

15 November

ehsca

Town and Country Planning Act 1990
Appeal by Enertrag (UK) Limited
Land at Busseys Loke, Hempnall, Norfolk

Application reference: 2008/0917

Grounds of appeal

1.0 Introduction

- 1.1 This is an appeal against the decision of South Norfolk District Council ("the Council") to refuse planning permission for the erection and operation of seven wind turbines, together with associated infrastructure and services on land at Busseys Loke to the north-east of Hempnall, Norfolk ("the appeal site").
- 1.2 The development would consist of 7 wind turbines with a blade tip height of up to 125m (hub height approximately 85m), associated infrastructure including a switch room, a series of interconnecting cables and access tracks to the turbines ("the proposed development").
- 1.3 The planning application was made to the Council on 21 April 2008 and validated on 28 April 2008. The development was refused by the Council by notice dated 14 August 2008.

2.0 Policy framework

National energy policy

- 2.1 There are clear aims and policies at national, regional and local levels that underline the need to achieve renewable energy targets. The Government renewable energy target is to generate 10% of UK electricity from renewable energy sources by 2010 and its aspiration is for this level to double by 2020. Energy policy and energy related land use planning policy is explicit and up to date with the publication of (1) Meeting the Energy Challenge: A White Paper on Energy and (2) Planning for a Sustainable Future in May 2007. When these documents are read in concert with:

- The Stern Review Report of the Economics of Climate Change
- The 4th Report of the Intergovernmental Panel on Climate Change
- The Annex on Climate Change to PPS 1
- PPS 22

there is no reasonable room for dispute regarding the seriousness of climate change and its potential effects; the seriousness of the need to cut carbon emissions; the seriousness of central government's intentions regarding deployment of renewable energy generation; or the seriousness of central government to tie the United Kingdom to binding European wide greenhouse gas emission targets.

- 2.2 The Annexe on Climate Change to PPS 1 expressly states that the proposed development should expect expeditious and sympathetic treatment in the domestic planning system.

Adopted development plan

- 2.3 For the purposes of section 38(6) of the Planning and Compulsory Purchase Act 2004, the starting point for determination of this appeal is the adopted development plan. The position has changed since the application for planning permission was submitted and the adopted development plan now comprises:

- The East of England Plan (The Revision to the Regional Spatial Strategy for the East of England) (May 2008)
- Saved policies of the South Norfolk Local Plan

- 2.4 Planning Policy Statement 12: Local Development Frameworks (2004) set out the Government's policy on the preparation of local development documents which will comprise the Local Development Framework (LDF). LDFs are to replace adopted Local Plan.

Regional planning guidance

- 2.5 The East of England Plan was published in May 2008, replacing the Norfolk County Structure Plan.

- 2.6 Within the East of England Plan the most relevant policies are considered to be as follows:

- Policy ENG2 – Renewable Energy Targets
- Policy ENV6 – the Historic Environment

- 2.7 This policy supports the development of new facilities for renewable power generation, setting a regional target of 10% of electricity generation from renewable energy sources by 2010 and 17% by 2020. The 2010 target equates to a target of at least 1192 MW of installed capacity (820 MW excluding offshore wind). The current figure for the region is 457.5 MW (397.5 MW excluding offshore wind).

National planning policy

- 2.8 PPS22 (Renewable Energy) makes it clear in Key Principle (i) that renewable energy developments should be capable of being accommodated throughout England in locations where the technology is viable and environmental, economic and social impacts can be addressed satisfactorily. Key Principle (iv) states that the wider environmental and economic benefits of all proposals for renewable energy projects, whatever their scale, are material considerations that should be given significant weight in determining whether proposals should be granted planning permission.
- 2.9 PPS7 "Sustainable Development in Rural Areas" requires Local Planning Authorities to provide for the sensitive exploitation of renewable energy sources in accordance with the provisions of PPS22.

South Norfolk Local Plan

- 2.10 Pursuant to the provisions of the Planning and Compulsory Purchase Act 2004, the Council applied to the Secretary of State to save specified policies beyond September 2007. These saved policies provide the land use framework pending the adoption of the Core Strategy and other Development Plan Documents (anticipated to take place in 2010 and 2012 respectively).
- 2.11 The Local Plan makes provision for renewable energy with a specific section providing the policy background for renewable energy developments (UTL13). This policy provides a series of criteria for assessment of the acceptability of a proposed renewable energy development.
- 2.12 Within the Local Plan, the most relevant saved policies are considered to be as follows:
- Policy ENV1 – Protection of Landscape
 - Policy IMP8 – Safe and free flow of traffic
 - Policy IMP9 – Residential amenity
 - Policy IMP15 – Setting of Listed Buildings
 - Policy UTL13 – Renewable Energy

3.0 Reasons for refusal and grounds for appeal

- 3.1 Whilst the appellant clearly does not agree with the decision of the Council, its reasons for refusal are clearly worded and specific. Given the specificity of the wording, the appellant is entitled to assume that all of the grounds of objection to the proposed development are included within them and will prepare its witness evidence for the forthcoming inquiry accordingly.
- 3.2 The refusal notice set out five reasons for refusal. These are set out below with their related ground of appeal.

Reason for refusal 1

"1 The proposal is contrary to the provisions of the adopted South Norfolk Local Plan 2003 including, in particular, policies UTL13 (Renewable Energy), ENV1 (Protection of landscape), IMP8 (Safe and free flow of traffic) and IMP15 (Setting of listed buildings)."

Ground of appeal

- 3.3 Reason for refusal 1 refers to a number of issues. The issues of the potential impact on the landscape, listed buildings and highways are amplified in reasons for refusal 2, 3 and 5. A detailed response on these issues demonstrating that these reasons for refusal are not sustainable is set out under the respective reason for refusal below.
- 3.4 The appellant will demonstrate that the proposed development is compliant with adopted development plan policy. In the event that non-compliance with adopted development plan policy is found, the appellant will point to material considerations that would justify the grant of planning permission in any event.

Reason for refusal 2

"2 The proposal is in an area which has an extremely attractive and tranquil rural character which is pleasantly free of any visual clutter such as pylons or overhead lines. The introduction of seven wind turbines with a maximum height of 125 metres would be contrary to the above policies ENV1 and UTL13 as the landscape is of an essentially horizontal scale and the turbines would dominate the landscape destroying its current rural charm and character. Furthermore, the site is relatively open, particularly when viewed from the south and there are a number of attractive views to and across the site from nearby roads and public rights of way. By virtue of their height and dominance the turbines would have an unacceptable impact on the visual amenities of the area and the occupants of

nearby residential properties. The mitigation measures proposed in the Environmental Statement would not be adequate as the planting would only have any significant impact after 15 years (three-fifths into the scheme's ant." [sic]

Ground of appeal

- 3.5 The proposed development would not result in unacceptable significant effects to landscape character or visual amenity. The inherent effects on landscape character and visual amenity of modern commercial wind turbines are written into PPS 22 and its Companion Guide. Significant landscape and visual effects are only one consideration to be taken into account in assessing planning applications. Effects may be deemed significant and even harmful but they do not have to be rendered harmless to be acceptable. Many people are positively disposed towards wind farm development, both in concept and in practice. The appellant will draw on information contained in public attitude surveys to existing wind farms both from local residents and from visitors to demonstrate the wide spectrum of response to modern wind turbines.
- 3.6 The appeal site is not subject to any national statutory landscape designations. The likely significant effects of the proposed development on landscape character and visual amenity have been assessed, found acceptable and a rigorous assessment provided as part of the planning application.
- 3.7 The proposed development would not be contrary to Policy ENV1 of the Local Plan. The effects of the proposed development on the elements of the landscape important to its character do not warrant refusal on this ground. The elements of the local agricultural landscape offer a suitable context and scale for the development. The landscape is robust in character and this element of the ground of refusal is not sustainable.
- 3.8 The proposed development would not be contrary to Policy UTL13 of the Local Plan. The proposed turbines have been arranged around woodland blocks and hedgerows to connect to other large-scale landscape elements to reduce the potential adverse effects by limiting the frequency of views of the entire structure. Visibility from public footpaths is limited due to orientation, elevation and distance. There would be no unacceptable harm to the locality in terms of visual intrusion due to the scale of the host landscape and its capacity to accommodate wind farm developments.
- 3.9 Likely significant effects on residential properties have been assessed. The proposed development would not be contrary to Policy IMP9 of the Local Plan. The landscape within which the appeal site is located is remote and sparsely settled. The scattered villages tend to be inward looking and well-enclosed by vegetation. The likely significant effects of the wind farm would be reduced and localised accordingly.

Reason for refusal 3

"3 The wind turbines would have a harmful impact upon the setting of the grade 1 listed St Margaret's Church in Hempnall contrary to the above policy IMP15, with insufficient information being provided within the Environmental Statement to justify consent being granted."

Ground of appeal

- 3.10 The proposed development does not lie within the immediate or historical setting of St Margaret's Church. The immediate or historical setting of a listed building, being the area where there is a real interrelationship between the historic feature and its surroundings, is distinct from the wider visual setting within development is located. In particular, the immediate or historical setting of a listed building does not extend to the limits of intervisibility.
- 3.11 Policy IMP15 of the Local Plan requires special attention to be given to the design, scale and impact of proposals within the setting of listed buildings. The proposed development is located 0.98km from St Margaret's Church at its closest point (extending to 2.3km away for the most remote turbine). The proposed development would form part of the wider visual setting of the Church and there would be a high level of change in views from the churchyard directly facing the turbines. From the churchyard, approximately 40% of the width of the view would be occupied by the wind farm (bearing in mind that due to the very nature of the turbines there is an inherent visual permeability). There will also be a degree of change in views towards the Church. The likely significant effects would not be such as to materially harm the setting of the building.
- 3.12 The inclusion of the wind farm within the wider landscape where St. Margaret's Church is situated would not dilute the link between the Church and its setting, nor would the introduction of the wind farm result in the historical elements of the wider landscape being altered to the extent that the interrelationship with the Church would be significantly altered.
- 3.13 The lifespan of the proposed development would be limited in duration and the change in the wider landscape would be reversed with decommissioning of the wind farm.
- 3.14 On the basis set out above, the reason for refusal as a whole is not sustainable.

Reason for refusal 4

"4 The proposed wind turbine development would conflict with national and international safeguarding requirements and present a hazard to

the safe operation of aircraft in the vicinity of Norwich International Airport.”

Ground of appeal

- 3.15 It is accepted that the proposed development would be likely to appear on the radar screen at Norwich International Airport. The fact that a wind turbine or the proposed development as a whole would be visible on Norwich International Airport’s radar is not in itself sufficient to demonstrate an adverse impact on civil aviation interests justifying the refusal of planning permission.
- 3.16 The proposed development would have no impact on the minimum altitudes for aircraft flying in the vicinity, would not pose a physical hazard to aircraft or have an impact on aeronautical radio navigation equipment.

Operational and procedural measures would be available to Norwich International Airport which would provide adequate mitigation of any potential effects on commercial operations. The appearance of the wind turbines on the radar can be treated in a similar way to other sources of “clutter”, using the skill, experience and judgement of air traffic controllers.

Reason for refusal 5

“5 The junction of the B1332/B1527 on the route serving the site is considered to be inadequate to serve the development proposed, by reason of its restricted visibility. The proposal, if permitted, would be likely to give rise to conditions detrimental to highway safety contrary to the above policy IMP8.”

Ground of appeal

- 3.17 A Construction Access Route Assessment was submitted to the County Council as the Highway Authority and was approved in principle in January 2008, subject to working drawings and a Construction Management Plan being submitted and approved by the Highways Authority prior to the commencement of construction.
- 3.18 The proposed development would not be contrary to Policy IMP8. The B1332/B1527 junction has adequate sight distances for highway safety and the B1527 width and geometry is adequate for use by general construction traffic.
- 3.19 There would only be a minor adverse impact on the local road network for the duration of construction works. By virtue of the mitigation measures and Construction Management Plan, the proposed development would not impact upon highway safety or give rise to traffic congestion.

3.20 This reason is insufficient to justify refusal of planning permission.

4.0 Concluding remarks

4.1 The proposed development falls to be considered in an adopted development plan context in which the potential for wind energy development is supported. This support takes into account international and energy policy objectives. The contribution of the proposed development to the achievement of current regional targets for deployment of renewable energy policy would be material.

4.2 The proposed development would not result in unacceptable significant effects on landscape character or visual amenity. Whether they are regarded as positive or adverse, such likely significant effects can be substantially reversed.

4.3 When assessing the acceptability of the proposed development, the decision maker must weigh the benefits of promoting renewable energy against any likely significant effects. In this case, the Council failed to make a proper assessment of the planning balance and has not placed sufficient weight on the effects of climate change and the potential consequences of it for the Norfolk landscape.

4.4 The appellant reserves the right to amend these grounds of appeal in light of any material provided with the Council questionnaire or representations made by third parties.

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