

PLANNING APPEAL DECISION

Lead Officer: John Groves – Head of Nuclear, Energy & Planning

To provide Members with a review of the recent appeal decision in respect of the wind farm proposal at Weddicar Rigg, Frizington

Recommendation: That the decision be noted in the context of the Council's Local Plan Policies and also in relation to performance monitoring.

Resource Implications: Nil

1.1 INTRODUCTION

1.2 Members will be aware that the Secretary of State has recently issued the appeal decision for the Weddicar Rigg wind farm. Officers indicated at the last meeting in December 2013 that a full report would be presented to the Planning Panel in January 2014 once the detail of the Inspectors report had been fully considered.

1.3 Members will recall that Officers recommended the original scheme for 6 wind turbines for approval, having sought Counsel's opinion. Members chose to go against the Officer recommendation as they considered that the adverse impacts of the proposal would be significant and these would not be outweighed by the benefits which might have been secured through the development.

2.0 OFFICER RECOMMENDATION

Although it was a finely balanced argument between the adverse impacts and the benefits the Officers concluded that the scheme should be recommended for approval. This recommendation was based on the following factors:-

An independent landscape and visual assessment of the proposal

A review of previous appeal decisions on wind turbines, particularly in neighbouring Cumbrian authorities

The reliance on the National Planning Policy Framework (NPPF) due to the status of the Copeland Local Plan and its lack of conformity with it

The extent of the benefits offered by the scheme

2.1 Original landscape assessment

The original Officer recommendation was based on an independent Landscape and Visual Impact Assessment undertaken by AXIS. Axis were given the brief of reviewing and commenting on the Landscape and Visual Assessment that was submitted with the planning application, undertaking a site visit to assess the potential landscape and visual effects of the development and providing a written report which set out in detail their own independent assessment of the proposal.

Axis were commissioned to undertake the report as they had previously provided the Council with Landscape guidance on other wind farm proposals, including the Fairfield wind farm. Officers also have experience of working with Axis on wind farm appeals from other Local Authorities.

Axis concluded that the proposed wind farm would result in locally significant and adverse effects both upon landscape character and views.

The AXIS report received a degree of criticism at the Inquiry and did not provide a significantly robust assessment of the landscape and visual effects of the proposal. In particular it underplayed the potential cumulative impact and magnitude of the harm to landscape character. It also gave little weight to the local landscape designation of the site.

Clearly there are lesson for us here in terms of the quality of assessments that are commissioned and clear definition of the role for any consultants.

2.2 Other wind farm decisions

The introduction of the NPPF changed the Government's guidance on wind turbines. The NPPF sets a strong presumption in favour of sustainable development. The NPPF sets out the test that requires any adverse impacts to be so significant that the turbines would demonstrably outweighed the benefits. This provided a significant shift in the threshold that was set out in the previous Government policy (PPS 22). Following the introduction of the NPPF evidence shows that Inspectors were placing greater emphasis on allowing wind farm development. This is borne out in appeal decisions elsewhere in Cumbria, particular in Allerdale and South Lakeland.

2.3 Status of Copeland Local Plan

At the time of the decision the Core Strategy was in its infancy and therefore carried no weight in the decision making process. The renewable energy policies within the Copeland Local Plan did not comply with the guidance set out in the NPPF as they lacked regards to the benefits in the planning balance.

The NPPF is very specific in that it states under paragraph 14 when the Local Plan is not consistent with the NPPF then planning permission should be granted unless "any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole". On the basis of the independent landscape and visual assessment Officers took the view that the adverse impacts were not of such significance to outweigh the benefits. Therefore the proposal was considered to be in compliance with the NPPF which sets a presumption in favour of sustainable development.

3.0 APPEAL DECISION

The Appeal was heard at a Public Inquiry which took place at Whitehaven Civic Hall between 9th and 16th July 2013. The Inspector came to the conclusion that the appeal should be dismissed. The Secretary of State recovered the appeal as it relates to a proposal of major significance for the delivery of the Governments climate change programme and energy policies/ the Secretary of State agreed with the Inspectors conclusions and recommendations that the appeal should be dismissed.

Having carefully considered the Inspectors report it is clear that there are significant factors which led to the Inspector rejecting the proposal which were not apparent when the planning application was originally considered. These can be summarised as follows:-

- The change in status of the Core Strategy
- The shift in the Governments policy position
- The change in the Government's stance towards renewables
- The weighting of the benefits of the scheme in the planning balance

3.1 Status of Core Strategy

The Core Strategy and Development Management policies DPD carried little weight when the original application was determined.

At the time of the appeal the Core Strategy and DM Policies had progressed significantly and were at an advanced stage following the public examination. The examination was held in abeyance whilst the Inspector waited for emerging policy on renewables to come forward. One of the Inspectors recommendations following the examination was to amend the wording of the renewable energy policies to bring it in line with the NPPF. The Council accepted this change which provided a more positive stance than the Councils original position.

The Core Strategy policy allows a weighting of the adverse impacts against the benefits of the proposal in accordance with the NPPF. This enabled the Inspector to attach great weight to the Core Strategy and DM policies in his decision.

The inclusion of the Landscape of County Importance designation within the Core Strategy was also significant as it allowed the Inspector to add weight to the conclusion that the appeal site sits within a high quality landscape.

3.3 Shift in Government Policy

The DCLG issued planning guidance for renewable energy in July 2013. This seeks to redress the balance and highlights the consideration of landscape and cumulative visual impacts in assessing renewable energy proposals, especially for sites in close proximity to National Parks. The NPPF sets out under paragraph 5 that all communities have a responsibility to help increase the use and supply of green energy. The guidance confirms that this does not mean that the need for renewable energy automatically overrides environmental protection and the planning concerns of local communities.

It also strongly advocates the use of landscape character assessments in considering likely landscape and visual impacts of proposals. This reinforces the role of the adopted Wind Energy SPD and the Cumbria Landscape Character Guidance and Toolkit 2011. The Inspector placed great weight to these two documents in coming to his conclusion that the appeal should be dismissed, especially the SPD which considers capacity of the landscape types to accommodate turbines. The presence of the existing Fairfield wind farm in close proximity to the Weddicar Rigg site was a significant factor in the cumulative assessment of the proposal.

3.4 Change in Government Stance toward Renewable Energy

Following the issue of guidance on renewable energy in July 2013 the Secretary of State called in 7 individual planning appeals for wind farms. This is significant as the S of S has only ever called in 19 wind farm appeals for his consideration (including the current 7).

A summary of the 7 cases involved is attached. Although some cases are still awaiting a decision the 3 appeals which have been determined to date have all been dismissed. This suggests that the Government stance towards on shore wind farms is becoming more stringent. There have been clear suggestions that the decision to call in these cases represented the Government's desire for planning decisions on such matters to consistently reflect the increasing concern of communities on the impact of such development and the desire to reflect this concern politically.

Members will note that there are also two other reports on the agenda for this meeting which summarise recent appeal decisions for two single turbines which were refused by the Council. Both of these decisions were also dismissed.

The Government has also recently announced a reduction in the tariff for onshore turbines. This is likely to result in a reduction in the submission of less wind farm applications which suggests that they are losing favour with the Government.

There has been a sea change to on shore, wind related, and renewable energy development proposals

3.5 Benefits of the Wind Farm Proposal

The benefits offered by the developer as part of the proposal were a factor in the weighting of the issues in the Officer report. The Inspector in assessing these benefits strictly applied the CIL Regulations. This requires the benefits to be directly related to the development. He concluded that the identified benefits of the development are either likely to be capable of realisation elsewhere or they are not essential to the overall public interest.

This led the Inspector to discounting some of the benefits offered for e.g. the apprenticeship scheme. This affected the weighting of the issues in the planning balance. Overall he concluded that the benefits did not outweigh the significant adverse impacts. It remains difficult to assess the precise relationship between community benefits and planning decisions, but this decision reiterates the need to be extremely cautious in applying any significant weight to benefits which cannot be seen as directly mitigating the impact of development, or are not enshrined in national or local policy.

4.0 CONCLUSION

Following a thorough review of the case in the light of the Inspector's decision Officers are still firmly of the view that the recommendation put forward for this wind farm was correct at that time in the context of the NPPF and the status of the Copeland Local Plan.

As noted above the recommendation had been supported with Counsel's opinion as it was presented to members. The appeal was heard 8 months following the refusal of planning permission. In the intervening period the Core Strategy and Development management policies DPD have acquired significant weight. There has also been a significant shift in both Government stance and policy position with regards to renewable energy. In particular the issue of the Ministerial guidance on renewable energy in July 2013 has redressed the balance. The Inspector placed great emphasis on this guidance in his decision and this has reinforced the role of the Wind Energy SPD and Landscape Character Toolkit. The emergence of the Core Strategy has DM policies reinforced the role of the SPD and the Landscape Character Toolkit. Any new application for this or similar development would have to be considered on its merits. Care must be taken not to prejudge the determination of any future applications. However, the change in national and local policy positions would clearly now provide scope for the balance of material considerations to support a recommendation different to that presented to Members in mid-2012.

Once members determined that the application should be refused it was incumbent on Officers to seek to present the best possible case to defend that decision. It was always expected that the developer would challenge a decision to refuse through an appeal irrespective of the Officer recommendation. There was inevitably a cost to the Council, as in all such cases of defending the panel's decision. Critically, in this case it was important to ensure that even if the Council could not prevent a permission being granted on appeal, it was possible to demonstrate that the decision had been made rationally and that evidence could be produced to support the Council's concerns. A highly experienced barrister and specialist consultants were commissioned to support Officers in the defence of the decision. This approach although costly, ensured that a robust case was presented, avoiding the potential threat of a costs claim against the Council and in this case providing an argument which together with changes in policy enabled the Inspector to dismiss the appeal

This decision is significant and will help the Council in its assessment of other wind farm proposals in the future but it does not automatically mean that the Council can oppose all wind turbine development. Each case has to be judged on its merits on the basis of current policy and guidance. The Council is fortunate in that it now has an adopted Core Strategy and Development Management Policies DPD that is consistent with the NPPF. It also has an adopted Wind Energy SPD and a recent Landscape Character Guidance toolkit as a basis for robust assessments.

5.0 OTHER USEFUL POINTS THAT WILL HELP WITH THE CONSIDERATION OF TURBINES IN THE FUTURE

5.1 Landscape Assessments

The presence of the Wind Energy SPD and the Landscape Character Assessment Toolkit provide a useful basis on which to assess wind farm proposals. The SPD provides an assessment of landscape types to accept turbines. The weight attached to this by the Inspector clarifies its usefulness even though it was adopted in 2007.

The Cumbria Landscape Character Toolkit is a recent assessment (2011) and provides a baseline for character and perceptual character.

The recent Ministerial Statement reinforces the role of these two documents in the decision making process.

5.2 Cumulative Assessments

The decision provides useful clarification that wind farms which have a separation distance of less than 1 km are likely to have a significant cumulative impact.

The Inspector places great importance of the presence of an existing wind farm within this landscape type.

5.3 Reason for Refusal

The Inspector makes reference to the wording of the reason for refusal. He suggests that the 3 issues should have been set out as 3 separate reasons rather than included in one reason.

The Inspectors decision also highlights the importance of having sufficient evidence to back up all of the reasons for refusal. There is a tendency to throw in issues that cannot be defended. In this case the impact of the visual amenity of settlements was included but could not be substantiated as a reason for refusal.

Contact Officer: Nick Hayhurst – Senior Planning Officer

Background Papers: Planning application file, Secretary of State letter and Inspector's decision letter.

APPENDIX 1 – Summary of cases recovered by the Secretary of State

REFERENCE	SITE	No OF TURBINES	TURBINE HEIGHT	MAIN ISSUES	DECISION
Pins - 2174982	Turncole Farm, Southminster Dengie Maldon District Council	7 turbines 12.6 MW	127 metres	Visual impact	Awaiting decision
	Treading Fenland and South Holland	6 turbines 15 MW	126 metres	Visual impact Impact on amenity and living conditions Impact on cultural heritage	DISMISSED Original decision against Officer recommendation
10/00751 Pins - 2191290	Asfordby Melton Borough Council	9 turbines 20.7 MW	125 metres	Impact on heritage assets Impact on visual impact	Awaiting decision
Pins - 2149434	Nuns Wood Milton Keynes District Council	12 turbines 22 MW		Visual impact	DISMISSED
11/02028/FU LEIS Pins - 2186522	Orchard Way Milton Keynes District Council	5 turbines	127 metres	Visual and landscape impacts Residential amenity	Awaiting decision
Pins - 2161066	Orby East Lindsey District Council	9 turbines 11.7 MW			Awaiting decision Likely May 2014