
Appeal Decision

Site visit made on 28 March 2017

by Richard Clegg BA(Hons) DMS MRTPI

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

Decision date: 16th May 2017

Appeal Ref: APP/N2739/W/16/3157826

Oak Tree Farm, Hospital Lane, Selby Common, Selby, YO8 3RE

- 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 R & B Hind against the decision of Selby District Council.
 - The application Ref 2014/1307/FUL, dated 16 December 2014, was refused by notice dated 9 March 2016.
 - The development proposed is the erection, 25 year operation, and subsequent decommissioning of a 500kW wind turbine of 77.9m to blade tip, including associated infrastructure.
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Decision

1. The appeal is dismissed.

Procedural matters

2. On the application form the location of the site is given as Hospital Lane, Selby Common. It is apparent from the submitted plans and my visit that the site is at Oak Tree Farm, and I have identified it accordingly in the appeal details above.
3. In its representations, an informal community group argues that the appeal is invalid due to the inadequacy of pre-application consultation¹. The statement of community involvement explains that a mailshot was sent to residents within a 1km radius of the site, with a follow-up visit to discuss the proposal. Whilst the community group acknowledges that these measures were undertaken it disputes that all residents were contacted, and complains that no efforts were made to address concerns raised. It is alleged that 5 out of 23 properties were not notified. In the absence of agreement between the Appellants and the community group, I cannot be certain that the pre-application was comprehensive as intended. However I consider that the approach set out was satisfactory, and I note that the Council validated the application. Moreover it is clear from the extent of representations at both application and appeal stage that the local community is aware of the proposal and has responded to it. I do not consider that prejudice to any parties would be caused by determination of the appeal, and in the circumstances of this case, that it is appropriate for me to proceed accordingly.

Main Issues

4. I consider that the main issues in this appeal are:

¹ Appendix 2 to the community statement submitted by Mr I C Vinton.

- (i) The effect of the proposed development on the character and appearance of the area.
- (ii) The effect of the proposed development on the living conditions of nearby residents, with particular regard to noise and shadow flicker.
- (iii) The effect of the proposed development on nature conservation interests.
- (iv) The effect of the proposed development on heritage assets.
- (v) The effect of other considerations on the overall planning balance.

Reasons

Character and appearance

5. The appeal site lies in open countryside, about 3km to the west of Selby. In the *Landscape Assessment of Selby District*, prepared for the Council, Oak Tree Farm is included within the West Selby Plain Local Landscape Character Area (LLCA). The report identifies the key characteristics of this area as including extensive flat open and low-lying arable farmland, within which are large fields with few trees or hedgerows. It also refers to a belt of semi-enclosed landscape with hedgerow trees and small woodlands to the north-east of Bishop Wood: the plan of the West Selby Plain shows Oak Tree Farm within this landscape character type. The Appellants' Landscape and Visual Impact Assessment (LVIA) refers to the landscape as having a low sensitivity to the proposed development, taking into account its susceptibility to the type of change proposed and its value. Overall the landscape of the LLCA is not identified as being of particular scenic interest, containing extensive areas of typical arable farmland. The relatively large scale of the field pattern and the flat landform lessen the susceptibility of the landscape to change from development of the type proposed. Taking these factors into account, I agree with the Appellants that, overall, the appeal site is located within a landscape of low sensitivity to the development of a single wind turbine.
6. The Appellants have drawn attention to two regional studies concerning renewable energy development in Yorkshire and Humber. *Planning for Renewable Energy Targets in Yorkshire and Humber* was published in 2004 for the former Government Regional Office. Volume 3 explains the approach to defining the sensitivity of different parts of the region. The appeal site falls within Zone 4, which comprises those areas with the lowest sensitivity to wind energy development. I note that the Introduction to Volume 3 explains that sensitivity has been defined at a strategic and relatively coarse scale, and that the Summary makes clear that, whilst the maps produced give an overview of where there is likely to be scope for wind energy development, as they are at a strategic scale they are not intended to provide guidance for individual applications. Furthermore one of the listed caveats is that the visual effect on people of the changes in available view was not specifically addressed. The report of a subsequent study, *Low carbon and renewable energy capacity in Yorkshire and Humber*, was published in 2011 for Local Government Yorkshire and Humber. On the energy opportunity plan for Selby, the appeal site lies within a practically viable resource area for wind energy, although this plan is presented at a small scale.
7. The West Selby Plain LLCA extends well beyond the vicinity of Oak Tree Farm. The erection of a single turbine, with a small footprint, would cause only minor

harm to this character area of low sensitivity to such development. There would, however, be a markedly greater impact within the immediate vicinity. With an upper blade tip height of 77.9m and about 50m to the hub, the turbine would be a sizeable vertical structure. Although it would be set back from Hospital Lane and be located only a short distance from the eastern side of Bishop Wood, it would represent a dominant feature in this predominantly open landscape for a prolonged period of 25 years. A line of pylons crosses the field between the position proposed for the turbine and the farmstead, and a lower electricity transmission line runs nearby to the south. These existing urban influences are less imposing than the uncompromising form of the proposed turbine. I note that the Appellants have offered to undertake mature planting along the boundary of land within their control. However neither this work nor the proximity of the position to Bishop Wood would sufficiently assimilate the turbine into the surrounding landscape, notwithstanding the low sensitivity of the West Selby Plain LLCA. I consider that the development would cause moderate harm to the landscape around Oak Tree Farm.

8. I have considered the cumulative effect of the proposal with other wind energy developments. The location of operational, permitted and proposed turbines and wind farms is shown in the LVIA², and this information has not been disputed by the Council. A single turbine at Commonsides Farm is the closest operational site: and this turbine is 6.6km to the south-east, on the far side of the urban area of Selby and in a different LLCA. The site of the proposed Gateforth windfarm is somewhat closer, but at 5.5km it would be clearly set apart from the appeal proposal, and is also in a different LLCA. Given the respective locations of the appeal site and other turbine developments, I do not consider that the proposal at Oak Tree Farm would result in an adverse cumulative effect on the character of the landscape.
9. The LVIA includes a series of six viewpoints, all of which I included in my programme of site visits. From nearby positions to the north-east on Hospital Lane (viewpoint 1 – VP1) and to the north on Scalm Lane (VP2), the turbine would appear as an extremely prominent feature across open fields, generally being seen as taller than the pylons, electricity poles and tree cover in the vicinity. It would be a dominant feature in views in the vicinity of Oak Tree Farm, and in consequence it would cause moderate localised harm to the appearance of the area.
10. The visual impact of the turbine would diminish with distance. A photomontage indicates that the upper part of the turbine would be visible from the public footpath north of Thorpe Hall (VP3), about 1.2km to the south. From here the turbine would be seen beyond intervening trees and hedgerows, and because of the greater distance its height would not appear dissimilar to that of trees closer to the viewpoint. In views from the edge of Wistow (VP5, about 2.6km to the north), the western edge of Selby (VP4 – about 2.8km to the east), and the A63 in Hambleton (VP6 – about 2.9km to the south-west), the combination of distance in a flat landscape and tree cover would largely assimilate the turbine at Oak Tree Farm into its surroundings. From Scalm Lane to the west, the density of Bishop Wood has a considerable screening effect. It may be possible to discern the blade tips above the tops of the trees from the road and the leisure facilities at Scalm Park, but I do not consider that this limited view would have a harmful effect. The photomontages for VP5 and VP1 indicate that

² Figure 1.6 of the LVIA.

several turbines at the proposed Gateforth windfarm would be seen beyond that at Oak Tree Farm: these would be over 5km further away, and as a result of their greater distance they would not be distinctive features from these vantage points, and I do not consider that there would be an adverse cumulative effect as a consequence of the appeal proposal.

11. I have found that the proposed development would cause only minor harm to the character of the West Selby Plain LLCA as a whole, but that there would be moderate harm to the landscape of the area around the appeal site. There would also be moderate localised harm to visual amenity from nearby viewpoints, and a minor impact from further away. I conclude that overall the proposed development would have a moderate adverse effect on the character and appearance of the area. It would, therefore, conflict with Policy SP19 of the Core Strategy, criterion (a) of which requires all development to make the best and most efficient use of land without compromising local character amongst other attributes, and with Policy ENV1(1) of the Local Plan.

Living conditions

12. Objections have been made by members of the local community to the effect of the proposal on the living conditions of residents in the vicinity of the appeal site. There are a number of dwellings scattered along the rural roads of Selby Common. Other than the house at Oak Tree Farm, which has a financial involvement in the proposal, the nearest dwellings are Longwood and Moss Hagg Farm on Hospital Lane, which are about 500m to the north-east. Tall conifers to the front and south of Longwood would restrict visibility, and I anticipate that views towards the position of the turbine would be heavily filtered from this property. Clearer views would be available from Moss Hagg Farm, although direct aspects from here are not towards the position of the proposed turbine. Spinney House is situated about 600m to the north of the appeal site, and it is likely that the turbine would be a prominent feature in the outlook from the rear of this property and its garden. I note that the Appellants' LVIA finds that there would be a moderate visual effect in respect of both Moss Hagg Farm and Spinney House,³ and this is a view which I share. Other dwellings are further away, with trees and bushes restricting views towards the site.
13. Concerns have also been raised by local residents about the effects of noise and shadow flicker. Guidance on noise levels is given in *The Assessment and Rating of Noise from Wind Farms* (ETSU-R-97). The Appellants' assessment indicates that none of the nearby dwellings would be subject to noise levels in excess of $L_{A90,10min}$ of 35dB(A) at wind speeds of up to 10m/s⁴. A condition is suggested to limit noise levels at non-associated dwellings accordingly, and ETSU-R-97 advises that, in the case of a single turbine, such a condition would offer sufficient protection of amenity. I note that the Council's Lead Officer for Environmental Health & Housing agrees that the development is capable of achieving the ETSU-R-97 limit. I have no reason to take a different view, and with the safeguard of conditions concerning noise levels, I do not consider that the operation of the turbine would have an adverse effect due to noise, and in this respect it would not, therefore, conflict with Policy ENV2 of the Local Plan.

³ Table 1.12, LVIA.

⁴ The Appellants' supporting statement, section 4.6 and Appendix 4.

14. Shadow flicker has also been assessed. The main parties agree that the potential for shadow flicker to occur is within a distance of 10 times the rotor diameter, which in this case would equate to 540m. Dwellings at Longwood and Moss Hagg Farm are within this distance and to the north-east of the turbine's intended position. I share the view expressed by the Council in its report on the planning application, that any potential adverse effect could be satisfactorily addressed by a condition requiring a protocol for the assessment of shadow flicker and the implementation of remedial measures if required.
15. I do not consider that the proposal would have a materially harmful effect in respect of noise or shadow flicker. However the turbine would appear as a prominent feature in the outlook from Moss Hagg Farm and Spinney House, and I conclude that it would cause moderate harm to the living conditions of their occupants.

Nature conservation

16. An ecological report accompanied the planning application, and considered the likely presence of protected species in the field where the turbine would be erected. Badgers are likely to be present in the area, and may forage in the field. However no setts were found within the appeal site. The report also considers that bats are likely to be present in the area. It notes, though, that Bishop Wood has greater potential to provide foraging opportunities than the field, with the edge of the woodland acting as a commuting route. The turbine would be positioned more than 50m from the woodland, in line with Natural England guidance for a buffer zone from foraging habitats. Low numbers of reptiles could be present in the area, but it is considered unlikely that they would be found in the arable field.
17. Bishop Wood is identified on the Local Plan proposals map as a site of importance for nature conservation. At its closest point, the appeal site would be about 100m from the eastern edge of the wood, and neither construction nor operational activity would interfere with this nature conservation site.
18. Concerns about the effect of the proposal on wildlife have been expressed by the local community, but there is no detailed evidence before me to indicate that any harm would be caused by the erection of a turbine in an arable field at Oak Tree Farm. On the information before me, I conclude that the proposed development would not adversely affect nature conservation interests, and that it would not conflict with Policy SP18 of the Core Strategy, which seeks to safeguard the natural environment, or Policy ENV9 of the Local Plan which protects site of importance for nature conservation.

Heritage assets

19. There are a number of heritage assets in the surrounding area. Of most relevance to this case are the scheduled ancient monument and listed building at Thorpe Hall, which are about 1.3km to the south of the appeal site. I am required by Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses.
20. Thorpe Hall is a grade II listed building, which is situated within the extent of a scheduled ancient monument, Thorpe Hall moated monastic grange. The Hall

is a substantial building, the main elevation of which faces south-east across gardens. Its setting includes the surrounding open landscape. The setting of the ancient monument, which has a less substantial physical presence, is more restricted. The reasons for designation of the ancient monument explain that a monastic grange was a farm owned and run by a monastic community. The grange at Thorpe Hall was held by Selby Abbey, and there is specific reference to fields associated with the grange. As such the contribution of the nearby fields to its significance is important, and, notwithstanding the line of trees alongside Dam Lane to the north, the open landscape also emphasises the physical presence of the listed building. Although it comments that the turbine would be a relatively small feature within the wider landscape setting adjacent to electricity infrastructure, the Appellants' cultural heritage assessment⁵ acknowledges that views towards the turbine would be possible from within the eastern part of the ancient monument and that long distance views could be possible from the upper floors at the rear of Thorpe Hall. Moreover the proposed turbine would be clearly apparent from the north of Thorpe Hall, within the setting of both the listed building and the ancient monument.

21. I note that English Heritage has no objection in principle to the proposal given the degree of modern energy generation infrastructure in the landscape, and it considers that the impact on the ancient monument would be acceptable, provided that the height of the turbine is justified and an archaeological watching brief is employed (the latter could be required by means of a condition). In its consultation response, English Heritage referred to views of Eggborough power station. The power station is about 8km to the south of the appeal site, and whilst visible in the distance, it is not unduly prominent in the area of Selby Common. Moreover the turbine would be appreciably taller than the pylons which cross the fields by Oak Tree Farm, and I do not consider that the extent of energy generation infrastructure in the landscape is such as to lessen the impact of the proposed development within the setting of the heritage assets at Thorpe Hall. Although framed by foreground trees, and notwithstanding my finding that there would be no material harm to visual amenity from this general location (above, para 10), the bold vertical lines of the 77.9m turbine would encroach into the setting of the listed building and the scheduled ancient monument, causing moderate harm to their significance.

Other considerations

Renewable energy

22. The turbine would produce electricity from a renewable source, thereby contributing to the lowering of carbon outputs. This benefit would support objectives of the National Planning Policy Framework (NPPF) to secure radical reductions in greenhouse gas emissions (paragraph 93) and to support the move to a low carbon future (paragraph 95). At paragraph 5-001, Planning Practice Guidance (PPG) explains that increasing the amount of energy from renewable and low carbon technologies will help to make sure that the UK has a secure energy supply, reduce greenhouse gas emissions, and stimulate investment in new jobs and businesses. It continues to say that planning has an important role in the delivery of new renewable and low carbon energy infrastructure in locations where the local environmental impact is acceptable. Both the Overarching National Policy Statement for Energy (EN-1) and the

⁵ Appendix 1.1 to the Appellants' Supporting Statement.

National Policy Statement for Renewable Energy Infrastructure (EN-3) refer to the contribution which onshore wind projects can make to meeting renewable energy targets. The proposal would also be consistent with other documents relating to energy policy, including the UK Renewable Energy Strategy, the UK Renewable Energy Roadmap Update 2013, and the Committee on Climate Change's Report on the UK's Fifth Carbon Budget.

23. Reflecting national planning policy in the NPPF and national energy policies, the Core Strategy supports the principle of renewable energy generation, and it refers to a local target for grid-connected renewable energy within the District of 32MW by 2021. Part C of Policy SP17 envisages a range of low carbon and renewable energy schemes coming forward, including proposals which would contribute to meeting or exceeding the local target of 32MW by 2021. It is envisaged that the turbine could produce 1,600,000kwh of electricity annually⁶. The Appellants acknowledge that the contribution to energy supply would be minor, but also point out that the proposal would assist in increasing energy security. I attach significant weight to the contribution of the proposal to a reduction in carbon emissions through the generation of electricity from a renewable source.

Social and economic implications

24. The Appellants argue that during construction, local sourcing would be preferred where possible, and that the use of local services and the transport of the turbine would also provide economic benefits. They also acknowledge that certain specialist contractors from outside the area would probably be required, and there is no mechanism for ensuring that services and supplies would be purchased locally. Reference is made by the Appellants to the business rates payable in respect of the turbine, which they estimate at about £6,025 per year. However paragraph 21b-011 of PPG advises that it would not be appropriate to make a decision based on the potential for the development to make money for a local authority, and accordingly I give little weight to this consequence of the appeal proposal.
25. The appeal proposal was originally put forward on the basis that it would provide electricity and a diversified income stream to the farm⁷. That is no longer the case. A letter on behalf of the Appellants explains that, due to a change in support prices for renewable energy, the farm can no longer borrow the funds to build the turbine and diversify the business in this way⁸. A community energy group known as *The Friends of Oak Tree Turbine* has been formed to bring forward the proposal as an equity based community project for investment in conjunction with the charity, York Community Energy. It is envisaged that a co-operative would be established which would be wholly owned by the community, giving people a stake in generating renewable energy at a local level. Reference is made to a potential return of up to 6% to investors and an annual charitable surplus of over £10,000 to local good causes. A condition which would require the development to be undertaken by a community benefit society is suggested by the Appellants, with the stated reason being to ensure that social environmental and economic benefits are delivered for the communities of Selby. However the limited information before me does not fully explain how the turbine would operate as a community

⁶ Letter dated 29 December 2016 from Mr T Hind of Oak Tree Farm.

⁷ The Appellants' Supporting Statement, section 1.3, page 6.

⁸ Mr Hind's letter of 29 December 2016.

venture to provide economic and social benefits. There is nothing before me to indicate that this community venture is being taken forward through a neighbourhood plan, and consequently, contrary to the Appellants' assertion, part B of Policy SP17 of the Core Strategy does not apply. Whilst I acknowledge that certain economic and social benefits would arise from the appeal proposal, these aspects of the scheme merit limited weight.

Aviation

26. Doncaster Sheffield Airport Ltd submitted a holding objection to the planning application as it was considered that the turbine would be visible to the primary surveillance radar at Robin Hood Airport. Subsequently the Airport has advised that a mitigation solution is available, and has requested that both a legal agreement and a condition be employed to this end. No planning obligation has been submitted, but the Appellants have suggested a condition concerning a mitigation scheme which reflects the content of that referred to by the Airport. I am satisfied that such a condition would satisfactorily address the potential effect on the radar, and that aviation safety does not count against the appeal proposal.

The Written Ministerial Statement

27. On 18 June 2015, the Secretary of State for Communities and Local Government issued a Written Statement entitled *Local planning* concerning the considerations to be applied to wind energy development proposals, and certain consequential changes were made to PPG. Where, as in this case, a valid application had already been submitted, the Written Ministerial Statement (WMS) sets out a transitional provision whereby a proposal may be found acceptable, if, following consultation, it has addressed the planning impacts identified by affected local communities.
28. There is considerable local opposition to the proposal from individual residents, an informal community group, and Nigel Adams MP. There is also extensive support, including from the Friends of Oak Tree Turbine. I note that there are representations both in support of and against the proposed turbine from outside the local area. Referring to its effect on the character and appearance of the area, the living conditions of nearby residents and nature conservation interests, the Council argues that, as the scheme has not been amended to take account of the concerns raised, the planning impacts have not been addressed and the proposal does not have the backing of the local community.
29. I have found that the proposal would lead to moderate localised harm to the character and appearance of the area, the outlook from a few properties, and to the setting of two heritage assets. These are all matters on which concerns have been raised by the local community, and accordingly I find that the proposal has not addressed all of the planning impacts identified by the local community.

Conclusions

30. The proposal would have a moderate adverse effect on the setting of the listed building of Thorpe Hall and of the scheduled ancient monument of Thorpe Hall moated monastic grange, which would represent less than substantial harm to these heritage assets. Nevertheless, having regard to the statutory requirement to have special regard to preserving the setting of listed buildings,

I accord considerable importance and weight to the encroachment of the turbine into the setting of Thorpe Hall. In accordance with paragraph 134 of the NPPF, the less than substantial harm to heritage assets must be weighed against the public benefits of the development. The generation of electricity from a renewable source, contributing to a reduction in carbon emissions, is a public and environmental benefit to which I attach significant weight. As a renewable energy scheme, the proposal would align with various expressions of UK energy policy, but this is a consequence of the proposal, rather than an additional public benefit. Expenditure on goods and services in the locality and operation of the turbine as a community venture would produce some economic and social benefits, but they merit only limited additional weight. Paragraph 132 of the NPPF makes it clear that great weight should be given to the conservation of heritage assets, and I do not find that the public benefits present in this case outweigh the harm which would be caused.

31. Policy SP17 of the Core Strategy provides support for the development of low carbon and renewable energy proposals: however part C requires that schemes are designed and located to protect the environment and local amenity or demonstrate that the wider benefits outweigh any environmental and amenity harm. I have found moderate localised harm to the character and appearance of the area, to the outlook from certain properties, and to the setting of two heritage assets. Given that the benefits of the turbine development would not outweigh the harm to the heritage assets, they would not outweigh the totality of the harm identified, and the proposal would conflict with Policy SP17. There would also be conflict with Policy SP19 of the Core Strategy and Policy ENV1 of the Local Plan in respect of the effect on the character of the area. As there would be no adverse effects in respect of noise and nature conservation, the proposal would be consistent with Policies ENV2 & ENV9 of the Local Plan and Policy SP18 of the Core Strategy.
32. The proposal would have certain economic, social and environmental benefits, but the harm which would be caused to the character and appearance of the area, the setting of two heritage assets, and the living conditions of nearby residents detracts from its environmental and social credentials: accordingly I do not consider that it represents a sustainable form of development, and it is not, therefore, supported by Policy SP1 of the Core Strategy. I conclude that the proposal would be contrary to the Development Plan considered as a whole. Paragraph 98 of the NPPF provides support for energy development if the impacts can be made acceptable, unless material considerations indicate otherwise. In this case, the balance of considerations does not justify the erection of the turbine at Oak Tree Farm.
33. The Council refused planning permission on the basis of the WMS. Whilst I do not consider that the proposal has addressed all of the planning impacts identified by the local community, my concerns are about the direct effect of the turbine. My overall conclusion, having regard to all matters raised including the suggested conditions, is that the appeal should be dismissed.

Richard Clegg

INSPECTOR