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## Appeal Decision

Site visit made on 8 December 2015

**by Brian Cook BA (Hons) DipTP MRTPI**

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

**Decision date: 18 March 2016**

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**Appeal Ref: APP/K2420/W/15/3031279**

**Land North West of Barlestone Road, Bagworth, Leicestershire GR Easting: 443641; Northing: 308092**

- 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 AGR Renewables Ltd against the decision of Hinckley & Bosworth Borough Council.
  - The application Ref 14/00729/FUL, dated 28 July 2014, was refused by notice dated 12 November 2014.
  - The development proposed is a single wind turbine with a maximum blade tip height of up to 94m and associated infrastructure including turbine foundation, crane hardstanding, transformer and electrical equipment kiosks, temporary construction compound and ancillary infrastructure.
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### Decision

1. The appeal is dismissed.

### Procedural matters

2. Although the appeal was made by the company set out in the summary details above, the planning application was submitted by RES UK & Ireland Ltd. The applicant company confirmed by letter dated 20 July 2015 that the development interest had been transferred to the appellant company.
3. The Council determined on 5 August 2013 that an Environmental Impact Assessment would not be required. On receipt of the appeal the Secretary of State agreed with that conclusion.

### Policy Matters and Main Issues

#### *Policy matters*

4. The Council cites three saved policies from the Hinckley & Bosworth Local Plan, (LP), adopted in February 2001 in the reasons for refusal. The Hinckley & Bosworth Core Strategy was adopted in December 2009 but neither party refer to any of its policies. There is an emerging Hinckley & Bosworth Site Allocations and Development Management Policies Development Plan Document (DPD) which has been submitted for examination which is ongoing. The most relevant policy is DM2 which addresses the delivery of renewable energy and low carbon development. However, this policy has been subject to considerable alteration and I agree with the parties that in the circumstances very limited weight should be afforded to this DPD policy in accordance with paragraph 216 of the National Planning Policy Framework (the Framework).
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5. An important part of the supporting evidence base for DPD policy DM2 is the *Hinckley and Bosworth Renewable Energy Capacity Study* (RECS). Among other things, the RECS identifies opportunity areas for renewable and low carbon energy developments. The appellant's evidence is that the appeal proposal is sited within an opportunity area identified for wind energy development.
6. However, the report contains some important caveats as to its use in relation to those areas. First, it contains only a landscape sensitivity assessment. It specifically states that there will be many other factors influencing decisions on the location of wind turbines including impacts on visual amenity. Second, it provides strategic guidance at the landscape character area (LCA) level only; local variations in character need to be considered for individual proposals. Third, it does not negate the need for detailed landscape and visual impact assessment (LVIA) on a case-by-case basis in relation to an individual planning application. Finally, it should not be interpreted as a definitive statement on the suitability of a particular landscape for a particular development. Given these caveats and the current position of the DPD policy that may give expression to the RECS outcomes, I believe that very little weight should be afforded to what the appellant interprets as apparent support for a specific scheme in any particular opportunity area identified.
7. LP policy BE27 addresses only wind power and states that planning permission will be granted for wind farms and individual wind turbines where five criteria are met. The appellant contends that this policy is inconsistent with the Framework and thus out of date. As I understand the appellant's evidence, this is because it allows no room for a balance of considerations to be made with regard to any adverse effects being addressed satisfactorily.
8. Specifically, the appellant argues that criterion (b) does not reflect the planning test considered to be inherent in the *Overarching National Policy Statement for Energy* (EN-1) and the *National Policy Statement for Renewable Energy Infrastructure* (EN-3), both of which are quoted. The appellant contends that the test is to judge whether the visual effects on sensitive receptors outweigh the benefits of the project. The appellant then says that the appeal proposal should be considered in '...the more recent (than the LP) planning policy context which attributes weight to proposals that have been carefully designed, employ reasonable mitigation and allow for the wider benefits of a proposal to be engaged as part of a balance when considering the visual effects of a proposal.'
9. I do not believe the appellant's interpretation that this balance must be within the relevant policy rather than the plan as a whole to be correct. EN-1 and EN-3 were both issued in 2011 as guidance to the (then) Infrastructure Planning Commission in coming to the decisions that it would make on developments within its remit. Neither directly indicates the weight that should be attributed to the energy benefits of the proposal. Nor do they suggest that the benefits should be weighed against the harm before a conclusion is drawn on the issue of visual or landscape impact.
10. While footnote 17 to Framework paragraph 97 confirms that in decision-making the approach set out in EN-3 together with relevant sections of EN-1 should be followed, there is nothing in Framework section 10 to suggest that the benefits of renewable and low carbon energy should be specifically taken into account

before concluding on the acceptability of a proposal against any particular issue such as landscape and visual impact. This contrasts with Framework section 12 for example where a conclusion on whether consent for a proposal should be given requires harm to the significance of a heritage asset to be balanced against the public benefits of the proposal. It contrasts also with Framework paragraph 88 where, as a matter of policy, the weight to be attributed to any harm to the Green Belt is specified.

11. Instead, Framework paragraph 98 simply says that an application should be approved where its impacts are, or can be made, acceptable. Landscape and visual impact is therefore one of the impacts that must be judged. In my view, LP policy BE27 sets out the impacts that need to be judged and is therefore not inconsistent with the Framework.
12. To complete this review of the evolution of national policy, on 18 June 2015 a Written Ministerial Statement (WMS) was issued. Although entitled *Local Planning*, its sole focus is onshore wind turbine development. It sets out new considerations to be applied to proposed wind energy development so that local people have the final say on wind farm applications, thus fulfilling the commitment made in the Conservative election manifesto.
13. Both parties have commented upon the implications of the WMS for this appeal. In doing so, a number of planning appeal decisions by both the Secretary of State and Inspectors have been included or referred to and the appellant in particular has undertaken an analysis of the objections lodged by local people in this case. This analysis is both qualitative, in that the extent to which the planning impacts identified have been addressed is examined, and quantitative in that the number of representations are expressed as a proportion of the affected community. This is then compared with what the appellant estimates to be equivalent proportions in two decided appeals.
14. I have taken all these comments into account. In the circumstances of the DPD described above I consider that it is the transitional provision in the WMS that applies to this appeal. While I have no reason to doubt the accuracy of the appellant's quantitative analysis, that was not the approach that the Secretary of State took to assessing the extent to which the planning impacts identified by the affected local community had been addressed in either case<sup>1</sup>. Since these are two of the most recent decisions issued by the Secretary of State since the WMS was issued, I attribute substantial weight to the WMS in that context.

### **Main Issues**

15. An Environmental Report (ER) accompanied the planning application. This included separate and comprehensive assessments of, among other things, ecology, ornithology, landscape and visual impact, cultural heritage, noise and vibration, shadow flicker, transportation and access, hydrology and flood risk and electromagnetic interference and aviation. All of these matters have been the subject of review by the responsible officers within the Council and/or the appropriate external consultee such as Natural England, English Heritage (as it then was) and the Coal Authority.

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<sup>1</sup> APP/J0405/A/13/2194726 and APP/Y3425/A/14/2212769

16. These expert reviews have, with the single exception of landscape and visual impact, found either no evidential basis for the concerns expressed in the representations on the planning application or that the impacts can be addressed through the imposition of appropriate conditions. I have no evidence to disagree with the majority of those expert reviews. However, on the basis of my visit to the site and the surrounding area, I consider that the effect on cultural heritage matters (raised by local residents) is also of concern.
17. The main issues for the determination of this appeal are therefore:
- (a) The landscape and visual impact that the appeal proposal would have; and
  - (b) The effect that there would be on the settings of designated heritage assets.

## **Reasons**

### ***The landscape and visual impact that the appeal proposal would have***

18. The proposed wind turbine would be erected within an agricultural field to the west of the broadly linear village of Bagworth. As set out in the summary details above, it would stand just over 90m to the blade tip. It would stand at a high point locally but, from the perspective of the majority in the village, it would be beyond a line of overhead power lines and the associated pylons. Although in contrast to the wind turbine proposed these are open, static structures and they are, in my opinion, dominant features in this part of the landscape. Beyond them however, the landscape is open and extensive with the village of Nailstone and its prominent church tower easily seen as is the more distant church tower in what was identified by the parties as Market Bosworth.
19. Looking generally back towards Bagworth from the Nailstone area and the public rights of way such as the Ivanhoe Way the proposed turbine would be seen against the backdrop of the pylons and, to a lesser degree, the village itself. Also in the panorama are, to one side, another turbine (Stonehaven-110m to blade tip) that was under construction at the date of my site view and, to the other side, the business parks and industrial buildings in the direction of Ellistown and the A511. Some of these buildings have a verticality including a stack of modest height associated with one of them.
20. The wider landscape therefore exhibits many of the landscape characteristics of the Forest Hills LCA within which the appeal site lies. These are listed within the appellant's LVIA as:
- (a) Gently undulating landform with small plateaus on higher ground with the highest point being centred around Bagworth;
  - (b) Predominantly rural landscape with arable and rough set-aside, influenced by industrial/urban features such as masts, poles and pylons;
  - (c) Industrial heritage of quarrying and mining resulting in areas of restored land and new woodland within the National Forest;
  - (d) Generally large scale field pattern with groups of smaller fields surrounding settlements;
  - (e) Linear settlements of former mining villages with sparsely scattered farms on slopes in between;

- (f) Good public access areas and footpath network throughout, especially within the National Forest area;
  - (g) Visually open due to immature plantations; and
  - (h) Wide-ranging views from higher ground.
21. The appeal proposal would introduce an uncharacteristically large structure into this landscape and, moreover, one that would have significant movement associated with it when functioning as it is designed to do. It would therefore change the character of the area in which it would be located. However, in my view, that change would be appreciated from relatively confined areas within Bagworth and from some of the public rights of way and other highways in the near vicinity. Even that would be tempered to a degree by the existing and dominant pylons. In more distant views I do not consider that the proposed turbine would read as a significant new element in a landscape already characterised to a degree by vertical structures such as the pylons and an emerging wind turbine.
22. I turn briefly now to the cumulative impact that there would be from the appeal proposal and others that exist, are consented or are awaiting a decision. In doing so I have taken account of the advice in the Planning Practice Guidance (PPG). Most of the schemes within 5km of the appeal proposal are to the south east of it. Some are considerably smaller than the appeal proposal. While some would be seen in the same view from certain locations I do not believe that this would lead to the character of the area changing to one that could be described as an energy landscape.
23. These conclusions are generally consistent with those of the appellant's LVIA. This has been prepared very much in the context of the RECS findings and recommendations. The RECS considers the sensitivity of this landscape to single large-scale turbines (80m-135m) to be moderate. It defines 'moderate' as 'some key characteristics and qualities of the landscape are vulnerable to change from wind turbines. Although the landscape may have some ability to absorb some development, it is likely to cause some change in character. Care would be needed in locating turbines.' In my judgement that analysis is fair.
24. The LVIA considers the landscape effect as perceived by landscape receptors at various distances from the proposed turbine. For those receptors within 1km (generally the residents of Bagworth and some users of the highways in that area) the effect is assessed as 'moderate' or 'moderate/minor'. Such assessments are, notwithstanding the rigour inherent in the LVIA process, subjective to a degree. However, I see no reason to disagree with the appellant's view. Elsewhere in the LVIA it is confirmed that, unless otherwise stated, it is assumed that all effects are adverse.
25. On that basis, the appellant's own evidence is that there would be a conflict with LP policy NE5 in this regard since under criterion (i) planning permission will be granted for development in the countryside only where it does not have an adverse effect on the character of the landscape. This policy is not inconsistent with the core planning principles set out in Framework paragraph 17. LP policy BE1 is a general design policy applicable to all development. To the extent that it is relevant, there would be no conflict with criterion (a) since, in the widest sense, the appeal proposal would complement the character of the surrounding area as discussed above. On this part of the main issue I consider LP policy BE27 to be silent.

26. I turn now to visual impact. The appeal proposal is for a generic rather than a specific model of wind turbine. While the overall maximum blade tip height is specified, the hub height and blade length are not. However, the turning blades will be at the top of the structure and thus the most prominent element of the turbine will be in the widest view.
27. The appellant quotes EN-3 as saying wind turbines ‘...are large structures and there will always be significant landscape and visual effects....for a number of kilometres around a site.’ This is a recognition at national policy level that traditional mitigation measures such as planting or the erection of screen bunds are likely to be very limited in their effect and that it is sensitive siting and distance from important visual receptors that is likely to be most effective in ameliorating impact. Indeed, the appellant’s LVIA specifically states that ‘...the turbine would give rise to some level of ...visual effects, which are not feasible to mitigate by providing screening.’
28. The appellant’s LVIA considers this issue in considerable depth. Residential occupiers and users of the public rights of way are identified as having the highest sensitivity to visual effects and can therefore be interpreted as being the most important viewpoints from which the turbine would be seen.
29. As stated above, Bagworth is for the most part, a linear settlement. As such many of the properties will have a view from their gardens and rooms at first floor especially across the landscape into which the development would be installed. Most of these properties would be about 1km or slightly less from the development. From within the modern developments to the north of the village it would only be those properties on the edge that would have a view across the development given the layout of the estates and orientation of the buildings. From public rights of way there would be clear views to the turbine which in places, on the appellant’s evidence, are about 250m from the turbine.
30. The appellant’s LVIA assesses the visual effect on these and many other receptors such as a number of recreational facilities in the immediate and wider area as being ‘moderate’ at least in many cases. On the basis of my site view I believe that to be fair. As set out earlier, that equates to an adverse effect.
31. Dealing very briefly with cumulative visual impact, my view is that this would be limited. To the extent that others would be seen at all together or in sequence with the appeal proposal, this would be in the context of the landscape at large scale.
32. The appeal proposal would therefore conflict with LP policy BE27 since the proposal has not been located such that the proposal would not be unduly prominent in views from important viewpoints. It would also conflict with LP policy NE5 since it would have an adverse effect on the appearance of the landscape.
33. To conclude on this issue, I consider that there would be a conflict with the development plan for the reasons set out. The extent to which issues such as what the appellant terms the ‘Lavender test’ should weigh against that conflict will be considered when I turn to the planning balance.

***The effect that there would be on the settings of designated heritage assets***

34. This is the subject of a short section of the ER which, among other things, includes a very brief summary of the fuller settings assessment given in Appendix D of the ER.
35. The church at Market Bosworth is just beyond the 5km study area used for the cultural heritage assessment. Of the two churches referred to above it is only the Grade II\* Church of All Saints in Nailstone that has been assessed. The primary setting is said to be the churchyard grounds and its relationship with the buildings within the wider Nailstone settlement. However, both the LVIA and the cultural heritage sections of the LVIA refer to the tower and spire as a prominent feature in the landscape (the LVIA refers to it as a landmark), especially when viewed from the main approaches to Nailstone from the north, north west, north east and south. The proposed turbine would be to the north east.
36. Churches generally have an important historic and cultural role in society with the spires and towers reflecting and emphasising the power and significance of the institution. The height and prominence of such towers and spires ensured that this was appreciated over a wide area. That area should, in my judgement, be considered as part of the setting of the heritage asset. The visual supremacy of the church within that setting contributes to the significance of the asset.
37. In my judgement, the proposed turbine and the Church of All Saints tower and spire would be seen in the same view by walkers travelling from Bagworth towards Nailstone along a short length of the Ivanhoe Way until it passes beneath the power lines. For that short time the turbine would challenge the supremacy of the tower and spire in the landscape and cause an albeit limited degree of harm to the significance of the heritage asset. In that sole regard, I do not consider the appellant's assessment of the level of effect as 'neutral' to be correct.
38. Where less than substantial harm to the significance of a designated heritage asset would be caused, Framework paragraph 134 requires that harm to be balanced against the public benefits of the proposal. The PPG advises that a public benefit should flow from the development proposed and be of a nature and scale to be of benefit to the public at large and not just a private benefit.
39. In this case, the development would generate enough electricity to power the equivalent of at least 470 homes per annum at the annual average consumption figures assumed in the ER while saving some 21,600 tonnes of CO<sub>2</sub> emissions over the 25 year life of the project. My understanding is that this would be made available direct to the national grid rather than being used on the farm and would thus be a public benefit as defined.
40. In my view this modest contribution to the Government's climate change agenda would outweigh the very limited harm that I have found to the significance of the Listed church. There would therefore be no conflict with Framework policy in this regard.
41. In coming to this conclusion I have had the special regard to the desirability of preserving the setting of the Listed Building identified that is required by s66 of

the Planning (Listed Buildings and Conservation Areas) Act 1990. The courts have held that in this context 'preserving' means doing no harm. Where, as in this case, an albeit very limited degree of harm has been found, that harm must nevertheless be given considerable importance and weight in the balancing exercise required by Framework paragraph 134.

### ***Planning Balance***

42. Framework paragraph 6 explains that the policies in paragraphs 18 to 219, taken as a whole, constitute the Government's view of what sustainable development in England means in practice for the planning system. Those paragraphs give effect to the core planning principles in Framework paragraph 17. It is clear that a balance has to be struck between them when determining whether or not a proposal amounts to sustainable development. In doing so regard must be had to the three dimensions of sustainable development set out in Framework paragraph 7.
43. Framework paragraph 93 confirms that supporting the delivery of renewable and low carbon energy and associated infrastructure is central to all three dimensions. Applicants and appellants do not need to demonstrate the overall need for renewable or low carbon energy and decision makers must recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions (Framework paragraph 98).
44. However, although the appellant states that the appeal proposal will support the farming business as a reliable form of diversification, no evidence in the form of the contribution to the balance sheet going forward has been submitted. Any contribution to local employment is likely to be confined mainly to the construction period. The contribution to the economic role is therefore uncertain.
45. The renewable energy benefits contribute to the environmental role but for the reasons set out above, the development would not protect or enhance the natural and historic environment. There would be some harm to landscape character and visual appearance and less than substantial harm to the significance of a designated heritage asset. Although the latter does not give rise to a policy objection for the reasons set out, that is not the test when considering the environmental dimension of sustainable development. There would therefore be no positive contribution towards the environmental role overall.
46. Therefore, balancing the Framework policies as a whole it is my view that the development would not amount to sustainable development as defined in the Framework. The presumption in Framework paragraph 14 does not therefore apply. In any event, as set out above, I do not regard the development plan as silent or out of date. Nor would the appeal proposal accord with the development plan policies. In accordance with s38(6) of the 2004 Act the appeal should therefore be dismissed unless material considerations indicate otherwise.
47. Although I have found that there would be a conflict with LP policy in respect to both landscape character and visual impact, in both cases the harm would be limited in my view. The perception of harm to landscape character would be confined to a relatively small area within about 1km of the proposed turbine. The visual impact would not be such as to make any property unattractive and



thus an unsatisfactory place in which to live (the so-called Lavender test). In my judgement limited weight should be given to the development plan conflict in the planning balance.

48. That however is not the view of those of the affected local community who have made representations. Applying the transitional provision set out in the WMS, I am not satisfied that the planning impacts identified by that community have been addressed. These include the effects that there would be on the landscape character, visual impact and the effect on the view of the church in Nailstone. Having concluded that the proposal would have some limited impact in regard to all three matters, I conclude that those planning impacts as identified by the affected communities have not been addressed. As such the proposed development would not meet the transitional arrangements set out in the WMS. Significant weight should be given to this non-compliance.
49. Having weighed all relevant considerations, I conclude that the factors which weigh in favour of the proposed development (which are the contribution to renewable and low carbon energy and the reduction in greenhouse gas emissions) do not outweigh the limited conflict with the development plan identified and the material consideration to which significant weight must be given. The outcome of this balancing exercise indicates that the appeal should be dismissed. In this respect I note that my decision is consistent with those of the Secretary of State issued and drawn to my attention since the WMS was published and with that in respect of two turbines near Stone Park Farm (APP/Y3425/A/2212769) in particular. This was issued on 21 October 2015 and is one of those referred to by both parties.

### **Conclusion**

50. For the reasons given above I conclude that the appeal should be dismissed.

*Brian Cook*

Inspector