

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Planning Committee

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APPEALS AGAINST PLANNING DECISIONS AND ENFORCEMENT ACTION: SUMMARIES OF DECISIONS OF INTEREST – FOR INFORMATION AND ACTION

S/1018/06/F – WEST WRATTING

13 wind turbines, electricity transformers, access tracks, crane hardstandings, control building, substation, permanent anemometry mast, highway modifications, temporary construction compound and two temporary anemometer masts – Land at Wadlow Farm, Six Mile Bottom Road, West Wrattling for RES Developments Ltd – Appeal allowed

Purpose

1. To highlight a recent appeal decision of interest. To consider whether the decision is one that can and should be challenged. To consider what implications, if any, this decision has on the appeal against the Council's non-determination of an application for seven wind turbines on land at Little Linton Farm, Linton.

The Appeal decision

2. Planning permission for the above development was refused by notice dated 7 June 2007. The grounds of refusal were:

“Whilst Policies P7/7 of the Structure Plan 2003 and NE/2 of the Local Development Framework (LDF) 2007 support proposals which generate energy from renewable sources, the benefits accruing from this proposal are outweighed by the substantial harm caused by the number, height and extent of the turbines dominating the character and quality of this landscape which can be appreciated by the public from nearby important public rights of way. The scale of the proposal would, therefore, be contrary to Policies P7/4 of the Structure Plan, EN1 of the South Cambridgeshire Local Plan 2004 and NE/4 of the LDF”

3. A public inquiry was held between 9 June and 7 July 2009. Those appearing at the inquiry included the Council, the Appellant and the Stop Wadlow Wind Farm Campaign (SWWF). The appeal was recovered for the Secretary of State's ("SoS") own determination as "the appeal involves proposals of major significance for the delivery of the Government's climate change programme and energy policies".
4. The Inspector's 111-page report, dated 26 August 2009, recommends the appeal be allowed subject to conditions. By letter dated 9 November 2009, the SoS has allowed the appeal, subject to the same conditions. A copy of the SoS decision letter is appended to this report.
5. The decision of the SoS to allow the appeal closely follows his inspector's recommendations. The main issues were identified as:

1. The capacity of the local landscape to accommodate the proposed wind farm

2. Whether the living conditions of nearby residents can be adequately protected from turbine noise
6. Members will note that this second issue was not a reason for refusal. It was put forward by the SWWF that while the turbines would not inevitably cause unacceptable disturbance to local residents, there is a risk they might do so. Such a risk should be safeguarded against.
7. The SoS has concluded that the proposals would accord with the development plan as a whole. There would be some conflict with policies designed to protect the historic environment (namely Grange Farmhouse and Fleam Dyke) and due to exposure to noise. Nevertheless, “development plan policies are generally welcoming towards renewable energy development and that, to the extent that any conflict may arise with particular policies, these are outweighed by the importance of achieving the national policy objectives relating to climate change and energy supply”.
8. The site was found to be in an area where there is some capacity for a wind farm. Suggestions that there would be a loss of openness, tranquillity and rurality are largely unfounded. While the appearance of the landscape would change, the overall magnitude and effect of such change would be acceptable. There would be insufficient visual impact either on the surrounding villages, or from the closest residential properties. The range of potentially positive effects and the need for renewable energy outweigh the desirability of preserving the settings of Grange Farmhouse and Fleam Dyke.
9. Concerns about turbine noise can be controlled through the use of conditions. While there would always remain some possibility of noise and disturbance from ‘Amplitude Modulation’ (essentially blade swish), residents would be adequately protected in accordance with adopted practice.
10. The appeal was therefore allowed subject to various conditions, most of which are normally applied with windfarm development and a unilateral undertaking. The provisions of the undertaking would help to improve access to Fleam Dyke, provide improved signing and provide for planting and vegetation management.
11. Officers have considered the Inspector’s report and the SoS decision letter in detail. Counsel has provided verbal comments and her written views have been requested. As a result, officers consider that while findings are disappointing, the decision itself is not one, which appears flawed. This aspect is, therefore, not one where a legal challenge is likely to be successful.
12. There are, however, issues concerning condition 7, which deals specifically with noise. The condition is designed to ensure that any noise emitted by the turbines does not exceed a specified level and that should there be complaints, or an established breach of the specified noise limits, this can be adequately addressed. Condition 7(b) states that should the local planning authority receive a complaint, the wind farm operator will assess the level of noise immisions from the wind farm at the complainant’s property following set procedures agreed as part of the condition. The condition lacks some precision, however, as there is no requirement for the operator to submit the results of this assessment to the local planning authority. Condition 7(c) goes on to state that where there is an established breach of the noise limits, the wind farm operator will propose a scheme to mitigate the breach and prevent its future occurrence. The condition does not, however, require the approval of the local planning authority, nor does it require the operator to implement that scheme. Thus

any breach may not be remedied to the satisfaction of either the local planning authority or the complainant.

13. There is a further grammatical error in condition 7(b), although this does not have any material bearing on the way it is read. Condition 7(c) also wrongly cross-refers to condition 6 (construction times) when it should refer to other parts of condition 7. Because these are deemed to be minor slips or errors and do not go to the heart of the condition itself, could probably be remedied on request by the Planning Inspectorate.
14. In view of the above, the local planning authority cannot be satisfied that should there be an established breach of the agreed noise limits, that this would be rectified. This anomaly could only be addressed by way of a legal challenge. There does not appear to be any other mechanism whereby the wind farm operator was able (assuming he was willing) to agree a post-decision amendment to the wording of the condition.

Implications of a legal challenge

15.	Financial	Would involve legal costs to pursue and would require the defendant's costs to be paid in the event a challenge was unsuccessful. There would be additional costs to the authority involved in any re-determination of the appeal
	Legal	A challenge must be made to the High Court within 6 weeks from the date of the decision letter (i.e. before 21 December 2009). A challenge would mean that the development could not go ahead until the matter was resolved. A successful challenge would mean the decision was quashed and the appeal would be re-determined. An unsuccessful challenge would mean that the decision would remain the same and the development could be implemented.
	Staffing	Will require input from planning and legal officers and then additional resources if the challenge is contested and/or the appeal was to be re-determined.
	Risk Management	There is no certainty a challenge would succeed. Even with a successful challenge, it is likely that the appeal would have the same outcome and would be allowed. This has a distinct bearing on the use financial resources
	Equal Opportunities	No Impact, other than to confirm that the SWWF clearly has a locus in this matter as representative of residents in the area to enable it to challenge the decision itself.

16. The Planning Committee is asked to consider the implications of any challenge should Counsel conclude that there is a reasonable prospect of any challenge being successful.

The Linton Appeal

17. The inquiry into the application for seven wind turbines at Linton (with an additional turbine within the district of Uttlesford) is due to commence on Tuesday 2 February 2010. It is currently scheduled to sit for 17 days. There are seven deemed reasons for refusal relating to the impact on cultural heritage; landscape; recreational use of rights of way; turbine noise; aviation, bats and flooding. The last two matters are capable of being resolved. Following a request from Members for officers to investigate further the potential for driver distraction along the A1307, consultants have advised that this reason for refusal could not be sustained at appeal.
18. The Committee is reminded that the Council's noise objections are essentially on the grounds that it has received insufficient information in order to decide the extent to which noise would be a potential problem. Further information has been submitted now the appeal has been lodged and the environmental health officer and the Council's noise consultant are currently considering this
19. In view of the SoS decision to allow the Wadlow Farm appeal, officers have considered if this has any implications for the Council's case for the site at Linton. The following points should be noted:
- (i) The Council's reasons for refusal at Wadlow Farm were restricted to landscape impact only. This is notwithstanding that the inspector considered noise issues in some detail and also found harm to the historic environment. This is in contrast to the site at Linton where the Council has identified material harm in several cases.
 - (ii) The Council's Landscape officer is content that the landscape issues are materially different between the two sites. Approval of the Wadlow farm development also raises a concern regarding cumulative visual impact arising from two wind farms close to one another. This concern was not a material consideration in the Wadlow Farm inquiry as at that time the Linton application had not been determined.
 - (iii) Ultimately, in both appeals the inspectors (as was the local planning authority at application stage) are required to balance the national policy and development plan presumption in favour of wind farm development against the identified harm. In the Linton case, the Council has identified considerably more harm than was the case at Wadlow Farm and this is of sufficient weight to count against the proposal. While the issues regarding flooding and bats are likely to be satisfactorily resolved, these are considered to be peripheral to the other issues as outlined in paragraph 16 above.
20. Officers therefore conclude that the case for opposing the proposed Linton wind farm remains strong and that collectively, if not individually, the harm arising from the deemed reasons for refusal are sufficient to outweigh the benefits of the scheme.

Recommendations

21. A. Having regard to the reasoning of the SoS and his inspector behind the decision to allow the appeal at Wadlow Farm, the decision itself should not be challenged
- B. Having regard to the wording of parts of Condition 7 insofar as it does not adequately give the local planning authority sufficient grounds to enforce an established breach of planning control nor protect a complainant from possible wind turbine noise, due consideration needs to be given to the desirability of challenging the decision on this basis.
- C. The Council maintains its opposition to the proposed Linton wind farm in line with the deemed reasons for refusal outlined in paragraph 16.

Background Papers

The following background papers were used in the preparation of this report:

- Secretary of State appeal decision for Wadlow Farm dated 9 November 2009 and his Inspector's report dated 26 August 2009
- Application file S/0232/09/F for the proposed Linton Wind farm

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