



Department for
Communities and
Local Government

Our Ref: APP/D0840/W/15/3097706

Mr Gareth Davies
Cleaneath Energy
Unit 2a, Bess Park Road,
Trenant Industrial Estate
Wadebridge
Cornwall
PL27 6HB

27 October 2016

Dear Mr Davies

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY MR JAMES BOLITHO
LAND AT WILTON FARM, HERODSFOOT, LISKEARD, PL14 4RD
APPLICATION REF: PA14/06447**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Paul Griffiths BSc(Hons) BArch IHBC, who made site visits on 17 November 2015 and 17 December 2015 into your client's appeal against the decision of Cornwall Council to refuse planning permission for a single wind turbine of max. 77m to tip, along with associated infrastructure, including an access track, and electrical housing in accordance with application ref: PA14/06447, dated 9 July 2014.
2. On 2 July 2016, this 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 gives rise to important issues for the application of the Wind Farm policy and the appeal is therefore being recovered because of the particular circumstances.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed, and planning permission granted, subject to conditions.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with his recommendation. He has decided to allow the appeal. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Policy and statutory considerations

5. In reaching his decision, 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.
6. In this case the development plan includes the Caradon Local Plan First Alteration, adopted in August 2007. The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR7-9, specifically LP Policies REN1, REN2, CL8 and CL9.
7. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as Written Ministerial Statement ('WMS') on local planning of 18 June 2015 which is referred to in IR18. Given its relevance to this case, the Secretary of State attaches substantial weight to the WMS as the most recent expression of government planning policy for onshore wind development.
8. The June 2015 Statement includes a transitional provision for where a valid planning application for wind energy development had already been submitted to a local planning authority at the date on which the statement was made and the development plan does not identify suitable sites. In such instances, local planning authorities can find the proposal acceptable if, following consultation, they are satisfied it has addressed the planning impacts identified by affected local communities and therefore has their backing. In applying the transitional provision to this appeal proposal the Secretary of State has considered the representations reported at IR41-52.
9. 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 schemes or their settings or any features of special architectural or historic interest which they may possess.

Emerging plan

10. The emerging plan includes the Cornwall Local Plan Strategic Policies Plan (CLPSPP). The Examiner's Report into the CLPSPP was submitted to Cornwall Council on 23 September 2016 together with the Schedule of Major Modifications. The Secretary of State considers that the emerging policies of most relevance to this case include Policy 14 in the "Combined document showing proposed Main and Minor Changes (October 2016)."
11. Paragraph 216 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. As the Examiner's Report has been submitted to the Council the Secretary of State gives the CLPSPP limited weight.

Main issues

12. The Secretary of State agrees with the Inspector that the main issues are those set out at IR63.

The Impact on the Adjoining Holiday Business

13. The Secretary of State concurs with the Inspector that the holiday business is located on the slopes, and along the bottom, of a relatively steep-sided valley, centred around some tourist accommodation near the valley base, and a series of fishing lakes, which are fed by a stream (IR65). For the reasons given in IR66-68 he agrees with the Inspector that the wind turbine proposed would not appear overbearing, or dominant, viewed along, or in conjunction with the other recently erected wind turbine (IR67) and its visual presence would have no significant impact on its quality as a place to stay (IR68).

14. The Secretary of State also agrees, for the reasons in IR69-72 that, if noise levels can be made ETSU-R-97 compliant (IR 71-72), it seems reasonable to conclude that noise from the wind turbine proposed would have no significant impact on its operation, or the enjoyment of visitors to it.

15. Like the Inspector the Secretary of State concludes that the proposal would have no undue impact on the operation of the Woodlay Holidays (IR73).

Other impacts

16. In terms of landscape impact, for the reasons in IR74-75, the Secretary of State like the Inspector sees no reason to disagree with the overall conclusion of the appellant's LVIA that there would be a 'slight to moderate adverse' impact on the Landscape Character Area. The Secretary of State agrees with the Inspector that as there would be some harm to the receiving landscape, the proposal would not accord with LP Policy CL9, however he also agrees that the wording of that policy fails to accord with the approach of LP Policies REN1 and REN2 there would be no divergence from these policies (IR75).

17. The Secretary of State also agrees with the Inspector's conclusion that the proposal would not have any harmful effect on the setting and significance of designated heritage assets in the vicinity (IR76 and 87). He also agrees, for the reasons given in IR77-79 and IR87 that it would not have any harmful effect on the living conditions of local residents, subject to suitably worded conditions.

18. The Secretary of State also agrees with the Inspector that, in terms of impacts on tourism, there is no direct evidence that the presence of single wind turbines and wind farms has depressed visitor numbers (IR79). Nor does the Secretary of State, like the Inspector, have any reason to doubt the conclusion of the Extended Phase One Habitat Survey which found that there would be no significant wildlife impact (IR81).

Benefits

19. For the reasons given in IR82-86, the Secretary of State agrees with the Inspector that the renewable energy produced will make an important contribution to cutting greenhouse gas emissions and the proposal would generate an income that would help sustain a rural enterprise.

Written Ministerial Statement

20. The Secretary of State agrees with the Inspector that, notwithstanding the presence of objections to the proposal at application and appeal stages, in the circumstances set out the proposal can be deemed to have the backing of the affected local community (IR89-91).

Planning conditions

21. The Secretary of State has given consideration to the Inspector's analysis at IR53-61, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework.

Planning balance and overall conclusion

22. For the reasons given above, the Secretary of State considers that, although there is conflict with LP policy CL9, the appeal scheme application is in accordance with LP Policies REN1 and REN2 of the development plan, and is in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

23. The Secretary of State concludes that the proposed wind turbine would have some harmful impact on the receiving landscape. Unlike the Inspector he takes the view that 25 years is a considerable period of time and has given no weight to the temporary nature of the proposal in his consideration of whether the scheme should be allowed. Nevertheless, he concludes that the benefits, to which he gives significant weight, far outweigh the harm that would be caused, and, in that context the impact on the landscape would not be unacceptable. For the reasons given at paragraph 20 above, he further concludes that the transitional provision of the WMS is satisfied and does not serve to justify a decision that would run contrary to the development plan and the Framework.

24. The Secretary of State therefore concludes that the appeal be allowed and planning permission granted, subject to the conditions set out at Annex A.

Formal decision

25. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission for a single wind turbine of max. 77m to tip, along with associated infrastructure, including an access track, and electrical housing in accordance with application ref: PA14/06447, dated 9 July 2014.

26. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

27. 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 6 weeks from the day after the date of this letter for

leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

28. A copy of this letter has been sent to Cornwall Council and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Richard Watson

Richard Watson
Authorised by Secretary of State to sign in that behalf

Annex A

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: PR2821-PA-LP-01: Location Plan; PR2821-PA-BP-01: Block Plan; PR2821-PA-SH-01: Control Cabinet and Transformer Housing; 1000900 Revision 02: DIRECTWIND 54–HH 50; and PR2821-PA-TP-01: Transport Plan.
- 3) The permission hereby granted shall endure for a period of 25 years from the date when electricity is first exported from the wind turbine to the electricity grid (the 'First Export Date'). Written notification of the First Export Date shall be given to the local planning authority no later than 14 days after the event. No later than 18 months before the permanent cessation of electricity generation at the site, a decommissioning and site restoration scheme, which shall include a timetable, shall be submitted for the written approval of the local planning authority. The decommissioning and site restoration scheme shall be implemented and completed, in accordance with the approved details.
- 4) If the wind turbine hereby permitted ceases to produce electricity for a continuous period of 12 months, then a scheme for the decommissioning and removal of the wind turbine, and the restoration of the site, and a timetable for all that, shall be submitted to the local planning authority for written approval within 6 months of the end of the 12 month period. The scheme shall be completed in accordance with the approved details.
- 5) Noise emissions arising from the construction phase of the development approved herein shall not exceed an LAeq, T noise level of 65 dB 1-metre from the façade of any occupied residential dwelling, during the construction working day which shall run from 0800-1800 hours on Mondays to Fridays (inclusive) and 0800-1300 hours on Saturdays. There shall be no construction activities relating to the development at any other times. The construction noise level shall be determined in accordance with the guidance presented in BS 5228 2009: Code of Practice for Noise and Vibration Control on Construction and Open Sites.
- 6) No development shall take place until a Construction and Delivery Traffic Management Plan (CDTMP) has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved CDTMP.
- 7) No development shall take place until details of aviation lighting, which shall include the mode of operation and a timetable for installation, have been submitted to, and approved in writing by, the local planning authority. The aviation lighting shall be installed and operated in accordance with the approved details.
- 8) No development shall take place until the local planning authority has been informed, in writing, of (1) the start date for construction and the projected completion date; (2) the maximum height of the construction equipment; and (3) the latitude and longitude of the wind turbine.

9) No development shall take place until details of the colour(s) and finish(es) of the wind turbine approved herein have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details and retained as such thereafter.

10) No development shall take place until a Private Water Supply Protection Plan (PWSP) has been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details.

11) No development shall take place until a protocol for the alleviation of any shadow flicker that might arise as a result of the operation of the wind turbine approved herein has been submitted to, and approved in writing by, the local planning authority. The wind turbine shall be operated in accordance with the approved protocol.

12) No development shall take place until a series of noise limits at different wind speeds, at noise sensitive properties, and a protocol for how those are to be achieved when the wind turbine hereby approved is in operation, has been submitted to, and approved in writing by, the local planning authority. The wind turbine shall be operated thereafter in accordance with the approved protocol.

Report to the Secretary of State for Communities and Local Government

by Paul Griffiths BSc(Hons) BArch IHBC

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

Date: 25 July 2016

The Town and Country Planning Act 1990

Appeal by

Mr James Bolitho

Against the decision of

Cornwall Council

Site visits made on 17 November 2015 and 17 December 2015

Wilton Farm, Herodsfoot, Liskeard PL14 4RB

File Ref: APP/D0840/W/15/3097706

File Ref: APP/D0840/W/15/3097706
Wilton Farm, Herodsfoot, Liskeard PL14 4RB

- 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 James Bolitho against the decision of Cornwall Council.
- The application Ref.PA14/06447, dated 9 July 2014, was refused by notice dated 15 October 2014.
- The development proposed is a single wind turbine of max. 77m to tip, along with associated infrastructure, including an access track, and electrical housing.

Summary of Recommendation: The appeal be allowed, and planning permission granted, subject to the conditions set out in Annex 1 to this report.

Procedural Matters

1. An accompanied site visit was originally arranged for 17 November 2015 but because of the prevailing weather conditions, visibility was too poor to allow it to be carried out properly. The visit was rearranged for the morning of 17 December 2015 but again, for the same reason, visibility was unacceptable. However, the weather cleared up enough by the afternoon of that day to allow the visit to be completed in conditions where visibility was reasonable.
2. As part of the visit, I took in the appeal site itself and the neighbouring business at Woodlay Holidays, on an accompanied basis. As agreed, I then took in the wider area unaccompanied.
3. After the completion of the visit, I proceeded to prepare my decision on the appeal. However, on 2 June 2016, in exercise of his powers under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990, the relevant Secretary of State directed that he shall determine the appeal instead of an Inspector. The reason given for the direction was that: *the Secretary of State believes that the appeal gives rise to important issues for the application of the Wind Farm policy and the appeal is therefore being recovered because of the particular circumstances.*

The Proposal

4. The proposal involves the erection of a single wind turbine of 50m hub height and a maximum height to the tip of the blades of 77m. The diameter of the blade sweep would be 54m¹. Supplementary elements of the development include a switch gear housing unit, a temporary access track, a temporary pad for a crane of approximately 30m by 25m and underground cabling².

The Site and Surroundings

5. The wind turbine is proposed to be located in a field, currently laid to pasture, approximately 700m north-east of the B3359, at an elevation of about 164m AOD. The B3359 connects East Taphouse to the north with Polperro and Looe around 10km and 9km respectively to the south.

¹ As shown on Drawing No.1000900 Revision02 DIRECTWIND 54 – HH 50

² As shown on Drawings Nos.PR2821-PA-LP-01: Location Plan; PR2821-PA-BP-01: Block Plan; and PR2821-PA-SH-01: Control Cabinet and Transformer Housing

6. The field that the wind turbine would stand in has an area of about 5Ha and slopes from around 154m AOD in the northern parts, to 168m AOD in the southern parts. It is bordered by other fields to the west, east, and south, and by woodland to the north.

Planning Policy

7. The development plan for the area includes the Caradon Local Plan First Alteration, adopted in August 2007³. LP Policy REN1 is permissive of proposals for the generation of energy from non-fossil fuel sources provided that, of relevance here, the proposal has no unacceptable impact on the character and appearance of the immediate and wider landscape, and on areas of natural, cultural, historical or architectural interest; the proposal does not overshadow or have an overbearing effect on nearby habitations; the proposal must be capable of being operated and serviced with no unacceptable impact on the amenity of nearby habitations through, of relevance, noise; and the proposal taken with the effects of similar development nearby must not have a materially adverse effect on the interests previously identified.
8. LP Policy REN2 deals specifically with on-shore wind energy. In areas like that in which the appeal site lies, wind turbines are permitted if, of relevance, they would not cause unacceptable damage to amenity, landscape, scientific, archaeological, nature conservation, or historic interests. In all cases, proposals must comply with LP Policy REN1, and the development must not unacceptably affect the amenities of neighbouring properties by reason of noise emissions, visual dominance, shadow flicker, or reflected light.
9. LP Policy CL8 defines Areas of Great Landscape Value⁴. The appeal site lies within the Looe and Seaton Valleys AGLV where LP Policy CL9 does not permit development that would materially harm the character of the particular area and if it does not closely reflect the traditional building styles and local materials, or the characteristic pattern of settlement, in the particular area.
10. One of the core principles of the National Planning Policy Framework⁵ is that the intrinsic character and beauty of the countryside should be recognised. Paragraph 109 is clear that the planning system should protect and enhance valued landscapes. Another of the core principles is that heritage assets should be conserved in a manner appropriate to their significance. Paragraph 132 says that when considering the impact of a proposed development on a designated heritage asset, great weight should be given to the asset's conservation. The Framework also makes clear that a good standard of amenity for all existing and future occupants of land and buildings should always be sought.
11. Against all that, reflective of wider national energy policy, and the statutory requirements of the Climate Change Act 2008, another core principle of the Framework is that planning should support the transition to a low carbon future in a changing climate, and encourage the use of renewable resources (for example, by the development of renewable energy).

³ Referred to hereafter as LP – relevant extracts are attached to the Questionnaire

⁴ Referred to hereafter as AGLV

⁵ Referred to hereafter as the Framework

12. Paragraph 93 tells us 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 energy and associated infrastructure. This, we are told, is central to the economic, social and environmental dimensions of sustainable development.
13. As an aid to decision-making, paragraph 98 says that we should not require applicants for energy development to demonstrate the overall need for renewable energy and recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions. In very simple terms, applications should be approved if impacts are (or can be made) acceptable.
14. Paragraph 18 of the Framework tells us that the Government is committed to securing economic growth in order to create jobs and prosperity, building on the country's inherent strengths, and to meeting the twin challenges of global competition, and a low carbon future.
15. Paragraph 123 of the Framework⁶ sets out that planning policies and decisions should aim to avoid noise giving rise to significant adverse impacts on health and quality of life as a result of new development; mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions; recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established; and identify and protect areas of tranquillity which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason.
16. To a large extent, and with their references to 'unacceptable impacts', LP Policies REN1 and REN2 reflect the approach of paragraph 98. On that basis, bearing in mind the approach set out in paragraph 215 of the Framework, there is no good reason not to attach the full weight of s.38(6) of the Planning and Compulsory Purchase Act 2004 to them.
17. By contrast, while the Council has drawn attention to the provisions of the Cornwall Local Plan Strategic Policies – Proposed Submission Document 2010-2030⁷, this is at too early a stage in the process towards adoption to attract any material weight.
18. There is also the Written Ministerial Statement on Local Planning of 18 June 2015⁸ and the concurrent changes to Planning Practice Guidance⁹ to consider. For proposals like that at issue in this appeal, where the transitional provisions apply, we are told that local planning authorities¹⁰ can find the proposal acceptable if, following consultation, they are satisfied it has addressed the planning impacts identified by affected local communities and therefore has their backing.

⁶ Referred to in the Council's reason for refusal

⁷ Relevant extracts are attached to the Questionnaire

⁸ Referred to hereafter as WMS

⁹ Referred to hereafter as PPG

¹⁰ And I take that to include the Secretary of State, or those acting on his/her behalf

The Case for the Council

19. In a comprehensive report prepared for the Council's Planning Committee, Council Officers recommended approval of the application¹¹. Having considered that report and recommendation, and an addendum report¹², Council Members resolved to refuse planning permission¹³.
20. The single reason cited for the refusal reads: *The proposed turbine by reason of its location, height and moving blades would have an adverse dominating impact on the holiday business known as Woodlay Holidays and Woodlay Farm Liveries, located to the south of the site, being detrimental to the general amenities of patrons/guests of these facilities who would have the reasonable expectation of the enjoyment of a peaceful and tranquil environment. The proposal would therefore be contrary to paragraph 123 of the National Planning Policy Framework and saved Policies REN1 and REN2 of the Caradon Local Plan First Alteration 2007.*
21. This reason for refusal is expanded upon in the Council's Statement on the appeal and I have used that as the basis for this brief summary. Observations were submitted too on the WMS¹⁴.
22. Consistent with the Framework, the approach of the development plan is to maximise the environmental and economic benefits of renewable energy but with careful regard to any harmful impacts that might result. There is a balance to be struck between the two.
23. In visual terms, the wind turbine would be situated on raised ground, well above the adjacent valley bottom where Woodlay Holidays is located. At a separation distance of as little as 300m from the holiday complex, it would be a dominant visual presence that the existing deciduous tree cover would do little to alleviate. The Landscape and Visual Impact Assessment¹⁵ prepared on behalf of the appellant accepts that receptors at Woodlay Holidays would experience a moderate-substantial adverse effect on visual amenity.
24. In noise terms, it is plain that Woodlay Holidays enjoys a peaceful, tranquil and secluded location in the valley bottom and these characteristics are major contributors to the attractiveness of the enterprise.
25. The information submitted by the appellant makes plain that the wind turbine proposed would be sometimes audible, and in some conditions, the noise generated would exceed the levels permitted by ETSU-R-97¹⁶. The updated noise assessment carried out by MLM Acoustics¹⁷ includes a noise contour map¹⁸ that shows the fishing lakes within the 45 and 35 dB(A) contours. Noise would have a harmful impact on the business, given that it relies significantly on tranquillity to attract visitors.

¹¹ The report is attached to the Questionnaire

¹² Attached to the Questionnaire

¹³ A record of the discussion is attached to the Questionnaire

¹⁴ Both documents can be found on the case file

¹⁵ Referred to hereafter as LVIA – included within the appeal documentation

¹⁶ ETSU-R-97: *The Assessment and Rating of Noise from Wind Farms*

¹⁷ Dated 1 September 2014 – included within the appeal documentation

¹⁸ Figure 2 Page 17

26. The mitigation measures proposed by MLM Acoustics which include sector controls are noted but have the potential to seriously affect the efficiency of the wind turbine, and reduce the benefits it might bring forward.
27. On that overall basis, it is the view of the Council that the proposal would have an adverse impact, in visual and noise terms, on the adjacent holiday business. That adverse impact is not outweighed by the benefits the proposal would bring forward. On that basis, the proposal would fail to accord with LP Policies REN1 and REN2, and the Framework.
28. In terms of the WMS, there are significant, unresolved objections from the affected local community. It cannot be said to enjoy their backing, therefore.

The Case for the Appellant

29. In pursuance of the appeal, the appellant submitted an Appeal Statement, Final Comments, and observations on the WMS¹⁹. I have used those documents, along with others submitted with and during the application and the appeal, to inform this brief summary.
30. It is noteworthy that the Council's reason for refusal is very specific and relates solely to the potential impact on the operation of Woodlay Holidays by reason of visual impact, and noise.
31. In terms of the former, the Landscape and Visual Impact Assessment²⁰ concludes that at most, the wind turbine would have a moderate-substantial effect on visual amenity. However, the wind turbine would be screened by the extensive woodland on the valley sides, even in Winter. In that way, the wind turbine would not be dominant in views out from the complex.
32. As far as noise is concerned, the report prepared by MLM Acoustics shows that if an operating protocol was followed, the wind turbine could operate within ETSU-R-97 limits, taking account of the recently installed wind turbine at New Hartswell Farm²¹. Such an operating protocol could be secured by condition. The Council's Environmental Health Officer is satisfied with that approach.
33. ETSU-R-97 is designed to protect residential rather than general amenity but does not require wind turbines to operate inaudibly. If the wind turbine can operate within ETSU-R-97 limits at the holiday complex, then it is difficult to see how there could be any significant adverse impact on the business, notwithstanding the peaceful and tranquil environment that prevails.
34. In landscape terms, the proposal involves a single, medium scale turbine, close to the Cannon Bridge landfill site, away from the sensitive coastal edge. It would not appear out of scale, or incongruous. Indeed, the Council's own guidance for the South East Cornwall Plateau²² allows for: *occasional small or medium clusters of turbines, or single turbines, comprising turbines that may be up to sizes at the*

¹⁹ All of which can be found on the case file

²⁰ Referred to hereafter as LVIA – it can be found on the case file

²¹ Allowed by Appeal ref.APP/D0840/A/14/2218136

²² *An Assessment of the Landscape Sensitivity to Onshore Wind and Large Scale Photovoltaic Development in Cornwall* – January 2012 which can be found on the case file

lower end of the 'large' category.....and no turbines along the coastal edge and its immediate hinterland. There would be no significant cumulative impact.

35. The Historic Visual Impact Assessment submitted with the application²³ concluded that there would be no materially harmful impact on the setting, or the significance, of any designated or non-designated heritage asset. The Council raises no issue in this regard.
36. None of the residents of dwellings scattered around the site would experience any significant impact on their living conditions as a result of visual impact, or noise. The submitted shadow flicker assessment²⁴ shows that this phenomenon might be experienced at Isle Cottage. However, a suitably worded condition could be applied to ensure that the wind turbine was shut down at times when it could possibly occur.
37. In terms of tourism generally, there is no good evidence that this particular wind turbine, or indeed wind turbines generally, have a harmful impact on the Cornish tourist industry.
38. Against all that, the proposal would bring forward environmental benefits. It will produce renewable energy that will serve the farm business with any surplus fed into the National Grid. If the wind turbine operated freely, the anticipated output would be about 1,636MWh per year. The operational protocol required to prevent any undue impact on nearby properties through noise would reduce that, a little, to 1,535 MWh per year. Over the 25 year lifespan of the wind turbine, it would save 17,500 tonnes of Carbon Dioxide. The proposal would also generate an income that would help sustain the farm business.
39. These benefits far outweigh any temporary and reversible harmful impact that the wind turbine would have. On that overall basis, the proposal accords with LP Policies REN1 and REN2 and because the impacts are or can be made acceptable, the Framework.
40. In terms of the WMS, it is acknowledged that there have been objections from some sections of the affected local community. However, there has been a significant amount of support for the proposal from local residents, and from the Parish Council. In that context it is clear that the proposal can be said to have the backing of the local community, overall.

Representations on the Appeal

41. There was a significant level of response from local residents to the originating planning application²⁵. These include objections, and letters of support. A number of objections were received in relation to the appeal²⁶ and I summarise these below.
42. **Douglas Mills**, a resident of East Taphouse, to the north of the appeal site, raises issues around the harmful impact of the wind turbine on the AGLV, including the cumulative impact with the recently installed wind turbine at New

²³ Part of the originating application - it can be found on the case file

²⁴ Part of the originating application - it can be found on the case file

²⁵ All attached to the Questionnaire

²⁶ Which can be found on the case file

Hartswell Farm, and the settings and thereby the significance of Boconnoc House and Park, Lanhyroc House²⁷, and the Bury Down Hill Fort²⁸.

43. In terms of living conditions, concerns are expressed about the visual impact of the proposed wind turbine and the efficacy of the noise mitigation measures proposed. Support is offered for the objections made by the operators of Woodlay Holidays, and it is stressed, in the context of the WMS, that the proposal does not have the backing of the affected local community.
44. On top of all that it is pointed out that the proposed wind turbine would feed electricity into the National Grid so there would be no mutually beneficial link with the farming enterprise.
45. **Mr & Mrs Aggiss** of Woodlay Farm, which lies to the south of the appeal site, adjacent to the B3359 point to the harmful landscape impact that would result from the incongruity of the proposal and the detriment it would cause to local residents and holiday makers, at Woodlay Holidays in particular. Disquiet is expressed about the potential effect on the health and well-being of the rare breed Crabbet Arabian horses kept on the farm and wildlife in general.
46. **Martin and Kate Mitchell**, residents of Herodsfoot raise concerns about the potential effect of the proposal on tourism, and the harm that would be caused to views of Bury Down Hill Fort, the Boconnoc Estate, and the landscape generally.
47. **Jonathan Quelch** of **Woodlay Holidays** raises a series of objections to the proposal. It is pointed out that the wind turbine recently erected at New Hartswell Farm is already audible from the complex, and prominent in visual terms. The addition of the wind turbine at issue, with its attendant noise, and visual impact, could put off potential visitors who come to enjoy the peaceful, tranquil surroundings and, as a result, have a devastating effect on the business.
48. **Peter Walmsley** owns two holiday cottages, Poldark Cottage and Wagtail Cottage at Higher Penhole Farm and refers to others in the complex. It is said that the harmful landscape and visual impact of the wind turbine proposed, along with the noise it would produce would make the area less attractive to visitors. Moreover, the point is made that the proposal is not intended to benefit Wilton Farm directly. **Nick Reed** of Higher Penhole Farmhouse makes similar points.
49. **Rebecca Hodges** of East Trevills Farm refers to the WMS and says that the proposal has not addressed important concerns and does not have the backing of the affected local community. It is said further that notwithstanding the Council's reason for refusal, there would be harmful impacts on the living conditions of other properties too, through visual impact and noise, notably Isle Cottage, the cottages at Higher Penhole Farm, and at East Trevills Farm.
50. **Professor Ian Bailey** of East Trevills Farm/Isle Cottage points out the obvious differences between the proposal and the much smaller wind turbine recently erected at New Hartswell Farm and underlines others' objections relating to the impact of the proposal on the Woodlay Holidays complex through visual impact and noise. Concerns are raised about the potential impact on tourism too with

²⁷ Highlighting the comments received at application stage from the Garden History Society

²⁸ With reference to the comments of English Heritage

reference to objections raised by the operator of Deerpark Forest Cabins, and comments by the Chief Executive of Visit Cornwall.

51. Specific objections are raised in relation to the effect on living conditions at Isle Cottage through visual impact, exacerbated by the difference in levels, and shadow flicker (from the moon as well as the sun). The noise mitigation measures promulgated are said to be based on unreliable information.
52. Finally it is said that the appellant claims support from the Framework and the emerging Local Plan but the latter is under examination and may change. Moreover, the approach of the Framework has been superseded by the WMS. The proposal does not have the support of the affected local community and fails to accord, therefore, with the WMS.

Conditions

53. A series of suggested conditions have been suggested by the Council²⁹ for application in the event the appeal is allowed. I have considered these in the light of advice in the Framework and the PPG. The standard commencement condition is required, as is another condition to set out the approved plans.
54. A condition is needed to deal with the temporary nature of the proposal and decommissioning and another to address what must happen if the wind turbine, for some reason, fails to function. The suggested conditions can be simplified in the interests of precision.
55. A condition specifying the height of the wind turbine is not required as the height proposed is clearly shown on the relevant plan³⁰. Similarly, a condition requiring details of the switchgear housing is not required as details of the transformer, shown on the block plan³¹, have been provided³².
56. Given the activities on adjoining sites, there is a necessity for a condition designed to deal with construction noise and the times when construction operations can take place. Similarly, given the potential for disruption, a condition requiring a Construction Traffic Management Plan would be a reasonable imposition. Again, the condition suggested can be simplified.
57. In the interests of air safety a condition requiring aviation lighting is required. Again though, that suggested is very prescriptive and it can be made more precise. An informative has been suggested which deals with notification of the construction period, the maximum height of the construction equipment, and the latitude and longitude of the wind turbine, to the MoD. An informative is not an appropriate vehicle for that and notification needs to be dealt with by condition.
58. There are no details on the submitted plans of the colour(s) and finish(es) of the wind turbine. A careful exercise of choice in these areas is important and a condition requiring details to be submitted for approval is justified. In order to protect controlled waters, the submission and approval of a Private Water Supply Protection Plan should be required by condition before development commences.

²⁹ Appended to the Officer's Committee Report and Addendum attached to the Questionnaire

³⁰ 1000900 Revision 02: DIRECTWIND 54 –HH 50

³¹ PR2821-PA-BP-01: Block Plan

³² PR2821-PA-SH-01: Control Cabinet and Transformer Housing

There is also a need for a condition designed to address any shadow flicker that might occur.

59. That leaves issues around noise. Based on the conclusions of the MLM Acoustics assessment, the appellant has agreed a means by which the wind turbine would be able to operate in accordance with ETSU-R-97. In that context, the suggested noise condition, notwithstanding the willingness of the appellant to accept it, would be an inordinately complex means of addressing that.
60. All the condition needs to require is for the noise limits for noise sensitive properties, at different wind speeds, and the protocol designed to ensure those limits are met, to be submitted to the Council for approval, and for the wind turbine then to be operated in accordance with that. The multifarious details proposed for inclusion in the suggested condition can be included in that protocol, in the event that they are felt to be necessary.
61. There is no need for a condition specifying what must happen in the event an alternative wind turbine is erected. In the first instance, details of the wind turbine proposed are clearly shown on the plans so such a course of action would be in clear breach of the condition setting out the approved plans. Moreover, the concern of the Council revolves around the noise characteristics of any alternative wind turbine that might be erected but there will be noise limits specified as a consequence of the condition referred to above. I cannot believe that the appellant would erect an alternative wind turbine that would fail to accord with those limits, given the obvious results likely to ensue from such an act. The condition proposed would serve no useful purpose, therefore.

Inspector's Conclusions

62. In this part of the report, I have used references thus [--] to cross-refer to previous paragraphs in the report.

Main Issue

63. The important issues for the application of the Wind Farm policy are not specified in the reason for recovery. Like many other proposals of the type at issue, the main issue to be considered is whether, in the context of the development plan, and the Framework, any benefits of the proposal are outweighed by any resulting adverse impacts, on the operation of the adjoining holiday business in particular. There is also the WMS to consider. [3]

The Impact on the Adjoining Holiday Business

64. The holiday business, referred to in the Council's reason for refusal as Woodlay Holidays and Woodlay Farm Liveries, lies to the south of the site. The Council, supported by the operator of the business, and others, raise concerns about the visual impact of the proposed wind turbine and also make reference to the peaceful and tranquil environment. I take that to be a noise-related objection.
65. The holiday business is located on the slopes, and along the bottom, of a relatively steep-sided valley, centred around some tourist accommodation near the valley base, and a series of fishing lakes, which are fed by a stream.
66. Dealing with visual impact first of all, the northern valley side is densely planted with trees. As a result, even in Winter time, the valley floor and the areas around

the fishing lakes are intimate, constrained spaces. There are no wider views outwards across the landscape and as a result the focus of the eye rests on elements close-up. When those trees are in leaf, a time when the tourist facilities are likely to be used most intensively, that impression would be further underlined.

67. The wind turbine proposed would be located well away from the precipitous valley side but on an area raised significantly above the valley floor. Like the recently erected wind turbine at New Hartswell Farm, its turning blades would be visible from the valley floor, through and in places above the trees on the valley sides. However, because of the intimate character of the spaces around the valley floor, like that at New Hartswell Farm, the wind turbine proposed would be seen as another element clearly separated from those spaces and it would not detract from their immediacy. That, coupled with the screening provided by the trees, means that it would not appear overbearing, or dominant, viewed alone, or in conjunction with the other recently erected wind turbine.
68. My attention was also drawn to the tourist accommodation near the fishing lakes. One façade of the building has windows that would face towards the wind turbine proposed. However, I noted the presence of a mature tree very close to those windows. The screening provided by that tree, along with the trees on the valley sides, would prevent the outlook from the building being affected to any material extent. As such, the visual presence of the wind turbine proposed would have no significant impact on its quality as a place to stay.
69. In terms of the issue around noise, I accept that the area of the holiday business around the valley floor is a peaceful and tranquil environment though there is ambient noise as a result of the wind blowing through the trees, and from the flow of the stream.
70. I have considered in some detail, the assessment carried out by MLM Acoustics on behalf of the appellant. Much is made in the Council's evidence of the fact that Woodlay Holidays would lie between the 35 dB(A) and 45 dB(A) noise contours as shown on Figure 2 within that assessment. However, that map takes no account of background noise levels. It cannot be used in isolation.
71. The MLM assessment concludes that if certain mitigation measures (that could be secured by condition) are put in place, wind turbine noise levels, taking account of the wind turbine proposed, and that operating at New Hartswell Farm, would be within the limits set out in ETSU-R-97, at all wind speeds.
72. Normally, ETSU-R-97 is used to protect permanent residential occupiers from any harmful impacts that might result from wind turbine noise. If noise levels can be made ETSU-R-97 compliant at Woodlay Holidays, it seems to me reasonable to conclude that noise from the wind turbine proposed would have no significant impact on its operation, or the enjoyment of visitors to it. There would be no departure, as a result, from the requirements of paragraph 123 of the Framework.
73. Bringing all those points together, I am content that the proposal would have no undue impact on the operation of Woodlay Holidays. On that basis, there would be compliance with LP Policies REN1 or REN2, in this regard. **[23-27, 30-33, 43, 45, 47, 50]**

Other Impacts

74. Interested parties have raised issues about landscape impact. Bearing in mind that the Framework requires us to recognise the intrinsic character and beauty of the countryside, as a man-made imposition on the landscape, almost any wind turbine will have something of a harmful impact. The overall conclusion of the appellant's LVIA is that the wind turbine proposed would result in an impact on the Landscape Character Area that would be 'slight to moderate adverse'. From what I saw, and taking into account the cumulative impact with the wind turbine at New Hartswell Farm, erected relatively recently, I have no good reason to disagree with the conclusion of the LVIA. I note that the Council raises no issue, in landscape terms generally, or in relation to the AGLV, in pursuance of the appeal.
75. Given that there would be *some* harm to the receiving landscape, which lies within an AGLV, the proposal fails to accord with LP Policy CL9. However, I do not regard that as telling because the wording of the policy fails to correlate with the approach of LP Policies REN1 and REN2 with their references to *unacceptably* harmful impacts. There would be no divergence from LP Policies REN1 and REN2. **[34, 42, 45, 46, 48]**
76. Issues have been raised too about designated heritage assets. However, it was very clear to me from my site visit that the degree of separation between the wind turbine proposed, and the designated heritage assets identified, notably Boconnoc House and Park, Lanhydroc House, and the hill fort at Bury Down, would be too great for it to have any materially harmful impact on their settings, or their significance. Again, it is relevant to note that the Council raises no issue in this particular regard. There is no good reason to conclude that there would be a failure to accord with LP Policies REN1 and REN2, or the Framework, in this context. **[35, 42, 46]**
77. Concerns have been expressed about the impact of noise from the wind turbine at, and visual impact from, other properties. The MLM Acoustics assessment highlights potential impacts at Woodlay Farm and Isle Cottage too. However, the conclusion is that with appropriate mitigation that could be secured by condition noise from the wind turbine would be within the ETSU-R-97 limits. I have no good reason to disagree with that.
78. In terms of visual impact, from what I saw, the degree of separation between the wind turbine and properties around the proposed site for it would be sufficient to ensure that it would not appear dominant or overbearing. Any shadow flicker that might occur at Isle Cottage, and at any other property for that matter, can be dealt with through an appropriately worded condition.
79. In terms of the impact on the living conditions of residents around the site, the proposal would comply with LP Policies REN1 and REN2 and the Framework. **[36, 43, 45, 48, 49, 51]**
80. Points have been made by third parties about tourism in general terms too but I would observe that an objection from someone with a financial interest in tourism is not the same as evidence that wind turbines in general, or the wind turbine proposed in particular, have, or would have, a harmful impact on tourism. As the Council's evidence ably demonstrates, Cornwall is home to many single wind

turbines, and wind farms, but there is no direct evidence that their presence has depressed visitor numbers. **[37, 45, 46, 48, 50]**

81. Points have been raised about the potential impact on horses and on wildlife generally. However, there is no good evidence to suggest that the installation of a wind turbine on the appeal site would have a detrimental effect on the well-being of horses at Woodlay Farm. The appellant's Extended Phase One Habitat Survey³³ found that there would be no significant wildlife impact as a result of the proposal. There is no good reason to doubt that expert conclusion. **[45]**

Benefits

82. The appellant points out that the wind turbine proposed will provide renewable energy to the farm business, and the National Grid. If the wind turbine operated freely, the anticipated output would be about 1,636MWh per year, enough to power 278 Cornish homes.
83. However, the operational protocol required to prevent any undue impact on nearby properties through noise would reduce that, a little. With such a protocol, the anticipated output would be 1,535MWh per year, enough to power 262 Cornish homes and, over the 25 year lifespan of the wind turbine, save 17,500 tonnes of Carbon Dioxide, though the exact figure would depend on the UK's overall energy mix over that 25 year period.
84. Concerns have been raised that all or most of the power generated by the wind turbine proposed would be fed into the National Grid, and that the proposal is motivated by a thirst for financial gain. First of all, I would observe that most development is fuelled by commercial considerations and I can find nothing in planning policy, national or local, that frowns on such an approach. Indeed, the Framework is very clear that the Government is committed to securing economic growth in order to create jobs and prosperity, building on the country's inherent strengths, and to meeting the twin challenges of global competition and of a low carbon future.
85. Second, and more importantly, whether the renewable energy produced reduces the carbon footprint of the rural enterprise concerned, or the country at large, makes no difference to the important contribution it would make to cutting greenhouse gas emissions.
86. Bearing in mind the approach of national policy, reflected in the Framework, and the development plan, the benefits that would flow from the production of electricity from a renewable source by the wind turbine proposed carry significant weight in its favour. On top of that, the proposal would generate an income that would help sustain a rural enterprise. Bearing in mind advice in paragraph 18 of the Framework, that is an important consideration. **[26, 38-39, 44, 48]**

Balancing Exercise

87. The proposal would have no detrimental impact on the operation of Woodlay Holidays and Woodlay Farm Liveries through visual impact or, subject to an appropriate condition, noise. Neither would it have any harmful effect on the setting and significance of designated heritage assets in the vicinity, or subject to

³³ Part of the originating application – it can be found on the case file

suitably worded conditions, the living conditions of local residents. There is no good evidence that it would have a deleterious effect on tourism, horses, or wildlife generally.

88. The proposal would have something of a harmful impact on the receiving landscape that would be temporary and reversible. Nevertheless, there would be conflict with LP Policy CL9. Against that, however, it would bring forward benefits that attract significant weight. These benefits far outweigh the harm that would be caused and in that context, the impact on the landscape would not be unacceptable. As a consequence, the proposal accords with LP Policies REN1 and REN2, and as a result the development plan overall, and because the impacts are, or can be made, acceptable, the Framework. **[7-16, 27, 39]**
89. The WMS of 18 June 2015 warrants attention, of course. For proposals like that at issue in this appeal, where the transitional provisions apply, we are told that local planning authorities can find the proposal acceptable if, following consultation, they are satisfied it has addressed the planning impacts identified by affected local communities and therefore has their backing.
90. National policy as expressed in the Framework has not changed, however, and it seems to me reasonable to assume that the WMS is to be read alongside, rather than as a replacement for, it. In that context, a conclusion that the impacts of the scheme are, or can be made, acceptable (as required by the Framework), must logically equate with a finding that the planning impacts identified by local communities have been addressed.
91. Notwithstanding the presence of objections to the proposal, at application and appeal stages, the use of the word 'therefore' in the WMS can in my view reasonably be said to mean that in the circumstances I have set out, the proposal can, as a consequence, be deemed to have the backing of the affected local community. On that basis, the WMS does not serve to justify a decision that would run contrary to the development plan, and the Framework. **[18, 28, 40, 49, 52]**

Recommendation

92. I recommend that the appeal be allowed, and planning permission granted, subject to the conditions set out in Annex 1.

Paul Griffiths

INSPECTOR

Annex 1

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: PR2821-PA-LP-01: Location Plan; PR2821-PA-BP-01: Block Plan; PR2821-PA-SH-01: Control Cabinet and Transformer Housing; 1000900 Revision 02: DIRECTWIND 54–HH 50; and PR2821-PA-TP-01: Transport Plan.
- 3) The permission hereby granted shall endure for a period of 25 years from the date when electricity is first exported from the wind turbine to the electricity grid (the 'First Export Date'). Written notification of the First Export Date shall be given to the local planning authority no later than 14 days after the event. No later than 18 months before the permanent cessation of electricity generation at the site, a decommissioning and site restoration scheme, which shall include a timetable, shall be submitted for the written approval of the local planning authority. The decommissioning and site restoration scheme shall be implemented and completed, in accordance with the approved details.
- 4) If the wind turbine hereby permitted ceases to produce electricity for a continuous period of 12 months, then a scheme for the decommissioning and removal of the wind turbine, and the restoration of the site, and a timetable for all that, shall be submitted to the local planning authority for written approval within 6 months of the end of the 12 month period. The scheme shall be completed in accordance with the approved details.
- 5) Noise emissions arising from the construction phase of the development approved herein shall not exceed an LAeq, T noise level of 65 dB 1-metre from the façade of any occupied residential dwelling, during the construction working day which shall run from 0800-1800 hours on Mondays to Fridays (inclusive) and 0800-1300 hours on Saturdays. There shall be no construction activities relating to the development at any other times. The construction noise level shall be determined in accordance with the guidance presented in BS 5228 2009: Code of Practice for Noise and Vibration Control on Construction and Open Sites.
- 6) No development shall take place until a Construction and Delivery Traffic Management Plan (CDTMP) has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved CDTMP.
- 7) No development shall take place until details of aviation lighting, which shall include the mode of operation and a timetable for installation, have been submitted to, and approved in writing by, the local planning authority. The aviation lighting shall be installed and operated in accordance with the approved details.
- 8) No development shall take place until the local planning authority has been informed, in writing, of (1) the start date for construction and the projected completion date; (2) the maximum height of the construction equipment; and (3) the latitude and longitude of the wind turbine.

- 9) No development shall take place until details of the colour(s) and finish(es) of the wind turbine approved herein have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details and retained as such thereafter.
- 10) No development shall take place until a Private Water Supply Protection Plan (PWSPP) has been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details.
- 11) No development shall take place until a protocol for the alleviation of any shadow flicker that might arise as a result of the operation of the wind turbine approved herein has been submitted to, and approved in writing by, the local planning authority. The wind turbine shall be operated in accordance with the approved protocol.
- 12) No development shall take place until a series of noise limits at different wind speeds, at noise sensitive properties, and a protocol for how those are to be achieved when the wind turbine hereby approved is in operation, has been submitted to, and approved in writing by, the local planning authority. The wind turbine shall be operated thereafter in accordance with the approved protocol.



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 day after 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 day after 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.