

Appeal Decision

Site visit made on 12 and 13 March 2017

by R C Kirby BA(Hons) DipTP MRTPI

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

Decision date: 11th September 2017

Appeal Ref: APP/D0840/W/16/3158450 Pines Tip, Near Fraddon, Cornwall

- 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 REG Windpower Ltd against the decision of Cornwall Council.
 - The application Ref PA15/00955, dated 30 January 2015, was refused by notice dated 15 March 2016.
 - The development proposed is the installation of three wind turbines with a maximum height of 70 m to tip, electrical switchstation, crane hardstandings, site access, onsite access tracks, underground cabling, temporary construction compound and ancillary infrastructure on Pines Tip, south east of Fraddon, Cornwall.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. On 13 March 2017, I undertook an accompanied visit to the site. I undertook an unaccompanied visit to the surrounding area on 12 March 2017. I am also considering a proposal for 3 wind turbines and associated equipment at Scarcewater Tip¹ which has been submitted by the appellant. This is the subject of a separate Decision letter.
3. During the course of the appeal the Cornwall Local Plan Strategic Policies 2010-2030 (CLP) was adopted by the Council. Policies of the Restormel Borough Council Local Plan as set out in the Council's decision notice have been replaced by those within the CLP. Both parties were provided with the opportunity to comment on this matter and I have taken the comments received into account in my consideration of this appeal.

Main Issues

4. The main issues in this case are:
 - whether the principle of wind turbines in this location is acceptable, having regard to national and local planning policies;
 - the effect of the proposal on the landscape character of the area and the historic environment; and
 - whether any harm identified would be outweighed by the benefits of the scheme, including the production of electricity from a renewable source.

¹ Ref APP/D0840/W/16/3158674

Reasons

Planning Policy

5. Policy 1 of the CLP applies a presumption in favour of sustainable development. It states that when considering whether a development proposal is sustainable or not, account will be taken of its location, layout, design and use against the three pillars of economic development, social development and environmental protection and improvement.
6. CLP Policy 2 supports, amongst other matters, the delivery of renewable and low carbon energies providing the special character of Cornwall is maintained and respected. This includes the natural and historic landscape. This policy also supports development that will improve conditions for business and investment in Cornwall including supporting smart specialisation sectors such as renewable energies. This is expanded upon in CLP Policy 14. In the case of wind turbines, criterion c. of this policy supports such development where it is located within an area allocated by Neighbourhood Plans (NP) for wind power, and any adverse effects are either avoided or mitigated. The policy also states that support will be given to schemes that are led by, or meet the needs of local communities. When considering such development, the policy states that regard will be given to the wider benefits of providing energy from renewable sources, as well as the potential effects on the local environment, including any cumulative impact.
7. CLP Policy 12 requires development to achieve high quality design which maintains and enhances the distinctive natural and historic character of Cornwall. CLP Policy 13 requires the adverse impacts of development, either individually or cumulatively, to be avoided or mitigated. Such impacts include the visual effects of development. CLP Policy 23 has similar objectives to these policies requiring development to take into account and respect the sensitivity and capacity of the landscape asset, considering cumulative impact, amongst other matters.
8. Whilst not displacing the primacy of the statutory development plan in respect of renewable energy policies, the Council's renewable energy document² provides guidance in respect of renewable energy proposals, including the landscape sensitivity to on shore wind energy and the cumulative impacts of wind turbines.
9. In respect of the historic environment CLP Policy 24 requires new development to conserve and where appropriate, enhance the significance of designated and non-designated assets and their settings. Any harm to the significance of a designated or non-designated heritage asset must be justified. Proposals causing harm will be weighed against the substantial public, not private, benefits of the scheme.
10. There is a national imperative to develop renewable energy as set out in the numerous documents referred to by both parties in evidence. Underlying this is the European Union Directive 2009/28/EC which requires the United Kingdom to achieve a legally binding target of 15% of all energy to be generated from renewable resources by 2020. One of the core planning principles of the National Planning Policy Framework (the Framework) is to

² Cornwall Renewable Energy Planning Advice 2016

encourage the use of renewable resources. In meeting the challenge of climate change the Framework promotes and seeks to maximise renewable and low carbon energy development while ensuring that adverse impacts are addressed satisfactorily, including cumulative landscape and visual impacts (paragraph 97). Paragraph 98 of the Framework advises that planning applications for renewable energy should be approved if its impacts are (or can be made) acceptable. This includes the impact on the natural and local environment which the planning system should contribute to and enhance (paragraph 109). Economic growth in rural areas is also supported by the Framework.

11. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (paragraph 132). The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting.
12. On 18 June 2015 a Written Ministerial Statement (WMS) was issued stating that planning applications for wind energy development involving one or more wind turbines should only be granted planning permission where: the development site is in an area identified as suitable for wind energy development in a Local or Neighbourhood Plan and following consultation, it can be demonstrated that the planning impacts identified by affected local communities have been fully addressed and therefore the proposal has their backing.
13. Further advice on wind turbines is contained in the Planning Practice Guidance (PPG), which reflects the WMS. It also advises that the cumulative landscape impacts of a proposal are important considerations as to the effects of a proposed development on the fabric, character and quality of the landscape. Cumulative visual impacts may arise where two or more of the same type of renewable energy development would be visible from the same point, or would be visible shortly after each other along the same journey. The PPG advises that it should not be assumed that just because no other sites would be visible from the proposed development site that the proposal would not create any cumulative impacts.

Principle of Development

14. At the time the Council determined the planning application there were no development plan policies or NP which identified suitable sites for wind energy development. Accordingly the Council relied on the transitional provisions as set out in the WMS. In such instances local planning authorities could find the proposal acceptable if, following consultation, they were satisfied the application had addressed the planning impact identified by affected local communities, and therefore had their backing. However, since the Council's decision, the CLP has been adopted. The appeal site is not identified as being suitable for wind energy development within the CLP; indeed paragraph 2.96 of the plan makes it clear that no sites for wind energy development will be allocated unless they are included in a NP. Both parties agree that there is no NP for the area.
15. The appellant submits that in view of the above the transitional provisions set out in the WMS apply in this case and my attention has been drawn to a

number of planning appeal decisions³ to support this view. Whilst noting the submissions made, I do not consider that the transitional provisions apply in this case. This is because the WMS makes it clear that transitional provisions only apply where the application was submitted prior to the WMS (which it was) and where the development plan or NP do not identify suitable sites for wind turbines. Whilst the CLP does not specifically identify suitable sites for wind energy development within the body of the plan, it makes it clear that such sites should be included in NP. It is not silent on this matter. The particular circumstances of this case are materially different to the examples quoted and I find that they are not comparable, and I have afforded them limited weight in my consideration of the appeal proposal. In any event each planning application and appeal should be determined on its individual merits and this is the approach that I have taken.

16. The appeal site has not been identified as being suitable for wind energy development within the CLP or a NP. Accordingly the transitional provisions do not apply in this case. I therefore conclude that the principle of wind turbines in this location is not acceptable. The scheme would result in conflict with Policy 14 of the CLP and national planning policy as set out above. Given my finding in this regard, whilst there was both support and opposition to the scheme, it is not necessary to consider whether or not the proposal has the backing of the affected local communities.

Landscape Character

17. The appeal site is located within Landscape Character Area (LCA) 17 – St Austell or Hensbarrow China Clay Area⁴ described as a very varied, dramatic landscape of china clay waste tips and areas of rough vegetation, characterised by open pit mining. The mix of active and disused sites creates a dramatic 'lunar' landscape of huge, light coloured waste tips and settling ponds within a relic pastoral farming landscape. Dominant visual elements include the large white spoil heaps, either conical or flat topped in form. The site is located within close proximity to other LCA as set out in the main parties' evidence.
18. The appeal site is a flat topped spoil heap which is the result of former tipping activities at Pines Tip. The appellant has indicated that the plateau is approximately 220 metres in height above ordnance datum. There are steep sides to the plateau covered in grass and shrub which fall away to natural ground levels to the north and south. The wind turbines would be of a monopole design with three blades and would be a maximum height of 70 metres above ground level. The proposal also includes an access to the public highway, on-site access tracks and crane hard standings, an electrical switchgear building and ancillary equipment and a temporary site compound for the duration of the works.
19. Pines Tip is one of the highest points in the surrounding landscape, with extensive long distance views to and from it, in all directions. It is surrounded by open farmland and fragments of broadleaved woodland to the north and west, with China Clay workings to the south and east. The A30 runs to the north and north west of the site with the closest residential properties being at Pedna Carne Mobile Home Park which is located to the north.

³ Refs: APP/D0840/W/15/3097706; APP/H0928/W/15/3132909 and APP/A4710/W/15/3134617

⁴ Cornwall and Isles of Scilly Landscape Character Study

20. The area has been, and continues to be influenced by industrial activity as a result of the mineral workings, the numerous spoil heaps in the area, and the overhead power lines and pylons leading to and from the Fraddon electricity sub-station which is located at a lower level than the appeal site adjoining the road. Within the wider landscape and visible from the appeal site are a number of solar arrays and wind turbines, including a single wind turbine close to the site, at Melbur Brickworks.
21. The Council's renewable energy document indicates that within St Austell or Hensbarrow China Clay Area the overall sensitivity to wind energy development is moderate. The document states that the landscape strategy for this area is for a landscape with occasional wind energy development within the central part of the LCA, comprising small, medium or large clusters of turbines, up to and including Band D (up to 150 metres in height). This document recognises the particular sensitivity of the outward presenting edge of the Clay area which the appeal site is located close to.
22. The proposal would be sited on one of the highest landforms in the area. As a result of this and the size of the turbines they would be particularly dominant and prominent in the wider landscape, visible over a wide area including from nearby settlements, residential and tourist accommodation and from local roads including the A30. Whilst they would be viewed in the context of existing man made features in the landscape, including nearby electricity pylons, they would be significantly taller than these and their solid structure and moving upper parts as opposed to a lattice, static structure would draw attention to them. They would also be more intrusive than nearby wind turbines, which in the main are sited at a lower level than the appeal proposal would be.
23. Furthermore, the new turbines would be sited upon a landscape feature which forms part of the outward presenting edge of the mineral workings in the area. I consider that they would compete with the scale of this tip and significantly detract from the important, sensitive landscape features presenting the face of China Clay in the area.
24. Turning to consider the cumulative impacts of the proposal on the landscape character of the area, I was particularly struck during my site visit that existing turbines were visible in the surrounding area, along with other tall structures including pylons and other tall man-made structures, including from many of the viewpoints selected by the appellant in their Landscape and Visual Impact Assessment (LVIA).
25. The 3 wind turbines, sited in close proximity to each other would be largely viewed in the context of existing pylons located nearby. I am however concerned that their visual dominance and their solid appearance with rotating blades would be likely to draw the viewer's attention to the preponderance of turbines and other tall features in the landscape. This would be likely to result in a landscape perceived to be characterised by turbines and other tall man-made structures to an unacceptable degree. The relationship of the appeal site to other wind turbines and the intervisibility between would lead to wind energy development in the area being more than occasional which would conflict with the landscape strategy set out in the Council's renewable energy document. This would lead to a significant reduction in the landscape quality of the area. I have not taken the proposed wind turbines at Scarcewater Tip into account in my assessment as these do not benefit from planning permission at

this time. The presence of topography, landscape features and settlements would not mitigate the harm identified.

26. In light of the foregoing, I find the impacts of the proposed development on landscape character and appearance both singly and cumulatively, to be unacceptably adverse, contrary to CLP Policies 2, 12, 13, 14 and 23. There would also be conflict with the Framework in respect of the natural and local environment and visual impact.

Historic Environment

27. There are a large number of heritage assets within close proximity of the appeal site, as set out in the appellant's Environmental Statement and additional information submitted following consideration of comments made by Historic England. These include Listed Buildings, Scheduled Monuments, Registered Parks and Gardens, Conservation Areas and Areas of Great Historic Value. Whilst there are no heritage assets upon the site, it is necessary to consider the impact of the scheme on the setting of nearby heritage assets.
28. The starting point for consideration in respect of this matter is the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). Section 66(1) requires the decision-maker, in considering whether to grant planning permission for development that affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
29. The appellant's reports⁵ identified that there were a number of assets that were considered to have the highest sensitivity with wide ranging settings. These included a number of Scheduled Monuments and 4 listed buildings (Trewithen House (grade I listed), Meledor Farmhouse (grade II*) and the Churches of St Denis (grade II*), and St Enoder (grade I)). In all cases the appellant found that the impact of the proposal on the significance of these heritage assets and their settings was less than substantial.
30. The proposal would clearly be visible from a number of heritage assets. However, having regard to the relationship of the proposal to the respective heritage assets, the intervening distance, land forms and landscaping, I consider that the proposal would result in less than substantial harm to the significance of designated heritage assets including their setting. The Council and Historic England reached the same view after considering the submitted evidence, photomontages and wireframes. In accordance with paragraph 134 of the Framework it is necessary to weigh this harm against the public benefits of the proposal. This is considered below.

Benefits of the Scheme and the Planning Balance

31. The Framework makes it clear that local planning authorities should not require applicants for energy development to demonstrate the overall need for renewable or low carbon energy. It should be recognised that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions. There is no let-up in the Government's drive to increase the amount of renewable energy and no cap on the amount that may be generated.

⁵ As contained within the Environmental Statement and additional information submitted to address concerns raised by Historic England

32. The proposal has the potential to generate up to 7,500MWh of electricity each year which the appellant submits is sufficient to meet the average annual electricity needs of 1,700 Cornish homes. Some of the energy produced could be used by Imerys Minerals Limited, upon whose land the turbines would be sited and a Memorandum of Understanding⁶ has been submitted in this regard. This would reduce this company's electricity requirement and would utilise a low carbon source of energy. The project could be developed in the near future as all parties, including the landowner are willing to develop the scheme. The appellant company contracts out construction and maintenance work to local people. Overall there would be a positive effect on the local economy. The appellant has submitted a Unilateral Undertaking⁷ which makes provision for community ownership of all or part of the scheme which amounts to social and environmental benefits in its favour. Whilst noting the Council's concerns in respect of this matter, I have no evidence before me to demonstrate that such an approach is not a realistic option.
33. There were objections from the Parish Council and nearby Parish Councils to the scheme and from occupiers of nearby properties. There was also support for the scheme citing amongst other matters the acceptable landscape impact of the turbines and the benefits of wind energy. The WMS places importance on the concerns of local people and I consider this local support provides some further weight in favour of the proposal.
34. However, in this instance I find that the benefits, including public benefits are outweighed by the substantial harm arising from the effect of the proposal on the landscape character of the surrounding area and the less than substantial harm that would be caused to the setting of nearby heritage assets. The reversibility of the impacts of the scheme after 25 years does not outweigh this harm. Even if I had found that the transitional provisions set out in the PPG and WMS applied in this case, given that these matters were raised by the local community and nearby Parish Councils, I would have found that the scheme had not addressed the concerns raised, and in accordance with the advice contained in these documents, the proposal could not be approved.
35. Wind is a sustainable form of energy production but sustainability has to be considered in the round. The protection of the natural, built and historic environment contributes to the social and environmental strand of sustainability. I conclude that the balance is against the proposal and as such it would be contrary to CLP Policies quoted earlier in my Decision as well as CLP Policies 1 and 24, and national planning policy.

Conclusion

36. For the above reasons, and having regard to all other matters raised, the appeal is dismissed.

R C Kirby

INSPECTOR

⁶ Dated 20 February 2017

⁷ Dated 20 February 2017