



Department for Communities and Local Government

Mr Brant Clayton
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Unit 4A
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Lincoln
Lincolnshire
LN2 1QA

Our Ref: APP/N2535/A/14/2216163

23 March 2015

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)
APPEAL BY MR BRANT CLAYTON (HAPPY DAYS FARMING COMPANY)
LAND TO THE NORTH OF KINGERBY WOOD, KINGERBY,
LINCOLNSHIRE, LN8 3LX
APPLICATION REF: 130618**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, David C Pinner BSc (Hons) DipTP MRTPI, who held a site visit on 15 December 2014 and considered written representations into your appeal against the decision by West Lindsey District Council (the Council) to refuse planning permission to erect a wind turbine (67m to blade tip) and associated infrastructure including access tracks, external compact housing with underground cabling to the wind turbine, turbine foundation and crane hardstanding at land to the North of Kingerby Wood, Kingerby, Lincolnshire, LN8 3LX, in accordance with application Ref: 130618 dated 16 October 2013.
2. On 1 May 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, 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. The Secretary of State agrees with the Inspector's analysis and recommendation, and he has decided to dismiss the appeal and refuse planning permission. A copy of the

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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 notes that it is not an EIA development (IR1). Having also had regard to the Inspector's comments at IR3-4, the Secretary of State is satisfied that the supporting information submitted with the application including an archaeological desk-based assessment; an archaeological evaluation report; a transport statement; a flood-risk assessment and a noise impact assessment is sufficient for him to assess the environmental impact of the proposal.

Policy considerations

5. In deciding the appeal the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 (PCPA) which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
6. In this case the development plan consists of various saved policies of the West Lindsey Local Plan (2006) identified by the Inspector at IR8-11. The Secretary of State note there are no saved Local Plan policies relating to renewable energy and regards it as being out of date in that respect.
7. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework); the Government's planning practice guidance (the Guidance); the National Policy Statements: the Overarching National Policy Statement for Energy (EN-1); and the National Policy Statement for Renewable Energy Infrastructure (EN-3), the UK Renewable Energy Roadmap Update 2013; a Written Ministerial Statement on Local Planning and Onshore Wind issued by the Secretary of State on 6 June 2013, and a Written Statement to Parliament on the same day published by the Secretary of State for DECC; and the Written Ministerial Statements on local planning and renewable energy developments of 10 October 2013 and 9 April 2014. The Secretary of State notes the Inspector's comments at IR1 and considers that, whilst the previous appeal decision is a significant material consideration, the revised proposal needs to be considered anew, on its own merits, and it is the turbine itself which is the focus of attention (IR4).

Main Issues

8. The Secretary of State, like the Inspector (IR29), considers the main issues to be whether any benefits of the proposal are sufficient to outweigh firstly, the effect of the proposal on Air Traffic Control (ATC) services provided by RAF Waddington, secondly the effect of the scheme on the Kingery Wood Local Wildlife Site and thirdly its effect on the local landscape.

ATC Services from RAF Waddington

9. The Secretary of State has carefully considered the Inspector's comments at IR30. He notes that the Defence Infrastructure Organisation (DIO) has produced

a very comprehensive statement that explains the potential problems that the proposed development would cause for ATC services from RAF Waddington. He agrees with the Inspector that the appellant has produced no technical evidence or suggested any other mitigation measures that address the Ministry of Defence's (MOD) concerns. The Secretary of State has no reason to doubt that the MOD's objections to the scheme are soundly based. Like the Inspector, he can find nothing in the representations that could lead him to disagree with the conclusion that the proposed development would unacceptably affect the provision of ATC services from RAF Waddington. The Secretary of State therefore agrees with the Inspector that any benefits of the scheme in terms of the production of electricity by renewable means would be far outweighed by the consequent risks to aviation safety. Under these circumstances, the Secretary of State considers that permission should not be granted for the proposed development, in accordance with the advice in EN-1 paragraph 5.4.17 (IR30).

Effect on Kingerby Wood Local Wildlife Site

10. The Secretary of State has considered the Inspector's comments at IR31-34. He notes that the appellant's report was prepared by professional ecologists and has no reason to disagree with the survey findings, which conclude that risks of collision with birds would be negligible and further collision risk modelling is therefore not necessary (IR33). The Secretary of State acknowledges that the RSPB and LWT have genuine concerns about the possible effect of the proposed development on birdlife in Kingerby Wood and that their concerns could possibly be addressed without undue difficulty. However, he agrees with the Inspector that the evidence submitted with the appeal suggests that the risks to wildlife would only be slight. On that basis, the Secretary of State does not consider risk to wildlife to be an objection of sufficient weight to warrant dismissal of this appeal (IR34).

Effect on Landscape

11. The Secretary of State has carefully considered the Inspector's comments at IR35-39. He agrees with the Inspector that the photomontages submitted as part of the scheme clearly demonstrate that the proposed turbine would be visible over a wide area as a very tall structure in a low-lying landscape (IR35). The Secretary of State agrees with the Inspector that the Kingerby Woods Ancient Woodland is an important landscape feature of the area, and that the proposed turbine would tower above Kingerby Wood. Like the Inspector, he considers that it would seriously diminish the contribution this ancient woodland makes to the quality of the local landscape, contrary to Local Plan saved policy NBE 12 and the first bullet point of paragraph 109 of the NPPF (IR36).
12. The Secretary of State sees no reason to disagree with the Inspector's view at IR37 that while the proposed turbine might be visible in the expansive views of the landscape which can be obtained from The Lincolnshire Wolds Area of Outstanding Natural Beauty and the Viking Way, it would not dominate such views because it would be three or four miles from any vantage point in that area. For this reason, he agrees with the Inspector that it would be more likely to be of benefit as a landmark to an observer navigating around the view than as something that would offend the eye. He further agrees with the Inspector that the

site cannot be properly regarded as being within the setting of any of those heritage assets listed at IR38.

13. The Secretary of State has carefully considered the Inspector's comments at IR39 in relation to the impact of the proposal on the nearest dwelling, Kingerby Lodge, about 650m away. For the reason that as a single turbine, it would occupy only a relatively narrow band of the 360° view potentially available from the property, the Secretary of State agrees with the Inspector's conclusion that Kingerby Lodge would provide a very pleasant living environment whether or not the proposed turbine was built.

Conditions

14. The Secretary of State has had regard to the suggested conditions listed in the Appendix to the IR and the Inspector's comments on conditions (IR3, IR42-44). He is satisfied that the proposed conditions are reasonable and necessary and would meet the tests of paragraph 206 of the Framework. However, he does not consider that these proposed conditions overcome his reasons for dismissing the appeal.

Planning balance and conclusions

15. 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. He has also given careful consideration to the Inspector's balancing exercise at IR40-41. The Secretary of State agrees with the inspector that the delivery of the associated infrastructure for renewable and low-carbon energy is central to the three dimensions of sustainable development, and that the proposal attracts the presumption in favour (IR40).
16. Nevertheless, taking the impacts of the proposed scheme both on aviation safety and on the character and appearance of the local landscape and weighing them against the benefits of the proposal, the Secretary of State agrees with the Inspector that the proposal is contrary to the advice in EN-1 paragraph 5.4.17 (IR30), Local Plan saved policy NBE 12 and the first bullet point of paragraph 109 of the NPPF (IR36). He agrees with the Inspector that the impacts would be so harmful that the presumption in favour of the scheme is clearly outweighed, and that its impacts cannot be made acceptable (IR41). The Secretary of State concludes that the scheme is contrary to the development plan as a whole and he does not consider that there are any material considerations of sufficient weight for him to determine the appeal other than in accordance with the development plan.

Formal decision

17. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector that the proposed scheme should be refused. He hereby dismisses your appeal and refuses planning permission to erect a wind turbine (67m to blade tip) and associated infrastructure including access tracks, external compact housing with underground cabling to the wind turbine, turbine foundation and crane

hardstanding at land to the North of Kingerby Wood, Kingerby, Lincolnshire, LN8 3LX, in accordance with application Ref: 130618 dated 16 October 2013.

Right to challenge the decision

18. 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.

19. A copy of this letter has been sent to West Lindsey District Council and Sir Edward Leigh MP. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Richard Watson

Richard Watson

Authorised by Secretary of State to sign in that behalf

Report to the Secretary of State for Communities and Local Government

by David C Pinner BSc (Hons) DipTP MRTPI

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

Date: 15 January 2015

Town and Country Planning Act 1990

Appeal by Mr Brant Clayton (Happy Days Farming Company)

West Lindsey District Council

Site visit made on 15 December 2014

Land to the North of Kingerby Wood, Kingerby, Lincolnshire, LN8 3LX

File Ref(s): APP/N2535/A/14/2216163

File Ref: APP/N2535/A/14/2216163

Land to the North of Kingerby Wood, Kingerby, Lincolnshire, LN8 3LX

- 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 Brant Clayton (Happy Days Farming Company) against the decision of West Lindsey District Council.
- The application Ref: 130618, dated 16 October 2013, was refused by notice dated 28 February 2014.
- The development proposed is the erection of a wind turbine (67m to blade tip) and associated infrastructure including access tracks, external compact housing with underground cabling to the wind turbine, turbine foundation and crane hardstanding.

Summary of Recommendation: That the appeal be dismissed.

Introduction

1. The appeal relates to a proposal to install a 500Kw turbine on agricultural land. It is not EIA development as acknowledged on the second page of the Council's Officer's Committee Report. The scheme is a resubmission of a previous scheme for a similar proposal. This was rejected for reasons which included an inadequate assessment of the landscape impacts, absence of an archaeological field evaluation and inadequate information to enable the Highway Authority to be satisfied that the development could be constructed without compromising highway safety.
2. The appeal scheme included additional information which satisfied previous concerns relating to potential archaeology and highway impacts. The appeal scheme was rejected for 3 reasons. In brief, these are (1) that the turbine would be detected by the radar at RAF Waddington and would adversely affect the safe and efficient provision of air traffic services; (2) that it would have an adverse impact on the character and habitat value of the nearby Kingerby Woods and; (3) that it would have a significant impact on the landscape and that it would make Kingerby Lodge an unattractive place to live.
3. Supporting information submitted with the application includes an archaeological desk-based assessment; an archaeological evaluation report; a transport statement; a flood-risk assessment and a noise impact assessment. These raise no issues that are incapable of being resolved through conditions where appropriate.
4. It is the turbine itself which is the focus of attention. The ancillary development raises no additional issues of any significance.

The Site and Surroundings

5. The appeal site is a large, generally flat arable field. It lies within a flat, open and intensively farmed landscape with medium to large fields bounded by hedgerows, generally small, dispersed settlements and pockets of woodland. Immediately to the south of the appeal site is Kingerby Wood, which is listed as Ancient Semi-natural Woodland on Natural England's Ancient Woodland Inventory and designated as a Local Wildlife Site. About three or four miles from the appeal site, to the north and east, the topography gives way to the edge of the Lincolnshire Wolds Area of

Outstanding Natural Beauty (AONB) from where elevated views over a wide area are available.

6. Access to the site would be via the proposed access track which would connect to a single track public highway. The junction of the access track and this minor public highway is only about 300 metres from the A631 and its junction with the A1103.
7. There are few residential properties in the immediate surroundings. The nearest is Kingerby Lodge, which is approximately 650 metres from the site of the proposed turbine.

Planning Policy

8. The Council has referred to various saved policies of the West Lindsey Local Plan of 2006. Policy STRAT 1 is a general policy that requires all development schemes to take full account of the need to protect the environment so that present demands do not compromise the ability of future generations to meet their own needs and enjoy a high quality environment. Development must reflect the need to safeguard and improve the quality of life of residents, conserve energy resources and protect the Plan area's character and be satisfactory with regard to various matters. These include the impact on the character, appearance and amenities of neighbouring, and where relevant, other land, including visual encroachment into the countryside; the impact of the proposal on neighbouring and, where relevant, other uses; and the retention and safeguarding of existing trees, woodlands and hedgerows where feasible and the incorporation of landscape measures and/or the utilisation of natural screening in order to maintain the ecological value of the site and the wider environment.
9. Policy STRAT 12 aims to resist development proposals in the open countryside unless it is essential to the needs of agriculture, horticulture, forestry, mineral extraction or other land use which necessarily requires a countryside location, or otherwise meets an objective supported by other Plan policies.
10. Policy NBE 10 gives high priority to conserving the distinctive landscape features, landscape character and the landscape amenity value of the District. Development will not be permitted if it is likely to have an adverse impact on the features, setting or general appearance of the Landscape Character Areas as defined in the Landscape Character Assessment and amplified in the Countryside Design Summary. Amongst other things, important landscape features should be maintained or enhanced as part of the scheme and development should not have a detrimental effect on skylines or important views.
11. Policy NBE 12 aims to resist development which would adversely affect nature conservation interests, including ancient woodlands and any species of animal or plant, or its habitat, protected under British or European law, unless there is a demonstrable overriding regional or local need for the development which cannot be accommodated elsewhere and the reason for the development clearly outweighs the need to safeguard the substantive nature conservation value of the site.

12. There are no saved Local Plan policies relating to renewable energy and it must be regarded as being out of date in that respect. Paragraphs 93 to 98 of the National Planning Policy Framework (NPPF) provide the relevant policy context for this renewable energy scheme. Paragraph 93 says that supporting the delivery of renewable and low-carbon energy and associated infrastructure is central to the economic, social and environmental dimensions of sustainable development. Paragraph 98 says that applicants should not be required to demonstrate the overall need for renewable or low carbon energy and that applications should be approved if its impacts are, or can be made, acceptable.

The Case for West Lindsey District Council

13. The Council's case expands on the reasons for refusal of planning permission by reference to each reason for refusal in turn. The main points can be summarised as follows:

Aviation

- i) Footnote 17 of the NPPF requires an assessment of potential aviation effects of wind turbines by reference to the Overarching National Policy Statement for Energy (EN-1). Together EN-1 and paragraph 16 of National Policy Practice Guidance "Renewable and Low Carbon Energy" require consultation with the Ministry of Defence (MOD). Schemes which, in the opinion of the decision maker, would have an impact on the safe and effective use of defence assets; limit military training or have an impact on safe and effective provision of air traffic control services for civil aviation should not be permitted.
- ii) The MOD has objected to the scheme on the grounds that it would be detectable by and interfere with the Air Traffic Control radar at RAF Waddington, 26.92 Km from the site of the proposed turbine.
- iii) The MOD has responded to the appellant's suggestion that Kingerby Wood would shield the proposed turbine. In summary, the MOD conclusion is that the wood would not act as an effective screen because the proposed turbine would be taller than the woodland; the amount of shielding varies depending on the type of trees and the time of year; and woodland is not permanent, being subject to potential storm damage and disease.
- iv) The appellant has provided no technical evidence to support their claim that Kingerby Wood is sufficient to shield the proposed turbine. Radar line of sight is not the same as visual line of sight and the MOD maintains their objection to the proposal. Reference to the MOD withdrawing their objections to another turbine elsewhere is not helpful as the full details of that case are not provided and it is a well-established principle that each case should be determined on its own merits.

Impacts on local habitats and ornithology

- i) Local Plan saved policy NBE 12 is consistent with the aim of the NPPF of conserving and enhancing the natural environment in that it militates against development that would adversely affect a locally designated nature conservation site or ancient woodland. The proposed turbine would be within 250m of the Kingerby Wood Local

Wildlife Site (LWS). Lincolnshire Wildlife Trust advises that the LWS contains a heronry of significant size for Lincolnshire. Their data suggests that the heron population is declining and any effects of the turbine in terms of collisions or disturbance to the birds would be more significant as a result.

- ii) The appellant's Ornithological survey presents evidence collected from June 2009 to June 2010, recording 27 Grey Heron flights, of which more than half were within 200m of the proposed turbine. Whilst the appellant concludes that the risk of collisions to Grey Herons is negligible, both the Lincolnshire Wildlife Trust and the RSPB are concerned that no mitigation measures are proposed. Both advise that their concerns could be readily overcome by locating the turbine further away from the LWS. The appellant has failed to demonstrate that there is an overriding need for the development in this location and that it could not be accommodated elsewhere, contrary to saved policy NBE12.

Landscape impact

- i) The West Lindsey Landscape Character Assessment 1999 (WLLCA) identifies the area within which the site lies as the Lincolnshire Clay Vale Local Character Area. The WLLCA addresses landscape sensitivity and specifically refers to ancient woodland such as Kingerby Wood as being amongst the most sensitive features.
- ii) The appellant's Landscape and Visual Impact Assessment (LVIA) accepts that the Lincolnshire Clay Vale LCA would be significantly affected in part by the proposed development. The LVIA does not, however, consider the sensitivity of the ancient woodland landscape feature of Kingerby Wood.
- iii) The LVIA acknowledges that there would be almost continuous theoretical visibility of the proposed turbine throughout the area covered by the LVIA. Drawings TL-007-12-09 and TL-007-12-10 show that the proposed turbine would tower over Kingerby Wood, thereby dominating this sensitive landscape feature.
- iv) Kingerby Lodge is approximately 650 m from the proposed turbine site. Its main outlook is over the rear garden which faces directly onto the appeal site. The introduction of a 67m high turbine into the main views from the house and garden would form an unpleasantly overwhelming and unavoidable presence. As a consequence, Kingerby Lodge would come to be regarded as an unattractive and therefore unsatisfactory place to live. It is not in the public interest that such unsatisfactory living conditions should be introduced which could be avoided if the proposed turbine were to be located elsewhere.

The case for the appellant

Aviation

- 14. The appellant company tried to correspond with MOD prior to submitting the planning application. Despite the MOD's obligation to assist the public through consultation prior to planning applications, the MOD has made no effort to discuss this scheme further. The appellant's research indicates that

Kingerby Wood would provide adequate screening to protect the ATC radar at RAF Waddington from unacceptable interference.

15. In a different case involving a proposal to erect a wind turbine at Worlby in the North Lincolnshire area, the appellant company was given the opportunity to liaise with the MOD as part of the consultation process for the planning application. In that case, the MOD agreed that the presence of woodland provided screening. This, along with a proposal to reduce the height of the turbine, resulted in the MOD withdrawing their objection.
16. The appellant considers that, based on the precedent set by the Worlby case, the MOD should consider this scheme in a similar light. Furthermore, Kingerby Wood is owned by the appellant and is designated Ancient Woodland and therefore can be protected and is unlikely to be felled within the lifetime of the proposed turbine. Furthermore, Kingerby Wood is closer to the proposed turbine than the woodland is in the Worlby case and it is considered that any interference from the turbine would be inseparable from the interference created by the woodland.

Habitat value of Kingerby Wood

17. The proposed wind turbine would not directly affect the integrity of Kingerby Wood but concerns have been raised with regard to the presence of a heronry within the woods, consisting of 21 nests about 500 m from the proposed turbine, as recorded in 2010. The appellant's Ecology and Ornithology Appraisal was based on survey work undertaken by professional ecological surveyors in accordance with relevant government guidance and concluded that the collision risk to Grey Herons would be negligible. In the appellant's opinion, no substantial evidence has been provided that either challenges the findings of the appellant's Ecology and Ornithology Appraisal or justifies the objections of Lincolnshire Wildlife Trust or the RSPB.

Landscape considerations

18. The Council's final reason for refusal splits landscape considerations, firstly concerning the impact of the scheme on the Lincolnshire Clay Vale Landscape Character Area and, secondly, relating to the visual impact on the occupants of the nearest dwelling, Kingerby Lodge. A detailed assessment of the landscape and visual impacts of the proposed turbine is included in the appellant's Landscape and Visual Assessment (LVA) document.
19. Sections 3.3.1 and 3.4 of the LVA conclude that the proposed turbine would have only a limited effect on the Lincolnshire Clay Vale Landscape Character Area. This is based on a series of computer-generated visualisations showing the turbine from various key receptors. Whilst there is the potential for an effect on the landscape character within the immediate vicinity of the proposed turbine, this is not seen to provide a significant overall impact on the Lincolnshire Clay Vale Landscape Character Area. It would not have an adverse effect on the features, setting or general appearance of the landscape character area.
20. Kingerby Lodge is sited approximately 695 metres from the proposed turbine. It is noted in the LVA that the turbine would have a significant impact on a small number of properties, of which Kingerby Lodge is one. It

would be impossible to locate the turbine so that it would be completely hidden from every property in the area. Kingerby Lodge is shielded to some extent by the established plot in which it sits. Although the turbine would be seen within the immediate landscape area of the dwelling, views of it would be limited to certain aspects which represent a minority of the available views and would not make the dwelling an unattractive place to live.

Written Representations

21. All representations made in relation to the appeal are expressing objections to the scheme. There were many more objections made to the planning application and these are included as attachments to the Council's Questionnaire response. The Secretary of State may wish to be aware of an objection from Edward Leigh MP on behalf of his constituents.

Defence Infrastructure Organisation

22. The Defence Infrastructure Organisation (DIO) manages, on behalf of the Ministry of Defence (MOD), the formal consultation process in which the MOD is engaged on development proposals, including those for wind turbines. DIO ensures that operational facilities are not compromised by development schemes. This safeguarding responsibility includes maintaining the effective operation of military radars.
23. DIO has submitted a comprehensive statement. Amongst other things, this explains the rôle of DIO in the consultation process; a basic description of the technical aspects of radar detection; the potential adverse impacts of turbines on Primary Surveillance Radar (PSR); a description of the rôle of RAF Waddington as Air Traffic Control (ATC) provider and an assessment of the appellant's case with regard to the issue of the proposed turbine's effect on the PSR at RAF Waddington.
24. It can be noted in paragraphs 3.1 and 3.3 of DIO's statement that the appeal scheme and the previously refused proposal for a similar development were subjected to full technical and operational assessments of the impact of the development on MOD assets. In other words, the MOD objections were directly related to the development proposals rather than being generic objections.
25. At 5.1 of the DIO statement, the potential detrimental effects of wind turbines on PSRs are described as:
- a) creation of false returns that appear on ATC radar like the return produced by real aircraft;
 - b) they can obscure returns from real aircraft;
 - c) they can saturate the radar by increasing the number of returns it receives;
 - d) or desensitise the radar due to the relatively large radar cross-section of wind turbines compared to aircraft.
26. Paragraph 5.8 explains that the MOD does not raise concerns or objections where the operational impact (of a turbine) is deemed manageable, but is keen to protect areas where operations will be affected. Paragraph 5.18 summarises Section 5 of the statement, concluding that the airspace in the

vicinity of the proposed development is vital to MOD aviation operations. It is congested airspace routinely used by both military and civilian aircraft. There is a variety of airfields in close proximity operating a wide range of aircraft from fast moving, aerobatic aircraft to slow and heavy military aircraft, microlights, gliders and helicopters. Airspace is a finite resource and maintaining coverage in this area is vital. The MOD must safeguard the PSR coverage in this area and therefore maintains its objection to the appeal scheme.

27. In response to the appellant's grounds of appeal, the MOD does not consider that Kingerby Wood would provide effective screening of the proposed wind turbine to the PSR at RAF Waddington. The reasons are that the woodland would not exceed the height of the turbine. According to the appellant's own statement of case, 16.12 metres of the height of the proposed turbine would remain within radar line of sight of the Watchman radar at RAF Waddington. This would be well within the radar's detection capability. Furthermore, the screening effect of vegetation varies considerably due to its irregular nature and the wide range in species, densities and water content. Deciduous trees will lose their leaves in winter and their movement in the wind can expose objects that, without wind, would not be exposed. The MOD concludes that Kingerby Wood would not provide any significant screening of the proposed turbine from the ATC radar at RAF Waddington. They confirm that the MOD has consistently maintained radar objections where woodland screening has been proposed as mitigation.

28. In response to the appellant's suggestion that the MOD took a different view with regard to a proposed turbine in an adjoining authority, in that case the proposed turbine was reduced to 55 m to tip. After undertaking a full technical assessment of the lower turbine, in that case it was concluded that the turbine would be unlikely to be detected. Other factors in the assessment included the distance from the radar, the curvature of the earth and the penetration of the radar line of sight path by terrain. The effects of a particular turbine can only be assessed on a case-by-case basis and such comparisons are therefore of little relevance.

Glenthams Parish Council:

- Danger to traffic for vehicles accessing the site at the junction with the A631;
- Visual impact;
- Industrial development in the open countryside;
- Public feeling is against the scheme. The concept of localism is understood to mean that local people have influence over local events.

Mr and Mrs Lealand, Kingerby Lodge

- The turbine would dominate the view from their property;
- Concern that it would be followed by additional turbines in this location

Corringham Parish Council

- Concern about the number of turbine applications in the Lincolnshire area. They are very visible and will turn the countryside into an industrial estate.

Owmby by Spittal Parish Council

- Simply reiterate the three reasons for refusal of planning permission.

Fiona MacNeill, North Lodge, Kingerby

- Risk to aviation safety
- Close proximity to historic sites: Kingerby Hall (Listed Grade 2) and the adjoining mediaeval castle Scheduled Ancient Monument; St Peter's Church Kingerby (Listed Grade 1); Kingerby Spa; Kingerby Woods.
- Adverse impact on landscape
- Endangerment of local wildlife
- Negative effect on tourism
- Zero local benefit
- Inadequate site access
- Noise
- Danger to motorists from shadow flicker.

Mr and Mrs Worth, High Street Caenby

- Concern at number of wind energy proposals in this area of Lincolnshire
- Repeat reasons for refusal

B Heaton, High Street Caenby

- Identical letter to that submitted by Mr and Mrs Worth.

Bishop Norton Parish Council

- Site is randomly selected rather than being plan-led in consultation with local communities
- Visualisation methodology not explained; photomontages not representative
- Proximity to Kingerby Woods – harm to wildlife and to this distinctive landscape feature
- Impact on views of the Wolds skyline
- Proximity to architectural and archaeological heritage assets and harm to their settings

J E Ward, West Rasen

- Loss of visual amenity
- Unacceptable noise disturbance
- Flawed evidence in the supporting information

Inspector's conclusions

29. I consider that the main issues are firstly, the effect of the proposal on ATC services provided by RAF Waddington, secondly the effect of the scheme on the Kingerby Wood Local Wildlife Site and thirdly its effect on the local landscape.

ATC Services from RAF Waddington

30. DIO has produced a very comprehensive statement that explains the potential problems that the proposed development would cause for ATC services from RAF Waddington. The appellant's suggestion that Kingerby Wood would adequately screen the proposed turbine from the Primary Surveillance Radar has been addressed in the statement and found to be incorrect. The appellant has produced no technical evidence or suggested any other mitigation measures that address the MOD's concerns. I have no knowledge or experience that would cause me to doubt that the MOD's objections to the scheme are soundly based. There is nothing in the representations that could lead to any conclusion other than that the proposed development would unacceptably affect the provision of ATC

services from RAF Waddington. Any benefits of the scheme in terms of the production of electricity by renewable means would be far outweighed by the consequent risks to aviation safety. Under these circumstances, permission should not be granted for the proposed development, in accordance with the advice in EN-1 paragraph 5.4.17.

Effect on Kingerby Wood Local Wildlife Site

31. The evidence base for consideration of effects on wildlife is provided by the appellant's submissions by Arcus Consultancy Services entitled "Ecology and Ornithology Appraisal" and "Further Information: Ornithology and Ecology. As noted in paragraph 1 above, the appeal scheme is a resubmission of an earlier scheme. The first Arcus document was produced in support of the earlier application which attracted objections from the RSPB and Lincolnshire Wildlife Trust (LWT). The second Arcus document was submitted with the appeal scheme to provide additional information. Both the RSPB and LWT maintain their objections to the scheme on the basis that the proposed turbine would be only 200m from Kingerby Wood within which is one of Lincolnshire's larger heronries. Neither organisation would be likely to have cause for concern if the turbine were to be located further away from the wood so as not to pose any threat to the wildlife within it.
32. The Arcus reports are based on ecological appraisals undertaken in accordance with guidance produced by Scottish Natural Heritage in 2008. In the absence of any equivalent guidance produced by Natural England, the Scottish guidance is regarded as representing good practice.
33. The Arcus report was prepared by professional ecologists. From survey findings, they conclude that risks of collision with birds would be negligible and further collision risk modelling is therefore not necessary.
34. I acknowledge that RSPB and LWT have genuine concerns about the possible effect of the proposed development on birdlife in Kingerby Wood and that their concerns could possibly be addressed without undue difficulty. However, the evidence submitted with the appeal suggests to me that the risks to wildlife would only be slight. On that basis, I do not consider risk to wildlife to be an objection of sufficient weight to warrant dismissal of this appeal.

Effect on Landscape

35. The Lincolnshire Clay Vale landscape character type is essentially an area of flat, arable farmland with a fairly weak vertical element to the landscape structure, mainly resulting from the areas of woodland and copses that are distributed throughout the area. Within such a landscape, tall structures are likely to be visible over a wide area, notwithstanding that views of them will come and go depending on the presence of intervening vegetation and buildings. The photomontages submitted as part of the scheme clearly demonstrate that the proposed turbine would be visible over a wide area as a very tall structure in a low-lying landscape. Photomontage views 1, 2 and 6 show this in particular. The photographs also show that, at present, there are few, if any, other tall man-made structures in the wider area that are out of scale with the area's trees and woodlands.

36. The Kingerby Woods Ancient Woodland is an important landscape feature of the area. This can be seen in photomontage 1 behind the white house and extending towards the middle of the photograph. In this view, the proposed turbine appears some distance to the left of the view of the wood, but there are other near views not covered in the photomontages (particularly from the lane from Kingerby Lodge towards viewpoint 2) where the turbine would be seen with Kingerby Wood more closely associated with it. In my opinion, the proposed turbine would tower above Kingerby Wood. It would seriously diminish the contribution this ancient woodland makes to the quality of the local landscape, contrary to Local Plan saved policy NBE 12 and the first bullet point of paragraph 109 of the NPPF.
37. There are several other landscape points raised in objections but I do not consider any of these to add significant weight to the case against the proposed turbine. It might be visible in the expansive views of the landscape which can be obtained from The Lincolnshire Wolds AONB and the Viking Way, but it would not dominate such views because it would be three or four miles from any vantage point in that area. I think at such distances, an observer would have to consciously seek out the turbine rather than it being an obvious and discordant element of the view. It would be more likely to be of benefit as a landmark to an observer navigating around the view than as something that would offend the eye.
38. The proposed turbine would be some considerable distance from the listed buildings and Scheduled Ancient Monument at Kingerby and Kingerby Hall. It might be visible in some views from those places, but I do not think the site could be properly regarded as being within the setting of any of those heritage assets.
39. The proposed turbine would be visible from Kingerby Lodge, which would be the nearest dwelling to it. I can appreciate that the occupants of that dwelling might not want to see such a tall structure in any part of their view and, from their perspective, the turbine might make their home a less pleasant place to live than it is now. However, that is a relative concept, rather than an absolute concept. The turbine would be about 650m from their garden and, as a single turbine, it would occupy only a relatively narrow band of the 360° view potentially available from the property. In absolute terms, it could not be said to have such an overwhelming presence that most people would consider the house an unsatisfactory place to live. It would provide a very pleasant living environment whether or not the proposed turbine was built.

Overall Conclusions

40. It may be inferred from paragraph 38 of the NPPF, that the delivery of the associated infrastructure for renewable and low-carbon energy is central to the three dimensions of sustainable development. Energy development usually has some adverse landscape impact and I consider that it would not be logical to elevate landscape protection generally (as opposed to landscapes of national importance such as National Parks and Areas of Outstanding Natural Beauty) to the extent that it would effectively “trump” the presumption in favour of sustainable development as far as such projects are concerned. Notwithstanding the harm to the landscape that would be

caused by the appeal project, and its consequent conflict with relevant development plan policies, I regard it still as comprising sustainable development attracting the presumption in favour.

41. Nevertheless, in this case, the impacts of the proposed scheme both on aviation safety and on the character and appearance of the local landscape would be so harmful that the presumption in favour of the scheme is clearly outweighed. Its impacts cannot be made acceptable and I therefore recommend that the appeal be dismissed.

Conditions

42. In the event that the Secretary of State does not agree with my recommendation, the Council has suggested that conditions of approval would be necessary. The majority of the conditions are derived from consultation responses and appear to me to be reasonable and necessary. However, I do not consider the suggested requirement to publish and archive the archaeological records and analysis to be a reasonable imposition on the developer, given that the archaeological information has to be submitted to the Council for approval and would therefore become a matter of public record. The requirement for the analysis to be in accordance with the Lincolnshire Handbook is superfluous given that the scheme is subject to the Council's approval.
43. The evidence points to there being no great risk to birds and other wildlife and it is likely that the LWT would maintain their interest in the ecology of the ancient woodland. I do not think that the bird monitoring conditions suggested would be a reasonable imposition on the developer under these circumstances.
44. The suggested conditions are attached as the Appendix to this report. I have made some alterations as I have thought necessary in the interests of clarity and enforceability.

Recommendation

45. I recommend that the appeal be dismissed.

David C Pinner
Inspector

Appendix – Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The permission hereby granted shall enure for a period of 25 years from the date when electricity is first generated from the wind turbine (First Export Date). Written confirmation of the First Export Date shall be provided to the Local Planning Authority within one month of the First Export Date.
- 3) Unless a further permission is granted, not later than 12 months before the expiry of this permission, a decommissioning method statement to include an environmental management plan, a transport statement and a scheme for the restoration of the site shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in accordance with a timetable to be agreed in writing with the Local Planning Authority.
- 4) If, before the expiry of this permission, the turbine ceases to operate for a continuous period of 12 months, it shall be decommissioned and removed from the site in accordance with a decommissioning method statement (to include an environmental management plan, a transport statement, a scheme for the restoration of the site and a timetable for implementation) which shall have been submitted to and approved in writing by the Local Planning Authority within three months of the end of the period of cessation.
- 5) No development shall commence until the developer has notified the Local Planning Authority, the Civil Aviation Authority and the Ministry of Defence of:
1) the dates when construction is expected to commence and finish;
2) the maximum height of any construction equipment and the height of the turbine above ordnance datum and 3) the latitude and longitude of the turbine.
- 6) Prior to the erection of the wind turbine, final details of the appearance, colour and finish of the tower, nacelle and blades and any external transformer unit(s) shall be submitted to and approved in writing by the Local Planning Authority. No advertisements, names or logos (other than safety or information notices) shall be displayed on any external surfaces of the development. Development shall be carried out in accordance with the approved details.
- 7) Prior to the erection of the turbine, a scheme for the provision of aviation safety lighting, to include the provision of MOD accredited 25 candela omnidirectional aviation lighting OR infra red warning lighting with an optimised flash pattern of 60 flashes per minute of 200ms to 500ms duration at the highest practical point on the turbine, shall be submitted to and approved in writing by the Local Planning Authority. The turbine shall be erected with the lighting installed in accordance with the approved details and the lighting shall remain operational until the turbine is dismantled.
- 8) No development shall take place until a scheme of archaeological investigation has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include:

- i) An assessment of significance and proposed mitigation strategy (i.e. preservation by preservation in situ or a mix of these elements).
- ii) A methodology and timetable of site investigation and recording.
- iii) Provision for site access.
- iv) Nomination of a competent person or organisation to undertake the work.

The archaeological work shall be undertaken only in accordance with the approved scheme. No development shall commence until a written report of the findings of the work has been submitted to and approved in writing by the Local Planning Authority.

- 9) Prior to commencement of development, full details of the proposed access improvement works shall be submitted to and approved in writing by the Local Planning Authority. The access improvement works shall be carried out in accordance with the approved scheme prior to any works being carried out for the erection of the turbine.
- 10) The turbine shall be erected at the coordinates: Easting 504541: Northing 391615 unless otherwise agreed in writing by the Local Planning Authority.
- 11) All cabling shall be installed underground unless agreed otherwise by the Local Planning Authority.
- 12) Where, within 12 months of the First Export Date, the Local Planning Authority has notified the developer of any complaint of television interference caused by the turbine at a lawfully occupied dwelling, a scheme providing for a baseline survey and the investigation and alleviation of any electro-magnetic interference to terrestrial television shall be submitted to the Local Planning Authority for written approval within 1 month of the date of notification. The scheme shall be undertaken by a qualified independent television engineer and, where interference is determined to be attributable to the turbine, mitigation works shall be carried out in accordance with the approved scheme.



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.