
Appeal Decision

Site visit made on 4 November 2014

by John Wilde C.Eng M.I.C.E.

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

Decision date: 6 January 2015

Appeal Ref: APP/Q3305/A/14/2222024

Rockhouse Farm, Chantry, Frome, Somerset, BA11 3LS

- 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 Peter Hill against the decision of Mendip District Council.
 - The application Ref 2013/1951, dated 6 September 2013, was refused by notice dated 9 May 2014.
 - The development proposed is the erection of a single wind turbine, with maximum blade to height of 77m, along with accompanying access track, crane hardstanding, substation, associated underground cabling and temporary construction compound.
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Decision

1. The appeal is dismissed.

Main Issues

2. A wide range of issues have been referred to in representations at both the application and appeal stages, but in my judgement, and bearing in mind the Council's reasons for refusal, the main issues that consideration of the appeal turn upon are the effect of the proposed development on:-
 - (a) the character and appearance of the area
 - (b) the settings, and thereby the significance, of the heritage assets within the vicinity, notably St Giles Church at Leigh on Mendip and All Saints Church at Downhead, and
 - (c) protected species, particularly peregrine falcons

Reasons

3. The appeal site is a relatively flat agricultural field that slopes away towards Asham Wood to the south. The field is bounded by the Old Wells Road to the north and by farmland to the east and west. The hamlet of Chantry lies further to the east and the village of Leigh on Mendip to the north-west. The proposal is for a wind turbine, situated approximately in the middle of the field that would be 50m high at the hub and 77m high at the tip.
4. From the appeal site itself some farm buildings and two silos in the direction of Chantry can be glimpsed between/through the surrounding vegetation. Beyond this a range of hills is visible on the skyline. To the north only the hedgerows and trees that line Old Wells Road can be seen whilst to the west the roofs and upper elevations of buildings belonging to an industrial estate can

be seen. To the south the view from the site is off Asham Woods, which fall away into the distance. Overall, notwithstanding the presence of the few visible buildings, the site can be considered to be very rural in character.

5. I have been supplied with a Landscape and Visual Impact Assessment (LVIA) prepared on behalf of the appellant. The LVIA highlights the fact that there is a clear distinction between landscape and visual effects, with the former being the effect of the proposed development on the physical and other characteristics of the landscape and its resulting character and quality, and the latter being the effects on views experienced by visual receptors (e.g. residents, footpath users etc.) and on the visual amenity experienced by those people. I will deal with each of these in turn.

Character and appearance – landscape effects

6. The appeal site lies within a local character area classified as unit A9.1, the Leigh-Oakhill character Area, which is part of a wider East Mendip Hills character area and the wider still National Character Area of the Mendip Hills¹. This immediate character area is identified as having key characteristics of *a mix of flat and undulating land; arable on flatter land; pasture surrounded by large hedgerows; frequent hedgerow trees; small fields around villages and hamlets; and large villages.*
7. Impact on landscape is gauged by a number of factors as described in appendix 1 to the LVIA. These factors include the sensitivity of the receptor to change and the magnitude of change which then combine to give the significance of the effect of the proposed development. The East Mendip Hills character area is considered to have a medium sensitivity to change. The LVIA concludes that the effect on the local level character area A9.1 would be minor adverse. I disagree with this conclusion.
8. The LVIA places significant weight on the presence of the local quarries, and makes the point that *exploitative land uses dominate the character area* which it concludes *would lessen the effect of the proposed wind turbine.* Whilst I accept that there are several quarries in the area these are screened from view from nearly all lower levels by effective bunding.
9. Table 1.5 of appendix 1 of the LVIA gives the definitions of magnitude of change. To be classified as a medium magnitude of change there must be *other built elements or human activities in view and the scale of the development should fit with existing features.* Whilst it is possible to see some buildings around the vicinity of the appeal site these are generally domestic or agricultural in nature and nowhere near the scale of the proposed wind turbine. A large magnitude of change is defined, amongst other things, as being where *the size of development is out of scale with existing elements.*
10. It seems to me therefore that the magnitude of change has to be classified as large. Given that the character area has a medium sensitivity it follows from table 1.6 of the LVIA that the proposed wind turbine would have a major adverse effect on the landscape. In arriving at this conclusion I note that the LVIA itself considers that *the proposal would introduce a new uncharacteristic element into the uncluttered landscape.*

¹ As given in the document *Landscape Assessment of Mendip District*

11. In arriving at this conclusion I accept that from higher levels, quarries, and the effect of quarrying on the landscape, can be clearly seen, and I will return to this matter later. However, the quarries are not visible in the immediate context of the appeal site and do not therefore have an adverse impact on its character.

Character and appearance – visual effects

12. In terms of predominant close distance views the proposed wind turbine would be seen by users of Old Wells Road and from the footpath that runs along the north of Asham Woods. Along the footpath itself views would be partially screened by foliage, particularly in the spring and summer. There would however be clear views of the proposed wind turbine when approaching from the west along the track that joins the footway to the Old Wells Road. The track is however somewhat further away from the site of the proposed wind turbine than the footpath through the woods.
13. There would be several properties within about 600m of the proposed wind turbine. From Asham View and Chantry Farm the proposed wind turbine would be seen through and partly over a considerable amount of foliage. Asham House is slightly nearer the site of the proposed turbine as the crow flies but this property is orientated such that only oblique views of the proposed turbine would be available.
14. In intermediate views the proposed wind turbine would to an extent be screened by existing trees and hedgerows and the undulating topography of the area. Cranmore Tower is a privately owned folly that is open to the public. It is some distance from the appeal site but its very high location gives visitors comprehensive views over the surrounding countryside. It is from this height that the local quarrying operations are clearly visible, as are two other turbines and two telecoms masts. The presence of these other man made alterations to the countryside would lessen the impact caused by the proposed turbine.
15. There would be direct views of the proposed wind turbine from the public right of way known as the East Mendip Way which emerges eastwards from the woods surrounding Cranmore Tower. Due to the orientation of the East Mendip Way the views of the proposed wind turbine would be directly ahead and it would be noticeable for some time.
16. It seems to me from the foregoing that the visual effects of the proposed turbine will be most keenly felt by users of the PROW in Asham Woods, the Old Wells Road, the East Mendip Way and by people accessing Cranmore Tower. The LVIA makes clear that the sensitivity of receptors is generally governed by their numbers and their interaction with the environment.
17. In the case of walkers in Asham Woods and on the adjoining track their attention would be likely to be focused on the landscape and the proposed wind turbine would be a significant feature in close proximity. Taking account of table 1.4 in the LVIA I consider that the sensitivity of such receptors would be medium. The magnitude of change taken from table 1.5 of the LVIA would be medium, i.e. the proposed wind turbine would be prominent, having an important but not defining influence on the view and would be a key element in the view. Taking these two factors into table 1.6 of the LVIA indicates that the significance of the effect would be moderate adverse.

18. Users of Old Wells Road would generally, but not exclusively, be in motor vehicles. Utilising the methodology of the LVIA as previously this would mean that the sensitivity of the receptors would be low, i.e. their attention would predominantly be focused on the road. The magnitude of change would be medium and therefore the significance of the effect would be minor adverse.
19. People using the East Mendip Way approaching from the west would be focused on the landscape but would be considerably further away. Notwithstanding this however, the proposed wind turbine would still be prominent and following the previous methodology the significance of effect would be moderate adverse.
20. Viewers looking from Cranmore Tower would be there almost exclusively for the view. They would therefore be high sensitivity receptors, i.e. people experiencing views from important landscape features of physical, cultural or historic interest. The magnitude of change occasioned by the proposed wind turbine would however be lessened by the close presence of the two telecoms masts, the obvious man made effects of the quarrying operations, clearly visible from this height, and also the presence of four other turbines, albeit at greater distances than that proposed. Bearing these factors in mind the magnitude of change would be medium i.e. having an important but not defining influence on the view. Overall therefore the significance of the effect would be major adverse.

Cumulative impact

21. There are already several wind turbines within the area, with the two existing turbines at Wanstrow clearly seen from Cranmore Tower. Four wind turbines are proposed at Torr Quarry which is reasonably close to the appeal site. These would be seen in conjunction with the appeal wind turbine particularly in views from the north and south-east. However, given the undulating topography and screening due to trees and hedgerows only the tops of the proposed Torr Quarry wind turbines would be generally visible. From these view points the significance of the effect would be minor adverse, in terms of both the landscape and visual effects.
22. However, the proposed Torr Quarry wind turbines in particular would be highly visible from Cranmore Tower, and would add to what I have already found to be a major adverse effect on visual receptors.

Summary of findings in respect of character and appearance

23. I have found that the proposed wind turbine would cause a major adverse effect on the local landscape, a moderate adverse visual impact to users of the local footway network and a major adverse visual impact to people surveying the landscape from Cranmore Tower.
24. The Council consider that due to the landscape impact the proposed development would conflict with policy Q1 of the Mendip District Local Plan 2002 (LP). This policy makes clear that development will be permitted where its design relates satisfactorily to its surroundings in terms of, amongst other things, the impact of the scheme on Landscape. The appellant has pointed out that this policy is entitled *design quality* and that its justification talks predominately about buildings rather than other forms of development. However, the policy itself specifically refers to *development*, and several of the consequences that it seeks to avoid can be attributed to development such as

the proposed wind turbine as well as buildings. Whilst I accept that some ambiguity exists therefore, I nonetheless give reasonable weight to the conflict with this policy.

25. The Council also cite conflict with policy DP4 of the emerging Mendip District Local Plan 2006-2028 (ELP). This policy indicates that development that would, individually or cumulatively, significantly degrade the quality of the local landscape should not be supported. Whilst this policy relates to an emerging plan I note that the plan is at a post-examination stage and that none of the Modifications sought by the Examining Inspector relate to policies relevant to this appeal. I therefore give reasonable weight to this conflict given the relatively advanced stage of the emerging plan.

Heritage assets

26. Paragraph 131 of the National Planning Policy Framework (the Framework) states that in determining planning applications, local planning authorities should take account of the desirability of sustaining and enhancing the significance of heritage assets.
27. This is in line with Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which makes clear 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.
28. The Court of Appeal in *Barnwell Manor Wind Energy Limited v East Northamptonshire District Council and Others* [2014] made clear that special regard to the desirability of preservation means that avoiding harm to a listed building, or its setting, is a factor that is not only one of considerable importance, but also one that attracts considerable weight in any balancing exercise.
29. There are a number of heritage assets in the area but the Council, in their refusal notice, specifically refer to the setting of St Giles Church at Leigh on Mendip. This is a Grade I listed building. English Heritage, in their letter to the Council dated 9 December, make the point that the church relates to the built environment of the village rather than the landscape beyond, and I agree with this statement.
30. The church is not visible from the appeal site and nor, due to screening and topography is it particularly visible from the area surrounding the appeal site. Its tower can be seen from Cranmore Tower and from here it would be seen in conjunction with the proposed wind turbine. However, the church tower is by no means a dominating feature of the landscape and I do not consider that the proposed turbine would have a detrimental impact on its setting.
31. As regards other listed churches in the area, these being the Church of the Holy Trinity at Chantry and the Church of All Saints at Downhead, English Heritage consider that *whilst there will be inter-visibility between the proposed turbine and the churches the degree of change will not be sufficient to cause substantial harm to setting*. The letter from English Heritage concludes that the harm caused to the setting of the Church of All Saints would be less than substantial. This is based on the fact that there would be inter-visibility

between the church and the proposed turbine at a distance of about a 1.5km, which would compromise the very rural setting of the church to a limited degree, thereby adversely effecting its significance. I concur with this conclusion.

32. Paragraph 134 of the Framework makes clear that where a proposed development would lead to less than substantial harm to the significance of a designated heritage asset, the harm should be weighed against the benefits of the proposal. I will therefore consider this matter in my final balancing exercise.

Protected species

33. The Council's third strand of their reason for refusal related to the proximity of the appeal site to the habitats of peregrine falcons, which in the view of the Council could result in harm to the falcons.

34. No peregrines falcons were observed during the breeding bird survey carried out for the appeal application, although they have been recorded as nesting at Torr Works Merehead Quarry (about 1.5km from the appeal site) and at the now abandoned Asham Quarry site (about 1km from the appeal site). There have also been 34 recordings of peregrines flying over the proposed Torr works wind farm site.

35. It seems to be a matter of record therefore that peregrines nest and fly within the locality. However, The RSPB recommend the *relocation of turbine positions within 400-800m of nest sites depending on individual site characteristics, with the upper end of the range applicable where turbines are in the line of sight*, and a more recent survey conducted in 2014 found no evidence of nesting peregrines in Asham Wood. The known nesting place is therefore at the Torr Works wind farm site which is about 1.5km away.

36. The Somerset County Ecologist considered that the risk to peregrines was *probably low*, and taking into account the above factors I would agree with this assessment. If the probability of harm occurring to peregrines is low, then I cannot see that it can be a significant factor in the determination of this appeal and therefore no conflict occurs with policy EN3 of the LP. This policy makes clear that development will not be permitted if it would adversely affect animal or plant species protected by law.

Overall balancing exercise

37. I have found that the proposed wind turbine would cause a major adverse effect on the local landscape, a moderate adverse visual impact to users of the local footway network and a major adverse visual impact to people surveying the landscape from Cranmore Tower. Added to this there would be less than substantial harm to the setting, and thereby the significance of a heritage asset, and the ruling in *Barnwell Manor Wind Energy Limited v East Northamptonshire District Council and Others* [2014] indicates that I have to attach considerable importance and weight to the harm to the setting of the listed building.

38. Against these negative aspects has to be balanced the factors in favour of the proposed wind turbine. The Framework makes clear in paragraph 93 that planning plays a key role in helping shape places to secure radical reductions in greenhouse gas emissions. Similarly the Planning Practice Guidance explains

that increasing the amount of energy from renewable and low carbon technologies will help to make sure the UK has a secure energy supply, reduce greenhouse gas emissions to slow down climate change and stimulate investment in new jobs and businesses. These matters carry significant weight.

39. However, in this particular case, I consider that the adverse effects that would occur in terms of landscape and visual impact, added to the harm to the setting of a listed building are significant and demonstrable and outweigh the positive aspects outlined above. For this reason the appeal must fail.

Overall conclusion

40. Therefore, having had regard to all other matters raised, I conclude that the appeal should be dismissed.

John Wilde

Inspector

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