



Department for
Communities and
Local Government

Miss Charlotte Sythes
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Wessex House
Priors Walk
East Borough
Wimborne
BH21 1PB

Our Ref: APP/Q3305/A/14/2227407

25 January 2016

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY MR JOHN PENNY OF AGGREGATE INDUSTRIES UK LIMITED
LAND ADJACENT TO TORR WORKS, SOMERSET
APPLICATION REF: 2013/1244**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Neil Pope BA (Hons) MRTPI, who held a public local inquiry between 2-4 and 8-11 September 2015 into your client's appeal against the refusal of Mendip District Council ("the Council") to grant planning permission for the erection of four wind turbines with a maximum blade tip height of up to 80 metres, together with a substation, associated crane pads, an improved access junction onto the A361, four turbine transformer kiosks, connecting internal and upgraded access tracks, a electricity connection to Torr Works Quarry, two temporary anemometer masts for a period of up to 12 months, a temporary construction compound and other ancillary infrastructure, in accordance with application ref 2013/1244, dated 24 May 2013.
2. On 4 November 2014 the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990. The reason for this direction is that the appeal involves a renewable energy development.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that a split decision be issued, with the appeal allowed and planning permission granted insofar as it relates to the proposed temporary anemometer masts, but dismissed and planning permission refused insofar as it relates to the proposed wind turbines and associated development. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and recommendation. A copy of the Inspector's report (IR) is

enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

4. The proposal comprises development that requires Environmental Impact Assessment (EIA) under the provisions of The Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (as amended). The Secretary of State has taken into account the Environmental Statement (ES), the Addendum to the ES and all other related documents (IR2-3 & 5-6). The Secretary of State is satisfied that the ES and the additional information listed at IR2-3 and IR5-6 comply with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the proposals.
5. The Secretary of State agrees with the Inspector that an Appropriate Assessment under the Habitats Regulations is not required for the reason given at IR242.
6. The Secretary of State agrees with the Inspector's reasons and conclusions at IR243 regarding the proposed temporary anemometer masts. He agrees that there is nothing of substance to demonstrate that planning permission should be withheld for the masts. He notes that the appellant and the Council agreed on this matter (IR8).

Policy Considerations

7. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the Mendip District Local Plan Part 1: Strategy and Policies 2006-2029 (LP) and the Somerset Minerals Plan Development Plan Document up to 2030 (SMDPD). The LP supersedes the 'saved' policies of the Mendip District Local Plan that applied when the Council determined the application. The Secretary of State agrees with the Inspector that the most relevant policies to this appeal are those listed at IR245 and also notes policy SD1 of the SMDPD which relates to mineral applications (IR246). The Secretary of State has also had regard to the 'Landscape Assessment of Mendip District' (LAMD) and 'Assessment of Special Landscape Features' (ASLF) (IR24-25), and agrees with the Inspector that this evidence can be given moderate weight for the reasons given at IR247.
8. The Secretary of State has had regard to his Written Ministerial Statement (WMS) on Local Planning of 18 June 2015. The statement explained that the Secretary of State was setting out new considerations to be applied to proposed wind energy development. Subject to a transitional provision, the statement explained that the new considerations had immediate effect. Given its relevance to this case, the Secretary of State attaches substantial weight to the statement as the most recent expression of government planning policy for onshore wind development.
9. The 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 in the Inspector's Report.

10. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework, March 2012 ("the Framework") and the planning practice guidance published in March 2014; the National Policy Statements (NPS) for Energy (EN-1) and Renewable Energy (EN-3), and the Planning Practice Guidance for Renewable and Low Carbon Energy (2013). The Secretary of State has also considered the WMSs on renewable energy published in June 2013 by the Secretaries of State for Energy and Climate Change and for Communities and Local Government; the WMS on renewable energy published by the Secretary of State for Communities and Local Government in April 2014. He concurs with the Inspector that these WMSs are important material considerations (IR249). The Secretary of State, in addition to these, has had regard to the various provisions relating to renewable energy, including those referred to at IR28 and agrees with the Inspector that the suite of energy policies are important material considerations and can be given substantial weight (IR248).
11. In accordance with section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA), the Secretary of State has paid special regard to the desirability of preserving listed buildings or their settings or any features of special architectural or historic interest which they may possess. The Secretary of State has also paid special attention to the desirability of preserving or enhancing the character or appearance conservation areas, as required by section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. He has also taken into account the English Heritage/Historic England guidance entitled "The setting of Heritage Assets" as updated in July 2015.

Main issues

12. The Secretary of State agrees with the Inspector that the main issues are those set out at IR244. An important consideration within this is the WMS of 18 June 2015.

Benefits

13. The Secretary of State agrees with the Inspector at IR251 that the proposal would help meet national targets to reduce greenhouse gas emissions and increase the supply of renewable energy, which would assist in mitigating climate change and increase energy security. He agrees that it would also provide direct and indirect economic benefits. Like the Inspector, the Secretary of State attaches considerable weight to these public benefits in the overall planning balance (IR251).
14. The Secretary of State notes the economic importance of Torr Works (IR250) and agrees with the Inspector that it would benefit from the development in that it is likely to increase the efficiency of the quarry, increase its profits and also reduce any future risk in interruption to its energy supply (IR252-253). The Secretary of State attaches considerable weight to these benefits.

Settings of Designated Heritage Assets

15. The Secretary of State agrees with the Inspector's reasoning and conclusions at IR254-276 regarding the heritage assets.
16. The Secretary of State agrees for the reasons given at IR257-263 that the proposed wind turbines would harm the significance of Cloford Manor, its stables, coach house and the Church of St Mary. The Secretary of State concurs with the Inspector, the main parties and Heritage England (HE) for the reasons given at IR257-263 that the proposal would not breach the very high threshold of substantial harm set out in paragraph 133 of the Framework, but agrees with the Inspector that the harm to the significance of Cloford Manor is at the top end of 'less than substantial harm', and that a lower level of 'less than substantial' harm would be caused to the significance of the stables, coach house and the Church of St Mary. He notes the Inspector's view (IR264) that while HE recommended refusal, it does not appear to have undertaken the necessary planning balance, and that limited weight should therefore be given to its recommendation. Like the Inspector, he attaches considerable weight to the harm to the significance of Cloford Manor that has been identified by HE (IR264).
17. For the reasons given at IR265-267 the Secretary of State concurs with the Inspector and the main parties that the harm to the significance of the Chantry would amount to less than substantial harm (IR268) but agrees that for the reasons given that it would be towards the top end of 'less than substantial' harm. For the reasons given at IR269 the Secretary of State agrees with the Inspector that the proposal would not harm the significance of the Church of the Holy Trinity.
18. With regard to Broadgrove House, the Secretary of State agrees with the Inspector that the turbines would detract from an appreciation of the architectural and historic interest of this asset (IR271). He concurs with the Inspector and the main parties that the resulting harm would be less than substantial (IR272).
19. The Secretary of State agrees with the Inspector for the reasons given at IR273-4 that the proposal would not harm the significance of Cranmore Tower. He also agrees that there would be no material impact upon the significance of the other designated heritage assets that have been identified by the main parties for consideration (IR275).
20. In view of Section 66(1) of the LBCA Act 1990, the Secretary of State attaches considerable weight to the harm the proposal would cause to the significance of these designated heritage assets and agrees with the Inspector that this harm should be weighed against the public benefits of the proposal (IR276). The Secretary of State is also in agreement with the Inspector that the proposed wind turbines would conflict with the provisions of LP policy DP3 (IR312).

Character and Appearance

21. The Secretary of State agrees with the Inspector's reasoning and conclusions at IR277-289. He agrees that the proposal, alone and in combination with other wind energy schemes, would not result in any harmful cumulative landscape or visual impacts upon any nationally designated landscape (IR281 & 288). The

Secretary of State agrees that the extent of the harm to the setting and attributes of Asham Wood would not be so great as to significantly degrade the overall quality of the local landscape and therefore concurs that there would be no conflict with LP policy DP4 (IR284). He agrees that the proposed turbines alone and in combination with the existing turbines would result in some harm to the character and appearance of the area (IR289). EN-3 recognises that there will always be significant landscape and visual effects for a number of kilometres around a windfarm. Like the Inspector, the Secretary of State therefore attributes moderate weight to the landscape and visual harm in the planning balance (IR289).

Birds and Bats

22. For the reasons given by the Inspector at IR291-292, the Secretary of State is satisfied with the adequacy of the submitted ecological information and does not consider that further evidence is necessary. The Secretary of State agrees with the Inspector's assessment of the impact upon bats and birds at IR295-299. He concurs with the Inspector and Natural England that attaching a planning condition ensuring a detailed programme of monitoring of any bat fatalities and mitigation in the event of higher than expected fatalities occurring, would ensure there was no significant risk to bats (IR296). Like the Inspector, the Secretary of State concludes that the proposal would accord with the provisions of LP policies DP5 and DP6 (IR299).

Outlook for Neighbouring Residents

23. The Secretary of State agrees with the Inspector's reasoning and conclusions at IR300-303. He agrees that whilst the development would adversely affect the outlook for neighbouring residents at Broadgrove House and Quarry Lodge, on balance, they would not become significantly less attractive places in which to live or stay (IR301-302). He agrees that the adverse effect carries limited weight against an approval and that there would be no conflict with LP policy DP7 (IR301-302).

Other matters

24. The Secretary of State is in agreement with the Inspector's assessment regarding noise, pollution, health and human rights (IR304-305). He also concurs with the Inspector at IR306 that each case must be determined on its own merits.

Conditions

25. The Secretary of State has considered the Inspector's assessment on the proposed planning conditions at IR307-310. He is satisfied that conditions proposed by the Inspector and set out at Schedules A and B of the IR meet the tests of Paragraph 206 of the Framework. However, for the reasons set out in this decision letter, he does not consider that these conditions overcome his reasons for dismissing the proposed wind turbines and associated development.

Overall balance and conclusion

26. Having regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, the Secretary of State concludes, like the Inspector, that the conflict with LP policy DP3 would be at odds with the environmental dimension to sustainable

development (IR315). As the achievement of sustainable development is central to the LP and the Framework, the proposed wind turbines would not therefore accord with the development plan when read as a whole. The Secretary of State has gone on to consider whether there any other material considerations that indicate that the appeal proposal should be determined other than in accordance with the development plan.

27. The Secretary of state considers that the proposed development would help meet national targets to reduce greenhouse gas emissions and increase the supply of renewable energy. This would assist in mitigating climate change and increase energy security. It would also provide economic benefits. The Secretary of state attaches considerable weight to these benefits. He also considers the benefits that the proposal will generate for the quarry merit considerable weight.
28. However, weighing against these benefits is the totality of the harm to the setting of grade II and grade II* listed designated heritage assets. Like the Inspector, the Secretary of State has had special regard to the desirability of preserving the settings of the listed buildings as set out in Section 66(1) of the LBCA Act (IR312). He attributes considerable weight to this harm. There is also the harm to the character and appearance of the area which carries moderate weight and the adverse effects upon the outlook of some neighbouring residents to which he attaches limited weight.
29. In addition the Secretary of State agrees with the Inspector that the application of the transitional provisions within the WMS of 18 June 2015 adds further weight against the proposal (IR313). As the Inspector has highlighted, the proposal has attracted considerable opposition from many members of the affected local communities and cannot reasonably be said to have their backing (IR313). As the Secretary of State has found a number of harms arising from the proposal he concludes that the planning impacts identified by the affected communities have not been addressed, the proposed scheme would not meet the requirements of the transitional arrangements set out in the WMS; and the Secretary of State gives significant weight to this non-compliance.
30. Overall, the Secretary of State concludes that the balance is against granting planning permission for the wind turbines. He considers that the harm is not outweighed by the benefits of the proposal and the material considerations in this case do not justify determining the appeal other than in accordance with the development plan.

Formal Decision

31. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby issues a split decision; dismisses the appeal and refuses planning permission for the erection of four wind turbines with a maximum blade tip height of up to 80 metres, together with a substation, associated crane pads, an improved access junction onto the A361, four turbine transformer kiosks, connecting internal and upgraded access tracks, a electricity connection to Torr Works Quarry, a temporary construction compound and other ancillary infrastructure and; allows the appeal and grants planning permission for two temporary anemometer masts for a period of up to 12 months, in accordance

with application ref 2013/1244, dated 24 May 2013, subject to conditions set out at Annex A of this letter.

32. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
33. 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.
34. This letter serves as the Secretary of State's statement under regulation 24(2) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011.

Right to challenge the decision

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

Yours faithfully

Philip Barber

PHIL BARBER

Authorised by the Secretary of State to sign in that behalf

ANNEX A

1. The development hereby permitted shall be commenced before the expiration of three years from the date of this decision.
2. The development shall be undertaken in accordance with the details shown on the following drawings: 1:50,000 scale site location plan (TORR01); 1:5,000 scale application boundary plan (TORR02); 1:5,000 scale proposed layout plan (temporary masts only) (TORR03); 1:500 and 1:100 scale typical details for the temporary met masts (TORR09).
3. No development shall commence until a scheme detailing the fitting of bird deflectors to the guy-wires has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include a timetable for fitting the bird deflectors and the scheme shall be carried out in accordance with the approved details. The bird deflectors shall be retained on the guy-wires thereafter.
4. No later than one year after the masts have been erected, the masts shall be removed from the site and the land reinstated. The Local Planning Authority shall be notified in writing within seven days of the masts being erected.