Conditions 12 and 13 require approval of the external finish of the turbines and sub station and conditions 15, 16 and 17 relate to landscaping. A programme of archaeological work is required under condition 11 and condition 18 implements the recommendations of the appellant's ecological reports. A protocol for the

assessment of shadow flicker is required by condition 14 and condition 21 A to F would control noise emissions. Condition 19 limits times of work and condition 20 would remove permitted development rights for the erection of means of enclosure.

51. I have considered these conditions in light of the advice in the NPPF and the PPG. Appendix B includes the conditions I consider satisfy the NPPF and the tests set out in the PPG. Where necessary I have redrafted the Council's conditions in order to comply with the guidance in the PPG.
52. I agree that it is necessary, in order to mitigate the impact of the proposed turbines on the character and appearance of the area, to impose conditions relating to; approved plans, the finish of the turbines and substation, landscaping, the temporary access track, decommissioning and restoration (Appendix B conditions 2, 3, 4, 5, 7, 8, 9 and 12). I consider the standard landscaping condition to be sufficient to ensure that any planting becomes established and see no need to require works to be carried out to a British Standard (Appendix A condition 16).
53. In order to safeguard protected species a condition is required regarding construction, operation and decommissioning (Appendix B condition 14). I do not consider the recommendations in the reports referred to in the suggested condition to be precise and recommend a condition requiring the submission of further details (Appendix A condition 18). Despite the consultation responses received from aviation bodies the Council has not suggested a condition relating to lighting. I consider that such a condition is necessary, the interest of safety, and this is included in the list of Inspector recommended conditions in Appendix B (condition 6).
54. In the interests of highway safety conditions are required regarding; access, parking and turning areas and traffic management (Appendix B conditions 11 and 13). Damage to and carrying deleterious material onto a public highway can be addressed through other legislation and I see no need to duplicate such controls (Appendix A conditions 8 and 9).
55. Given the distance between the proposed turbines and the nearest houses [14] I see no need to control hours of work (Appendix A condition 19). Nor, given the firm conclusions of the ES regarding shadow flicker (accepted by the Council) [16] do I see the need for a condition seeking an agreed protocol for assessing and addressing any complaints (Appendix A condition 14). It is necessary to impose a condition relating to noise but the Council's proposed suite of conditions would, in my view, place a disproportionate burden on the appellant and be unduly onerous (condition 21 A to F). It is sufficient to require that noise levels experienced by local residents do not exceed acceptable limits (Appendix B condition 15).
56. Permitted development rights should only be removed in exceptional circumstances. I have seen nothing to suggest that the appellant intends to erect a fence so see no need to remove permitted development rights to erect one (Appendix A condition 20). The Archaeology chapter of the ES⁴ concludes that the presence of archaeological remains on the site is unlikely. Consequently,

⁴ Chapter 8, paragraph 23.1

I do not consider a condition requiring a programme of work to be justified (Appendix A condition 11).

Conclusions

57. National guidance states that even small renewable energy projects contribute to reducing carbon emissions and help combat climate change [3]. The proposed turbines would generate renewable energy and in this regard contribute to the objectives of sustainable development [24]. I consider that the planning impacts identified by the Council and local communities relating to ecology, living conditions, transport and safety have been satisfactorily addressed.
58. I do not consider that the proposed turbines would have a material impact on the setting on Haunton Conservation Area or the Church of St Andrew at Clifton Campville and the harm to Dunimere Farmhouse would be less than substantial. Nevertheless, a finding of less than substantial harm carries considerable weight [4]. I acknowledge the public benefits arising from the renewable energy that would be generated by the proposed turbines. However, I do not consider that this outweighs the harm that would be caused to the setting of Dunimere Farmhouse or the adverse impact of the proposed turbines on the character and appearance of the area. Consequently, for the above reasons and having regard to all matters raised, I recommend that the appeal be dismissed.

Anthony Thickett

Inspector

Annex A: List of conditions supplied by the local planning authority

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development authorised by this permission shall be carried out in complete accordance with the approved plans and specification, as listed on this decision notice, except insofar as may be otherwise required by other conditions to which this permission is subject.
- 3) This permission shall endure for a period of 25 years from the date when electricity is first exported from any of the wind turbines to the electricity grid network (the First Export Date). Written confirmation of the First Export Date shall be provided to the local planning authority within 1 month of the First Export Date.
- 4) Before any development involving abnormal load delivery on the strategic highway network takes place, a comprehensive transport strategy shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved strategy.
- 5) Before the development hereby approved is commenced, precise details of the temporary access track, including its width, form and location, shall be submitted to and approved in writing by the Local Planning Authority. The temporary track shall thereafter be laid out in accordance with the approved details, prior to the commencement of any construction works.
- 6) Before the development hereby approved is commenced, details of the construction compound and parking and turning areas within the site shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved details.
- 7) Within 3 months of the development hereby approved being brought into use, the temporary access road, site compound and turning and parking areas shall be removed and the land restored to its previous condition in accordance with details to first be submitted to and approved in writing by the Local Planning Authority.
- 8) Before the development hereby approved is commenced, details of the reconstruction of the access within the limits of the public highway, to a standard suitable to carry HGV's shall be submitted to and approved in writing by the Local Planning Authority. The access shall thereafter be reconstructed in accordance with the approved details prior to the commencement of any construction works.
- 9) Before the development hereby approved is commenced, wheel cleaning/washing facilities shall be installed within the site in accordance with details to be first submitted to and approved in writing by the Local Planning Authority. The approved facilities shall thereafter be utilised by all heavy goods vehicles throughout the construction period.
- 10) Not later than 12 months before the end of this permission, a decommissioning and site restoration scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include

details of the access arrangements and the reinstatement of any disturbed land and hedgerows. Decommissioning shall therefore be carried out in accordance with the approved details.

- 11) Before the development hereby approved is commenced, the implementation of a programme of archaeological work shall be secured in accordance with a written scheme of investigation which has been first submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved programme of works, unless otherwise agreed in writing by the Local Planning Authority.
- 12) Prior to the erection of the wind turbine, details of the size, design and colour finish of the turbine tower, nacelle and blades, including measures to deal with sun glinting and icing, shall be submitted to and approved in writing by the Local Planning Authority. Development shall thereafter be carried out in accordance with the approved details. No name, sign, symbol or logo shall be displayed on the turbine other than to meet health and safety requirements.
- 13) Prior to the erection of any substation, details of the colour and type of materials to be used for external walls and roof shall be submitted to and approved in writing by the Local Planning Authority. Development shall thereafter be carried out in accordance with the approved details.
- 14) No development shall take place until a scheme setting out a protocol for the assessment of shadow flicker in the event of any complaint being received, including the remedial measures to be taken, has been submitted to and approved in writing by the Local Planning Authority. Operation of the wind turbines shall be in accordance with the approved protocol.
- 15) No development hereby approved shall commence until a landscaping scheme and maintenance schedule has been submitted to and approved in writing by the Local Planning Authority. The submitted details shall include replacement planting for any sections of hedgerow or trees removed to accommodate the temporary access. The approved landscaping scheme shall be carried out within eight months of the development first being brought into use.
- 16) All tree and hedgerow works shall be carried out in accordance with BS 3998:2011.
- 17) Any trees and hedgerows planted as part of the approved landscape and planting scheme, and which die or are lost through any cause during a period of 5 years from the date of first planting, shall be replaced in the next planting season with plant material of similar size, species and provenance, unless otherwise agreed in writing by the Local Planning Authority.
- 18) Works for the construction, operation and decommissioning of the proposed development shall be carried out fully in accordance with the recommended mitigation measures set out in the reports on Ecology and Ornithology by Wild Frontier Ecology Ltd, submitted to the Local Planning authority on 11 June 2012 and the Addendum Update to the Ecological Assessment dated August 2012, unless otherwise agreed in writing by the Local Planning Authority.
- 19) Construction work, including any associated traffic movements to or from the site, shall not take place outside the hours of 0730 to 1900 hours on

Mondays to Fridays and 0730 to 1400 hours on Saturdays, No construction work shall take place on Sundays or on Bank, or Public Holidays.

- 20) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no fences or boundary walls shall be erected within the site, without the prior written permission, on application to the Local Planning Authority.
- 21) The rating level of noise emissions from the wind turbine (including the application of any tonal penalty), when determined in accordance with the attached Guidance Notes, shall not exceed the values for the relevant integer wind speed set out in the noise report accompanying the planning application and in addition:
- A) Prior to the First Export Date, the wind turbine operator shall submit to the Local Planning Authority for written approval a list of proposed independent consultants who may undertake compliance measurements in accordance with conditions of this permission. Amendments to the list of approved consultants shall be made only with the prior written approval of the Local Planning Authority.
- B) Within 21 days from receipt of a written request of the Local Planning Authority, following a complaint to it alleging noise disturbance at a dwelling, the wind turbine operator shall, at its expense, employ an independent consultant approved by the Local Planning Authority to assess the level of noise emissions from the wind turbines at the complainant's dwelling in accordance with the procedures described in Note 2 and having due regard to the principles set out in ETSU-R-97. The written request from the Local Planning Authority shall set out at least the date, time and location that the complaint relates to.
- C) Prior to the commencement of any measurements by the independent consultant to be undertaken in accordance with these conditions, the wind turbine operator shall submit to the Local Planning Authority for written approval, the proposed measurement location(s) where measurements for compliance checking purposes shall be undertaken. Measurements to assess compliance shall be undertaken at the measurement location(s) approved in writing by the Local Planning Authority.
- D) Prior to the submission of the independent consultant's assessment of the rating level of noise emissions, the wind turbine operator shall submit to the Local Planning Authority for written approval, a proposed assessment protocol setting out the following:
- (i) the range of meteorological and operational conditions (the range of wind speeds, wind directions, power generation and times of day) to determine the assessment of rating level of noise emissions;
- (ii) a reasoned assessment as to whether the noise giving rise to the complaint contains or is likely to contain a tonal component;
- The proposed range of conditions shall be those which prevailed during times when the complainant alleges there was disturbance due to noise, having regard to the information provided in the written request of the Local Planning Authority and such others as the independent consultant considers likely to result in a breach of the noise limits. The assessment of the rating level of

noise emissions shall be undertaken in accordance with the assessment protocol approved in writing by the Local Planning Authority.

- E) The wind turbine operator shall provide to the Local Planning Authority the independent consultant's assessment of the rating level of noise emissions undertaken within 2 months of the date of the written request of the Local Planning Authority unless the time limit is extended in writing by the Local Planning Authority. The assessment shall include all data collected for the purposes of undertaking the compliance measurements, such data to be provided in the format approved by the Local Planning Authority. The instrumentation used to undertake the measurements shall comply with note 2 attached to this permission and certificates of calibration shall be submitted to the Local Planning Authority with the independent consultant's assessment of the rating level of noise emissions.
- F) The wind turbine operator shall continuously log wind speed at a height of 10m using a method to be agreed in writing with the Local Planning Authority at all times when the wind farm is operating, as well as the nacelle wind speed, nacelle orientation, power generation and nacelle wind direction, for each turbine. The data from each wind turbine shall be retained for a period of not less than 12 months. The wind turbine operator shall provide this information in an approved format to the Local Planning Authority on its request within 14 days of receipt in writing of such a request.

Note 1: For the purposes of this condition, a "dwelling" is a building within Use Class C2, C3 and C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended) which lawfully exists or had planning permission at the date of this permission.

Note 2: Values of the LA90, 10-minute noise statistic should be measured using a sound level meter of BS EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This should be calibrated in accordance with the procedure specified in BS 4142:1997 (or the equivalent UK adopted standard in force at the time of the measurements). Measurements shall be undertaken in such a manner to enable a tonal penalty to be applied if found necessary.

Note 3: If the rating level after adjustment for background noise contribution and adjustment for tonal penalty (if required) at any integer wind speed lies at or below the values given in the noise report accompanying the planning application, at a complainant's dwelling then no further action is necessary. If the rating level at any integer wind speeds exceeds these values at a complainant's dwelling then the development fails to comply with these conditions.

Annex B: Schedule of conditions recommended by the Inspector in the event of the Secretary of State deciding to allow the appeal

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Figures 3, 4, 5 6, 6.1a, 7a, 8, 9 and 17.
- 3) The permission hereby granted shall endure for a period of 25 years from the date when electricity is first exported from a wind turbine hereby permitted. Written confirmation of the first export date shall be sent to the local planning authority within one month of the first export date.
- 4) No development shall take place until details of the finished colour of the turbines hereby permitted have been submitted to and agreed in writing by the local planning authority. Development shall take place in accordance with the approved details.
- 5) No development shall take place until samples of the materials to be used in the construction of the external surfaces of sub station hereby permitted have been submitted to and agreed in writing by the local planning authority. Development shall take place in accordance with the approved details.
- 6) No development shall take place until details of aviation warning lights to be installed on the turbines hereby permitted have been submitted to and agreed in writing by the local planning authority. Development shall take place in accordance with the approved details.
- 7) No development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of planting to replace any trees of hedgerows that are removed to construct the temporary track shown on Figure 3. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.
- 8) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the first export date; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 9) No later than 12 months before the expiry date of the planning permission hereby granted a decommissioning and site restoration scheme shall be submitted in writing to the local planning authority. Decommissioning and restoration shall take place in accordance with the approved details.
- 10) No development shall take place until a traffic management plan has been submitted to and approved in writing by the local planning authority. The development shall thereafter be implemented in accordance with the approved traffic management plan.
- 11) No development shall take place until details of the temporary access track, including its construction and removal has been submitted to and approved in

writing by the local planning authority. Development shall take place in accordance with the approved details.

- 12) No development shall take place until details of the construction and removal of the construction compound, parking and turning areas have been submitted to and approved in writing by the local planning authority. Development shall take place in accordance with the approved details.
- 13) No development shall take place until details of measures safeguard the protected species on the site identified in the reports on Ecology and Ornithology by Wild Frontier Ecology Ltd, submitted to the local planning authority on 11 June 2012 and the Addendum Update to the Ecological Assessment dated August 2012 have been submitted to and approved in writing by the local planning authority. Development shall take place in accordance with the approved details.
- 14) The level of noise emissions from the turbine hereby permitted shall not exceed 35 dB LA90 when measured at the boundary of any dwelling which lawfully exists or has planning permission for construction at the date of this planning permission at wind speeds up to 10ms at rotor centre height. All instrumentation and methodology for evaluating compliance with this condition and the positions for all measurements of noise and wind speed, shall have been previously agreed in writing by the local planning authority.



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 for permission 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

With the permission of the High Court 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. 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 for leave under this section must be made within six weeks from the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: 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 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.