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# Appeal Decision

Site visit made on 18 February 2013

**by Paul Griffiths BSc(Hons) BArch IHBC**

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

**Decision date: 12 March 2013**

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**Appeal Ref: APP/Q3305/A/12/2181741**

**Warren Farm, Old Frome Road, Masbury, Wells BA5 3HB**

- 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 Brian Ingham of Windberry Energy Operations Ltd against the decision of Mendip District Council.
  - The application Ref.2011/2201, dated 18 August 2011, was refused by notice dated 23 July 2012.
  - The development proposed is the erection of a single wind turbine with a maximum blade tip height of up to 54 metres and associated infrastructure including: upgrading a section of the existing access track and creating a new access track (approximately 31m in length); a crane pad (measuring approximately 20m by 22m); and an equipment housing cabinet.
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## Decision

1. The appeal is allowed and planning permission is granted for the erection of a single wind turbine with a maximum blade tip height of up to 54 metres and associated infrastructure including: upgrading a section of the existing access track and creating a new access track (approximately 31m in length); a crane pad (measuring approximately 20m by 22m); and an equipment housing cabinet, at Warren Farm, Old Frome Road, Masbury, Wells BA5 3HB, in accordance with the terms of the application, Ref.2011/2201, dated 18 August 2011, subject to the conditions set out in the attached Annex A.

## Main Issue

2. This is whether any benefits of the proposal are sufficient to outweigh any harm to the setting, and thereby the significance, of Maesbury Castle<sup>1</sup>.

## Reasons

### *The Benefits*

3. Government policy on renewable energy is expressed, most succinctly, in the Framework<sup>2</sup>. 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. This is central to the economic, social and environmental dimensions of sustainable development.

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<sup>1</sup> A Scheduled Ancient Monument (SAM)

<sup>2</sup> The National Planning Policy Framework

4. 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 approved<sup>3</sup> if its impacts are, or can be made, acceptable. LP<sup>4</sup> Policy ER2 treads a broadly similar path, being permissive, subject to a range of criteria that I return to below.
5. According to the figures advance by the appellant and accepted by the Council, the proposal would generate 330 kW per year, enough to power 258 households, and displace 365 tonnes of Carbon Dioxide. In the light of the paragraph 93 of the Framework, viewed in isolation, 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. RPG10<sup>5</sup>, and the subsequent draft RSS<sup>6</sup>, 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.
6. The Government has made very clear its intentions towards the regional apparatus. However, the targets set out above continue to have relevance because the binding Government commitments they reflect remain in place. According to the figures quoted by the Council, 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. As the Council, very fairly, acknowledges, there is a significant need for renewable energy generation in Somerset, and the District.

#### *The Impact on the SAM*

7. The principal source of objection to the proposal revolves around the impact it would have on the setting, and thereby the significance, of Maesbury Castle, a SAM. This is a relatively small, multivallate hill fort. These are defined as fortified enclosures of varying shape, generally between 1 and 5Ha in size, located on hilltops, and defined by boundaries consisting of two or more lines of closely set earthworks. Multivallate hill forts are relatively rare and their importance, in understanding the nature of settlement and social organisation in the Iron Age, means that all examples, with surviving archaeological remains, like Maesbury Castle, are regarded as nationally important<sup>7</sup>.
8. 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.

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<sup>3</sup> Unless, of course, material considerations indicate otherwise

<sup>4</sup> The Mendip District Local Plan, adopted December 2002

<sup>5</sup> South West Regional Planning Guidance 10

<sup>6</sup> Regional Spatial Strategy

<sup>7</sup> Information taken from the List Entry Description

9. 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 designated heritage assets of the highest significance, like SAMs, should be wholly exceptional.
10. 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, consent<sup>8</sup> 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.
11. 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.
12. The wind turbine proposed would be located about 600 metres to the south-east of the SAM and would be clearly visible from it. As such, it would have an impact on its setting. The key point, for the purposes of the Framework, is how that impact would bear on significance.
13. Significance is defined in 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 derives not only from a heritage asset's physical presence, but also from its setting.
14. Evidently, as a SAM, a good part of the significance of Maesbury Castle lies in its archaeological and historic interest. However, given its original purpose as a defensive fortification, prominence in the landscape and views out from it are integral to the experience, and understanding, of the heritage asset. As such, the setting of Maesbury Castle makes an important contribution to its significance. The wind turbine proposed would not alter the prominence of the SAM in the landscape. However, it would affect some views out of it.
15. As set out in the List Entry Description, the site enjoys commanding views over the landscape to the north, west and south. The wind turbine proposed would not figure in those views. However, there are two prominent vertical elements in the view to the west that bear some analysis for the purpose of comparison.
16. The first is the existing wind turbine at Shooters Bottom Farm, said to be 95m high to tip, over 3 km away<sup>9</sup>. The second is the much taller Mendip transmitter mast. Both figure prominently in the view to the west, acting as distractions that focus the eye, especially the moving blades of the existing wind turbine.
17. However, they are relatively distant features and occupy a small part of the overall field of view, and do not prevent, or undermine to any great degree, an understanding of how important commanding views outwards were to the function of the hill fort. The harm they cause to the setting, and thereby the significance, of the SAM is therefore limited.
18. On the eastern side of the SAM, the land falls away more gently and the defensive advantages provided by the steep slopes to the north, west and south, are not present. Hence, there was a need for more massive fortifications, formed by two banks sandwiching a substantial ditch or moat.

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<sup>8</sup> I take that term to include permission

<sup>9</sup> According to the appellants' Landscape and Visual Impact Assessment

19. As a consequence of the landfall, the views to the east from the ramparts are not as commanding as the views to the north, west and south, and are further constrained by trees that form part of the adjacent Mendip Golf Course. Nevertheless, the view out in an easterly direction remains important because an appreciation of the difference in landfall is essential to an understanding of why the fortifications of the hill fort are more extensive on the eastern side.
20. At present, these views from and across the SAM take in, above the trees on the golf course, the existing 30m anemometer mast, close to the site of the proposed wind turbine<sup>10</sup>, the existing wind turbine at Warren Farm itself<sup>11</sup>, and a telecommunications mast, about 40m high, 500m or so beyond the site of the proposed wind turbine. From the eastern ramparts, the golf course is prominent in the foreground. As with the views in a westerly direction, these modern interventions act as distractions to the viewer, the moving blades of the existing wind turbine in particular.
21. The existing anemometer mast would have to be removed in the near future in any event but along with the existing wind turbine, it is intended to be removed as part of the overall proposal. Nevertheless, the proposed wind turbine would be taller, and a more prominent, man-made, kinetic feature in the view. It would draw the eye, and its distracting presence would detract, to a degree, from an appreciation of the SAM. However, like the wind turbine at Shooters Bottom Farm and Mendip Transmitter Tower to the west, the proposal would not be so close that it would dominate the outward views to the point where an understanding of the influence of landfall on the form of the SAM would be prevented, or made unduly difficult. Be that as it may, the distracting presence of the proposal would have something of a harmful impact on the setting, and thereby the significance, of the SAM.
22. Bearing in mind the advice in the Framework, the crux is whether that harm to that significance is substantial, as the Council and EH posit, or less than substantial. The Framework is silent on the difference and does not indicate where, on a sliding scale between no harm and complete destruction, substantial harm falls. Neither the Council nor EH, in their representations, offer any useful explanation of where they consider that point is reached.
23. If one looks to the still extant PPS5 Practice Guide for clarification, substantial harm, demolition or destruction are dealt with under the same heading in paragraphs 91 to 95. Those paragraphs deal almost exclusively with demolition and if substantial harm is something very far removed from that, as the Council and EH suggest, it seems reasonable to expect that there would have been some explanation. Otherwise, I see no good reason why these matters should have been dealt with together. The only sensible conclusion, in the light of the advice in the PPS5 Practice Guide, is that substantial harm, while not equating to demolition or destruction, is a degree of harm that falls not very far short of it. That conclusion is consistent with the way the term 'substantial' has been used in Appendix D to Circular 01/01<sup>12</sup> when dealing with the implications of the House of Lords judgement in the case of *Shimizu (UK) Ltd v Westminster City Council [1997] 1 All E.R. 481* in relation to the total or substantial destruction of unlisted buildings in conservation areas.

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<sup>10</sup> Approved by the Council under Ref.2011/0483 for a period of two years

<sup>11</sup> Approved by the Council under Ref.007614/005

<sup>12</sup> Circular 01/01: *Arrangements for Handling Heritage Applications – Notification and Directions by the Secretary of State*

24. Applying that analysis to the proposal at issue, it would have no physical impact on the SAM, nor would it affect its standing in the landscape but it would act as a prominent, often moving, distraction in views to the east. However, it would not prevent, or make unduly difficult, an understanding and appreciation of the influence of landfall on the form of the fortifications. On that basis, while there would be some harm to the setting, and thereby the significance, of Maesbury Castle, it would fall well short of substantial harm.
25. That there would be some harm to setting means that the proposal would not comply with LP Policy ER2. This only permits wind turbines where, amongst other criteria, there would be no detrimental effect on the setting of a listed building, conservation area, or SAM. However, 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 the designated heritage asset to be weighed against the public benefits of the proposal.
26. The proposal is intended to endure for 25 years. The Council acknowledges that the harmful impact would not, therefore, be permanent, but suggests this would not significantly reduce it<sup>13</sup>. The degree of harm that would be caused to the setting, and thereby, the significance, of Maesbury Castle, is a function not only of the impact of the proposal, but also of the time that impact would persist. The fact that the impact would be limited to 25 years, rather than permanent, or, for that matter, a period greater than 25 years, must mean that the less than substantial harm to the setting, and thereby the significance, of the SAM, would be reduced further.
27. The Council also suggests that the appellant has not provided any evidence to show that the scheme is the only available alternative for a wind energy development on the site<sup>14</sup>. However, I find no support in the Framework for the suggestion that there should be some sort of sequential, or other exploration of, alternatives before a scheme can be permitted. The important point is that proposals of this type should be approved<sup>15</sup> if its impacts are, or can be made, acceptable. That is a matter for the balancing exercise that I deal with below.

### *Other Matters*

28. Based on the analysis of the appellants' LVIA<sup>16</sup>, the Council accepted that the wind turbine proposed would not be a prominent feature in the landscape nor have any great cumulative impact with existing, or proposed, wind turbines or other tall structures. There is no suggestion that the proposal would breach the relevant criterion of LP Policy ER2 which requires wind turbines to be sited and designed so as to minimise their impact on the landscape. I note the views of local residents but from what I saw of the area, I see no reason to disagree.
29. Local residents have also raised concerns about noise and shadow flicker but there are no dwellings, other than Warren Farmhouse, close enough to make any significant impact likely. In any event, these matters can be controlled by condition. Similarly, while concerns have been raised by local residents about the impact on birds, the appellants' Ecological Assessment found that there would be no significant effects. I have seen no good evidence to bring that conclusion into doubt.

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<sup>13</sup> In their reason for refusal

<sup>14</sup> Again, in their reason for refusal

<sup>15</sup> Unless material considerations indicate otherwise

<sup>16</sup> Landscape and Visual Impact Assessment

30. The wind turbine would be relatively close to the Old Frome Road and may cause some distraction to passing drivers. However, the Highway Authority raised no objection in this regard and I see no cogent reason why it should have any significant impact on highway safety.

#### *The Balancing Exercise*

31. The proposal would cause less than substantial harm to the setting, and thereby the significance, of Maesbury Castle, a SAM. That harm would be reduced further by the temporary nature of the proposal. However, that there would be some harm brings the proposal into conflict with LP Policy ER2.
32. 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, in terms of renewable energy generation, would be significant and magnified further by the need for renewable energy generation in Somerset, and the District, acknowledged by the Council. In my view, those public benefits far outweigh the less than substantial harm that would be caused to the setting, and thereby the significance, of the SAM. As such, the impact of the proposal is acceptable and it complies, therefore, with paragraph 98 of the Framework. That provides a compelling reason to allow the appeal.

#### **Conditions**

33. I have considered the suggested conditions in the light of advice in Circular 11/95<sup>17</sup>. As well as the standard condition to cover commencement, another is required to set out the approved plans. The list need not include the topographical survey as this reflects the existing situation.
34. The proposal is promoted on the basis that it will endure for 25 years. A condition is required to underline that and to ensure that the land is reinstated after decommissioning. A condition is also required to secure removal of the existing wind turbine and anemometer mast at Warren Farm. The Ecology Assessment that accompanied the originating application promoted some works of ecological mitigation. A condition is necessary to ensure these are completed. Similarly, conditions are required to deal with aviation lighting and the colour and finishes of the wind turbine and associated equipment.
35. As set out, conditions are necessary to control any deleterious impacts from noise, shadow flicker, television reception and/or Bristol Water telemetry. A condition is also required to ensure that the development is brought to the attention of the MoD, through the medium of the local planning authority.

#### **Final Conclusion**

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

*Paul Griffiths*

**INSPECTOR**

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<sup>17</sup> Circular 11/95: *The Use of Conditions in Planning Permissions*

## **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: WB001/01B: Location Plan; WB002C: Proposed Site Plan; WB001/03B: Turbine Details; 568/01A: Section; and 568/02A: Section.
- 3) The permission hereby granted shall be limited to 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.
- 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, that shall include a timetable, first submitted to, and approved in writing by, the local planning authority.
- 5) The existing wind turbine (granted planning permission under ref.007614/005) and anemometer mast (granted planning permission under ref.2011/0483) at Warren Farm, and all associated equipment, shall be permanently removed prior to the installation of any part of the wind turbine approved herein.
- 6) No development shall take place until details of ecological mitigation measures, including an implementation programme, have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details.
- 7) No development shall take place until details of aviation lighting and its operation have been submitted to, and approved in writing by, the local planning authority. The aviation lighting shall be installed before first operation of the wind turbine, retained thereafter, and operated in accordance with the approved details.
- 8) 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.
- 9) 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).
- 10) Prior to the First Export Date a scheme setting out a protocol for the assessment of shadow flicker resulting from the wind turbine, in the event of any complaint being received from the owner or occupier of a dwelling which lawfully exists or had planning permission at the date of

this grant of planning permission, including the remedial measures to be taken, shall be submitted to and approved in writing by the local planning authority. Operation of the wind turbine shall accord with the approved protocol.

- 11) Prior to the First Export Date a scheme setting out a protocol for the assessment of any interference with TV reception, caused by the wind turbine, in the event of any complaint being received from the owner or occupier of a dwelling which lawfully exists or had planning permission at the date of this grant of planning permission, including the remedial measures to be taken, shall be submitted to and approved in writing by the local planning authority. Operation of the wind turbine shall accord with the approved protocol.
- 12) Prior to the First Export Date a scheme setting out a protocol for the assessment of any interference with the telemetry of Bristol Water, caused by the wind turbine, including the remedial measures to be taken, shall be submitted to and approved in writing by the local planning authority. Operation of the wind turbine shall accord with the approved protocol.
- 13) 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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