



Department for
Communities and
Local Government

Mr Paul McLean
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Our Ref: APP/N2535/A/14/2217829
Your Ref: MCLEANPA/156396-000103

14 September 2015

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)
APPEAL BY RWE INNOGY UK LTD
LAND NORTH OF HEMSWELL CLIFF, LINCOLNSHIRE, DN21 5SL
APPLICATION REF: 128940

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Paul K Jackson BArch (Hons) RIBA, who held a public local inquiry which opened on 27 January 2015 and sat for 7 days, into your client's application to West Lindsey Council ("the Council") for the erection of a ten turbine wind farm (maximum height of 126.5 metres to blade tip for each turbine) and ancillary development, including the erection of a permanent and temporary anemometer mast, substation and control building, temporary construction compound, construction of underground electrical cabling, new access tracks and the upgrade of existing access tracks and site access points from the A15 and Middle Street, dated 4 July 2012, in accordance with application ref: 128940.
2. The appeal was recovered for the Secretary of State's determination on 25 June 2015, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the appeal involves a renewable energy development.

Inspector's recommendation

3. The Inspector recommended that the appeal be dismissed. 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 Secretary of State notes that, immediately following the appeal, your client submitted an alternative 8 turbine scheme which the Inspector has considered as an alternative to the appeal scheme. For the reasons given at IR5, the Secretary of State is satisfied that no interests have thereby been prejudiced and, like the Inspector, he has taken the alternative scheme into account in reaching his decision.

5. The Secretary of State considers that the Environmental Statement (ES) which accompanied the application, together with the Supplementary Environmental Information submitted in June 2013 at the request of the Council and the information submitted to accompany the alternative scheme (IR5), meets the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011 and provides the data and information required to adequately assess the impacts on the environment of the proposed development.

Matters arising after the close of the inquiry

6. The Secretary of State has had regard to the correspondence which was submitted after the close of the inquiry and listed at Annex A(i), along with that received in response to his letter of 18 June 2015 inviting comments on the Written Ministerial Statement (WMS) of the same date and referred to in paragraphs 8, 9 and 23 below. The Secretary of State has carefully considered all the representations received in his consideration of the appeal before him, but is satisfied that they do not raise matters which would require him to refer back to parties again prior to reaching his decision. Copies of these representations can be made available on written request to the address at the foot of the first page of this letter.

Policy and Statutory Considerations

7. In deciding the appeal, 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. In this case, the development plan comprises the saved policies of the West Lindsey Local Plan (First Review) 2006 (LP). The Secretary of State agrees with the Inspector that the most relevant policies are those referred to at IR13-19 but, having regard to the Inspector's reasoning at IR295-296, he gives them little weight. The Secretary of State also agrees with the Inspector (IR13) that little weight can be attached to the replacement development plan (the Central Lincolnshire Local Plan), particularly given that it is at a very early stage in its preparation.
8. The Secretary of State has had regard to his WMS of 18 June. 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 and the correspondence referred to in paragraph 6 above.

10. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ("the Framework") and the planning guidance published in March 2014; the National Policy Statements (NPS) for Energy (EN-1) and Renewable Energy (EN-3); the Community Infrastructure Levy (CIL) Regulations 2010 as amended and Planning Practice Guidance for Renewable and Low Carbon Energy (2013). The Secretary of State has also taken into account 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; and the English Heritage/Historic England guidance entitled "*The setting of Heritage Assets*" as updated in July 2015.
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 structures 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.

Main issues

The effect of the proposed development on the settings of designated heritage assets

12. Having given very careful consideration to the Inspector's findings with regard to the effect of the appeal scheme on the settings of heritage assets at IR297-318, and having taken into account the views of English Heritage and its updated guidance on the "Setting of Heritage Assets" referred to at paragraph 10 above, the Secretary of State agrees with the Inspector's conclusion at IR318.
13. The Secretary of State has given considerable importance and weight to the identified harm and to the desirability of preserving the setting of the listed buildings as well as to the desirability of preserving or enhancing the character or appearance of the conservation area. However, he agrees with the Inspector (IR318) that, in the terms of paragraph 134 of the Framework, the overall harm of either the 8 or 10 turbine scheme would be "less than substantial" on the heritage significance of Norton Place, its park and garden; Hemswell Conservation Area; Willoughton; Blyborough Grange; and Spital-in-the-Street; but that it nevertheless needs to be considered in the balance.

The effect on heritage assets of significant archaeological interest

14. For the reasons given at IR319-322, the Secretary of State agrees with the Inspector at IR322 that there is nothing to suggest that the appellant has failed to evaluate properly the potential for archaeology on the site or that unacceptable harm would occur to heritage assets on the site as a result of either the 8 or 10 turbine scheme, subject to the locations of the temporary construction compounds being revised. He therefore has no reason to suppose that the development would not accord with the archaeological preservation aims of both the LP and the Framework.

The effect on landscape character and visual amenity

15. The Secretary of State notes (IR326) that it is common ground in this case that the turbines, whether 8 or 10 in number, would have a significant landscape impact for at least 3km from the site. Having carefully considered the Inspector's arguments

at IR323-333, the Secretary of State agrees that there would be a significant adverse impact on landscape character in the Dip Slope and the Cliff Local Character Areas (LCAs) for a radius of about 3km, but that the significant effect would extend for a much greater distance in the Till Vale LCA; and he agrees with the Inspector (IR333) that that needs to be taken forward into the balance.

16. For the reasons given at IR334, the Secretary of State agrees with the Inspector that, although there would be some adverse impacts on the landscape in terms of it being a characteristic of the setting of heritage assets, these do not add any additional weight in the balance to the harm identified to the setting of the heritage assets themselves. Similarly, for the reasons given at IR335, the Secretary of State agrees with the Inspector that the proposed turbines would not, in conjunction with any other planned, constructed or operational wind turbines, have any unacceptable cumulative impact on landscape character or heritage assets.
17. With regard to visual amenity, the Secretary of State agrees with the Inspector (IR336-339) that the appearance of the appeal scheme, whether in 8 or 10 turbine guise, would have no more than moderate visual impact except in two cases. The first exception (IR337) is the bridleway passing through Ingham and Fillingham and on to Glentworth, where the Secretary of State agrees that the increased visibility of the turbines would be a direct result of their height above the Till Vale and the Cliff. The second (IR338-339) is the impact of the constant presence of the turbines on the day to day life of the Hemswell Cliff Primary School and the local community. The Secretary of State agrees with the Inspector that the visual impact on those in the school and the residents of Hemswell Cliff would be significantly greater than has been assessed by the appellant and he has given significant weight to this in the overall balance.

Other considerations

18. For the reasons given by the Inspector, the Secretary of State agrees with him that the issues of shadow flicker, and tv and wi-fi interference could be dealt with by means of conditions (IR340), as could the potential to interfere with aviation-related radar systems (IR347) and gliders (IR348). He also agrees that there is no firm evidence that any unacceptable health effects have been experienced in the UK as a result of a wind energy development (IR341).
19. Having regard to IR342-346, the Secretary of State notes that there is no evidence of any specific negative impacts that the proposed turbines would have on any person with autism in the vicinity of the appeal site (IR345). The Secretary of State also agrees with the Inspector that there are no convincing arguments to suggest that the impact of the scheme on business, tourism and employment should weigh heavily against the proposal (IR349); or that, with the conditions proposed, turbine noise would be a reason to refuse either of the two schemes. Furthermore, with regard to residential amenity (IR351-352), the Secretary of State concludes that, as a result of distance and partial screening, the effect of the turbines on any property would not be so overwhelming as to make any residential property an unpleasant place to live. He also agrees with the Inspector (IR353-354) that hydrology and ground water concerns do not weigh against permission being granted.

Overall balance and conclusions

20. Having regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 (see paragraph 7 above), the Secretary of State has concluded that the proposal



does not accord with the development plan taken as a whole, in particular owing to the clear conflict with policies NBE8 and NBE10. The Secretary of State has therefore gone on to consider whether there are any material considerations which might nevertheless justify allowing the appeal.

21. The Secretary of State agrees with the Inspector (IR357-358) that, in principle, new renewable energy proposals are to be welcomed and that, whether the 8 or 10 turbine option were to be pursued, the contribution to combatting climate change is an important consideration as is the potential to provide some economic stimulus to the local area.
22. However, the Secretary of State also agrees with the Inspector (IR359) that, although the development would be sustainable in principle, it is necessary to have regard to the fact that the environmental dimension of sustainable development includes contributing to protecting and enhancing the natural and historic environment by ensuring that the impacts of schemes are acceptable or capable of being made acceptable. As set out in more detail above, the Secretary of State agrees with the elements of harm identified by the Inspector at IR360-362. He also agrees with the Inspector (IR362) that the reversibility of the proposal carries little weight in view of the adverse effects on visual amenity for a generation.
23. In addition, having applied the transitional provision set out in the June 2015 WMS, the Secretary of State is not satisfied that the planning impacts identified by affected local communities have been addressed. There has been extensive involvement of the local population throughout the process (IR361), including the granting of Rule 6 status to VOCAT (IR2). In their responses to the Secretary of State's letter of 18 June 2015, the affected communities have repeated the concerns which they expressed previously about the planning impacts of the scheme. These include harm to the landscape, visual amenity and the setting of heritage assets, and it is clear from the IR that those planning impacts have not been addressed. This is demonstrated, in particular, by the Inspector's summary of the harm to the landscape character, visual amenity and setting of heritage assets at IR360. As those planning impacts as identified by the affected communities have not been addressed, the proposed scheme would not meet the transitional arrangements set out in the WMS of 18 June 2015; and the Secretary of State gives significant weight to this.
24. While the development would make a significant contribution to the supply of electricity as part of a mix of renewable resources in West Lindsey and a consequent contribution to combatting climate change for the life of the scheme, the combined adverse impacts of either the 10 or 8 turbine format in terms of harm to landscape character, harm to visual amenity and less than substantial harm to the setting, and therefore significance, of a number of heritage assets would significantly and demonstrably outweigh these benefits.

Conditions

25. The Secretary of State has considered the Inspector's reasoning and conclusions on conditions, as set out at IR290-291. He is satisfied that, in the form recommended by the Inspector, they are reasonable and necessary and would meet the tests of the Framework and the guidance.

Formal Decision

26. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses

planning permission for the erection of a ten or eight turbine wind farm (maximum height of 126.5 metres to blade tip for each turbine) and ancillary development, including the erection of a permanent and temporary anemometer mast, substation and control building, temporary construction compound, construction of underground electrical cabling, new access tracks and the upgrade of existing access tracks and site access points from the A15 and Middle Street, dated 4 July 2012, in accordance with application ref: 128940.

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 by making an application to the High Court within six weeks from the date of this letter.

28. A copy of this letter has been sent to West Lindsey District Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Jean Nowak

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Authorised by the Secretary of State to sign in that behalf