



Appeal Decision

Site visit made on 8 April 2013

by Paul Griffiths BSc(Hons) BArch IHBC

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

Decision date: 23 May 2013

Appeal Ref: APP/Q3305/A/12/2185032
Beechbarrow Farm, Hillgrove, Wells BA5 3EL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Aspire Planning Ltd against Mendip District Council.
 - The application Ref.2012/1158 is dated 10 May 2012.
 - The development proposed is the erection of a wind turbine.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a wind turbine at Beechbarrow Farm, Hillgrove, Wells BA5 3EL in accordance with the terms of the application, Ref.2012/1158 dated 10 May 2012, subject to the conditions set out in Annex A to this decision.

Application for Costs

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Main Issues

3. It is important to record first of all that the Council has already granted planning permission for a wind turbine in the same position on the site as that subject to the appeal before me¹. Details submitted in pursuance of the pre-commencement archaeology condition have been approved² and the base for the permitted wind turbine constructed. On that basis the Council is satisfied that the permission has been lawfully implemented and the previous permission is extant.
4. Notwithstanding concerns raised about consultation on that application, I agree with the Council that there is a clear fallback position available to the appellant and the proposal at issue in this appeal needs to be considered in that light. In their statement on the appeal, the Council advanced two putative reasons for refusal. The first relates to the effect of the wind turbine proposed on the setting, and thereby the significance, of two bowl barrows, both of which are SAMs³. Subsequently, the Council has confirmed that the second, relating to the potential impact on bats, is no longer pursued. Nevertheless, interested persons have raised concerns about that, and a series of other issues.

¹ Under Ref.2010/2997

² Under Ref.2012/1862

³ Scheduled Ancient Monuments

5. Against that overall background, the main issue to be considered is whether, having regard to the fallback position available to the appellant, any benefits of the proposal would outweigh any harm it might cause.

Reasons

6. Before addressing that main issue, it is beneficial to compare the Coemi 50kW wind turbine previously approved with the Endurance e3120 50 kW model at issue in the appeal. The former has a tower height of about 17 metres and a total height of nearly 25 metres while the corresponding dimensions for the latter are about 23.5 metres and just over 34 metres.
7. Furthermore, the proposal needs to be considered in the light of LP⁴ Policy ER2. This is permissive of wind turbines where, of relevance, they are sited and designed so as to minimise their impact on the landscape, and will not significantly affect the landscape value of an AONB⁵; will not lead to nuisance to local residents by reason of noise, safety, shadow flicker, electro-magnetic interference or reflected light; will not detrimentally affect the character or setting of a listed building or SAM; will not result in damage to a site designated for its ecological or archaeological value either during or after construction; and provision is made for the removal of redundant turbines and associated structures.

Benefits

8. Government policy on renewable energy is expressed, most succinctly, in the Framework⁶. Paragraph 93 explains that planning plays a key role in helping shape places to secure radical reductions in greenhouse gas emissions, minimising vulnerability, and providing resilience to the impacts of climate change, and supporting the delivery of renewable and low carbon energy and associated infrastructure. Paragraph 98 sets out that applicants for energy development are not required to demonstrate the overall need for renewable or low carbon energy. Moreover, it must be recognised that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions. Most importantly, a proposal should be approved⁷ if its impacts are, or can be made, acceptable.
9. According to the Council, the proposal would generate about 238,800 kWh of renewable energy per year⁸. In the light of the paragraph 93 of the Framework, that contribution attracts significant weight in favour of the proposal. That weight is magnified by the performance of the South-West, generally, and Somerset, in particular, in terms of renewable energy generation. RPG10⁹, and the subsequent draft RSS¹⁰, set targets that reflected the Government's binding commitments to generate 10% of electricity from renewable energy sources by 2010 and 20% by 2020. Consequently, RPG10 expected 11-15% of the region's electricity to come from renewable sources by 2010. The draft RSS expected Somerset to contribute 61-81 MWe of installed renewable capacity by 2010, as part of an overall target for the region of 509-611 MWe. This latter figure was expected to rise to 850 MWe by 2020.

⁴ The Mendip District Local Plan, adopted December 2002

⁵ Area of Outstanding Natural Beauty

⁶ The National Planning Policy Framework

⁷ Unless, of course, material considerations indicate otherwise

⁸ As opposed to 180,000 kWh per year for the wind turbine already approved

⁹ South West Regional Planning Guidance 10

¹⁰ Regional Spatial Strategy

10. RPG10 has recently been revoked and the subsequent draft RSS will not be progressing further but the targets they set remain relevant because the Government commitments they reflected are still in place. According to the Council's figures, Somerset has a current installed renewable capacity of 36 MWe, well short of 2010 expectations, let alone 2020. That shortfall magnifies the weight that can be attached to the relatively small, but tangible, contribution, the proposal would make towards meeting those targets, and wider Government ambitions, over and above the contribution the wind turbine already approved would make.

Heritage Assets

11. The primary concern of the Council and EH¹¹ relates to the effect of the proposal on the setting of two bowl barrows, both SAMs, known as Bowl Barrow in the garden of Beechbarrow (1020019) and Bowl Barrow 380 metres south-east of Beechbarrow (1020020). Concern has also been expressed about the impact on a group of three barrows further north-west of the appeal site, similarly designated, and a Statue of Romulus and Remus that sits alongside the A39, which is a Grade II listed building. In terms of the listed building, Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990¹² provides that in considering whether to grant planning permission for development which affects a listed building, or its setting, the decision-maker shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. By contrast, the setting of a SAM is not protected by Statute.
12. The Framework deals with determining planning applications that affect heritage assets in paragraphs 128 to 135. Paragraph 132 sets out that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. It goes on to note that significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting and notes that substantial harm to or loss of a Grade II listed building should be exceptional, and designated heritage assets of the highest significance, like SAMs, wholly exceptional.
13. Paragraph 133 goes on to note, of relevance, that where a proposed development would lead to substantial harm to or total loss of significance of a designated heritage asset, consent¹³ should be refused unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh the harm or loss. Paragraph 134 says that where a proposed development will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.
14. The wind turbine proposed would be located about 240 metres south-east, and 170 metres south-west, of the two nearest bowl barrows, and about 330 metres south-east of the Statue of Romulus and Remus. The three bowl barrows to the north-east of the site of the proposed wind turbine would be further away still.

¹¹ English Heritage

¹² Referred to hereafter as the Act

¹³ I take that term to include permission

15. Nevertheless, the wind turbine proposed would be clearly visible from, and in juxtaposition with, all these heritage assets. As such, it would have some impact on their settings. The key point, for the purposes of the Framework, is how that impact would bear on their significance.
16. Significance is defined in Annex 2, the glossary to the Framework, as the value of a heritage asset to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. Significance, we are told, derives not only from a heritage asset's physical presence, but also from its setting.
17. In terms of the bowl barrows affected, their interest is mainly archaeological and historic. There would be no diminution of their archaeological interest as a result of the proposal. As the Council and EH suggest, setting contributes to the significance of the barrows in that a lack of distracting features in proximity to them, allows their better appreciation as historic places of rest and burial.
18. As a moving object in some fields of view, the wind turbine proposed would act as something of a distraction that would affect an appreciation of the barrows. However, the extent of that distraction must take account of the current context. The bowl barrow to the north-west lies within a domestic garden, with paraphernalia around it, and modern boundary treatments close-by. The bowl barrow to the north-east sits in an arable field. The setting of both is dominated by the existing presence of the Pen Hill Mast which is about 300 metres high, and sits 800 metres to the west of the appeal site. The barrows further north-east are a relatively significant distance away from the wind turbine proposed. While a wind turbine has already been authorised on the appeal site, the wind turbine at issue would have more of a distracting impact because it would be bigger. As such, it would have a more harmful impact on the setting and thereby the significance of these heritage assets.
19. Much of the significance of the Statue of Romulus and Remus lies in its artistic quality and historical status as a structure commemorating the kindness shown to Prisoners of War during their internment in the area. Setting contributes to that significance in so far as it provides the context within which those qualities can be appreciated. The ability to appreciate the structure is already deleteriously affected by the close proximity of the A39 to it. Nevertheless, in some views, despite screening from trees, the wind turbine proposed would act as a further distraction. That there is a wind turbine already approved on the appeal site must be taken into account but nevertheless, the wind turbine that is the subject of this appeal would be bigger and, therefore, more of a distracting presence. As such, it would have more of a harmful impact on the setting and, as a consequence, the significance of the listed building.
20. Having regard to the Framework, there is a need to assess whether the harm to the significance of these heritage assets would be substantial or less than substantial. With that in mind, much of the archaeological significance of the barrows would remain intact and the same is true of the artistic significance of the statue. The wider context would remain largely unchanged and the impact of the wind turbine proposed on the setting and thereby the significance of these heritage assets would be limited to the distracting impact its presence would have on an appreciation of the heritage assets, over and above that of the wind turbine already approved and extant. In that context, it is my conclusion that the harm caused to the setting, and thereby the significance of these heritage assets, would be minimal and thereby less than substantial.

21. Moreover, the proposal is intended to endure for 30 years. The previously-approved wind turbine was not required to be removed after a fixed period of time. That the proposal would be temporary and reversible is a matter that must be taken into account. Bearing that in mind, the impact of the proposal before me on the setting, and thereby the significance, of the heritage assets affected, would be no worse than that of the wind turbine already approved.
22. Nevertheless, that the proposal would cause some harm to the setting of a listed building and SAMs means that the proposal does not accord with LP Policy ER2. But, paragraph 134 of the Framework, which is a much more up-to-date exposition of Government policy, requires this less than substantial harm to the significance of designated heritage assets to be weighed against the public benefits of the proposal. That balancing exercise I return to below.

Ecological Matters

23. In their final comments on the appeal, the Council accepts that having regard to advice in TIN051¹⁴, and the separation distance between the wind turbine proposed and the nearby hedgerow, there would be no significant risk to bats as a result of it. On my analysis of the evidence, that conclusion is correct. Neither is there any evidence that the proposal would have an unacceptably adverse impact on other species, protected or otherwise. The proposal complies with LP Policy ER2 in this respect.

Radar and Aviation Matters

24. The MoD¹⁵ has objected to the proposal on the basis that it would cause unacceptable interference to the ATC radar at RNAS Yeovilton. The Council confirms that no such objection was lodged to the wind turbine already approved on the site. Moreover, the MoD objection appears generic and carries no proper explanation of how unacceptable interference would arise. By contrast, the appellant has addressed the matter in some detail through a technical report. This concludes that in the extremely unlikely event that the wind turbine is detected, it will not produce unacceptable interference and will pose no hazard to ATC operations at Yeovilton. Radar will not be desensitised, false targets will not be generated, and real aircraft will always be seen.
25. On the balance of the evidence, I conclude that the proposal would have no unacceptable impact on radar and neither would it have any significant aviation safety implications. There is no departure from LP Policy ER2 in this regard.

Landscape Impact

26. There are already harmful man-made impositions on the landscape around the appeal site, notably the Pen Hill Mast. Nevertheless, as a further imposition, that would be larger than the wind turbine already approved on the appeal site, the proposal would have more of an impact, and cause additional harm to the landscape. However, unlike the wind turbine previously approved, that impact would be time-limited, and reversible. On that basis, it is my conclusion that, overall, the wind turbine proposed would cause no more harm to the landscape than that already approved. Using the site of the wind turbine already approved means that it has been sited and designed so as to minimise the impact on the landscape, as required by LP Policy ER2.

¹⁴ Natural England Technical Information Note TIN051: Bats and Onshore Wind Turbines *Interim Guidance*

¹⁵ Ministry of Defence

27. Like that previously approved, the wind turbine proposed would be visible from the Mendip Hills AONB, the boundary of which is relatively close to the appeal site. However, I do not equate visibility from the AONB with harm to its landscape and scenic beauty. As a consequence, I agree with the Council that the proposal would have no significant effect on the landscape value of the AONB. There would be no departure from LP Policy ER2 in this regard.

Living Conditions

28. Local residents advance a series of concerns about the impact of the proposal on their living conditions. In terms of visual impact, residents at Barrow Cottage, would be able to see the wind turbine proposed, from the garden and from east-facing windows, but the degree of separation, coupled with some filtering of the view by trees, would mean that, while more prominent than that previously approved by the Council, it would not be overbearing.
29. Barrow House and the neighbouring residences would be closer to the proposed wind turbine but the relationship would be more oblique and there would be some screening from trees and outbuildings. While the wind turbine proposed would have more of a visual impact than that previously approved, it would not be dominant. There may also be views of the proposed wind turbine from Middle Lodge, to the north of the appeal site, but the separation distance is such that any visual impact would be minor. Other dwellings affected are even further away so the consequent visual impact would be even less.
30. Residents of these dwellings may well be concerned about being able to see the wind turbine as part of the view from their properties. It is important to record that the wind turbine previously approved would also be visible but in any event, there is no inviolable right to a view. Bearing in mind the fallback position, the visual impact of the wind turbine proposed would fall within reasonable bounds.
31. Issues have also been raised about the potential for shadow flicker but as set out in the Companion Guide to PPS22¹⁶, flicker effects have been proven to occur only within ten rotor diameters of a wind turbine. The separation distances and the dimensions of the wind turbine involved in this case mean that there is no likelihood of shadow flicker having any impact on the living conditions of local residents.
32. In terms of any noise, the Council is satisfied that the relationship of the wind turbine to nearby dwellings would be such that noise levels are likely to be less than the limits set out in Government guidance¹⁷. In that context, any effects can be controlled through a suitably worded condition. Reference has also been made to various health effects said to be likely as a result of the wind turbine, such as sleep deprivation. However, there is no good evidence that any are likely to occur as a result of the wind turbine already approved, or that at issue in this appeal.
33. Bringing all these points together, the proposal would have no significant adverse impact on the living conditions of local residents and it would, therefore, not fall foul of the requirements of LP Policy ER2 in this regard.

¹⁶ Planning for Renewable Energy A Companion Guide to PPS22: *Technical Annex: Wind*

¹⁷ ETSU-R-97: *The Assessment and Rating of Noise from Wind Farms*

General Safety

34. Issues have been raised about safety but as the Companion Guide to PPS22 points out, experience indicates that properly designed and maintained wind turbines are a safe technology and a wind turbine erected in accordance with best engineering practice should be a stable structure. I have no reason to suspect that the proposal was not been properly designed nor that it would be erected other than in a proper manner. Maintenance will be the responsibility of the operator, as is the case with other buildings and structures. In terms of highway safety, I recognise that the A39 to the west of the appeal site is a relatively busy road but, like that already approved, I do not believe the wind turbine at issue would act as a dangerous distraction to drivers. In that overall context, there is compliance with LP Policy ER2 and issues around safety do not weigh against the proposal.

Conclusion

35. Given that the proposal would cause a degree of harm to the settings of the Statue of Romulus and Remus, a Grade II listed building, and some bowl barrows which are SAMs, the proposal would not comply with LP Policy ER2. However, given the vintage of the LP, the Framework is a material consideration that carries more weight. Paragraph 134 says that where a proposed development will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. As set out, the public benefits of the proposal would be significant and magnified further by the need for renewable energy generation in Somerset, and the District.
36. With Section 66(1) of the Act in mind, the desirability of preserving the setting of the listed building is a matter to which I have paid special regard. Nevertheless, it is my view that the public benefits of the proposal far outweigh the time-limited, reversible, and less than substantial harm that would be caused to the setting, and thereby the significance, of the listed building, and the SAMs. As such, the impact of the proposal is acceptable and it complies with paragraph 98 of the Framework. That provides a compelling reason to allow the appeal.

Conditions

37. I have considered the suggested conditions in the light of advice in Circular 11/95¹⁸. Aside from the standard condition to govern commencement, another is required to set out the approved plans. The proposal is promulgated on the basis that it would operate for 30 years. Bearing in mind the requirements of LP Policy ER2, a condition is required to deal with that and to secure restoration of the land once the wind turbine permanently ceases to operate, or the expiration of 30 years, whichever is the sooner.
38. Conditions are required to deal with coloured finishes and any requirement for aviation lighting. A condition is required to deal with noise but I have removed the requirement for a scheme of mitigation to be submitted should the specified noise limit be breached. If the limit was breached, the wind turbine could not be operated without some adjustments to bring it into line with the specified limit. I see no good reason why details of those adjustments need be approved by the Council.

¹⁸ Circular 11/95: *The Use of Conditions in Planning Permissions*

39. A condition is necessary ensure that the development is brought to the attention of the MoD, through the medium of the Council. Of the other conditions suggested, I see no reason for one to secure archaeological work given that the underground works with any archaeological implications have been completed as part of the implementation of the previous grant of planning permission. I see no necessity either for a condition to secure a scheme to mitigate any impact on radar at Yeovilton. The evidence is that there would be no harmful effect.
40. In terms of TV reception, Arqiva raise no objection and there is no good evidence that there would be any impact. On that basis, the condition promulgated by the Council could only be precautionary and cannot, therefore, be deemed necessary. The Council has also suggested a condition to secure post-installation ecological monitoring studies and mitigation measures. However, the Council now accepts that the proposal would have no significant impact on bats, or any other species, protected or otherwise, and I have concluded similarly. In that context, the condition suggested would be an unnecessary and unreasonable imposition.

Final Conclusion

41. For the reasons given above I conclude that the appeal should be allowed.

Paul Griffiths

INSPECTOR

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: ASP-001; ASP-002 A; and E-3120-50kW Monopole Revision A.
- 3) The permission hereby granted shall be limited to a period of 30 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.
- 4) Within 12 months of the point where the wind turbine permanently ceases to produce electricity, or the expiration of this permission, whichever is the sooner, the wind turbine and its ancillary equipment and infrastructure shall be removed, and the land restored, in accordance with a scheme first submitted to, and approved in writing by, the local planning authority.
- 5) No development shall take place until details of the colour and finish of the wind turbine, and its associated equipment, 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. The wind turbine shall not carry any logos or lettering.
- 6) No development shall take place until details of any aviation lighting and its operation have been submitted to, and approved in writing by, the local planning authority. Any aviation lighting required shall be installed before first operation of the wind turbine, retained thereafter, and operated in accordance with the approved details.
- 7) The LA90 (10 minutes) specific noise levels due to the operation of the wind turbine shall not exceed 35dB(A) up to wind speeds of 10 m/s at 10 metre height, as measured 3.5 metres from the façade, or at the boundary, of the nearest noise-sensitive property in existence at the date of this permission. All measurements shall be made in accordance with BS7445: Description and Measurement of Environmental Noise (Parts 1 to 3).
- 8) No development shall take place until the local planning authority has been advised of the date that construction will start and end; the maximum height of the construction equipment; and the latitude, longitude and height of the wind turbine. Any changes to these details that arise shall be advised to the local planning authority immediately.

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