
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/16/3158674
Scarcewater Tip, St Stephen, 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 Limited against the decision of Cornwall Council.
 - The application Ref PA15/00511, dated 19 January 2015, was refused by notice dated 17 March 2016.
 - The development proposed is the installation of three wind turbines with a maximum height of 92.5m to tip, electrical switchstation, crane hardstandings, site access, onsite access tracks, underground cabling, temporary construction compound and ancillary infrastructure on Scarcewater Tip, north west of St Stephen, Cornwall.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. On 13 April 2017, I undertook an accompanied visit to the site. I undertook an unaccompanied visit to the surrounding area on 12 April 2017. I am also considering a proposal for 3 wind turbines and associated equipment at Pines Tip¹. 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 Policies of the Restormel Borough Council Local Plan as set out in the Council's decision notice have been replaced by those within the CLP.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.
4. The Council's decision notice included 3 reasons for refusal. The third reason related to the impact of the scheme on the adjacent telemetry network. During the course of the appeal representations were submitted by Western Power Distribution and the Joint Radio Company advising that this matter had subsequently been satisfactorily addressed by the appellant. Accordingly, the Council has advised that this reason for refusal has been withdrawn.

Main Issues

5. In light of the above, the main issues in this case are:
 - whether the principle of development is acceptable in this location;

¹ Appeal Ref APP/D0840/W/16/3158450

- the effect of the proposal on the character and appearance of the area and the historic environment; and
- if harm is caused, whether any harmful impacts of the proposal outweigh the benefits of the scheme, including the production of electricity from a renewable source.

Reasons

Planning Policy

6. 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.
7. 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, including the natural and historic landscape. This is expanded upon in Policy 14 of the CLP. In the case of wind turbines, criterion c. of this policy requires that they are located within an area allocated by Neighbourhood Plans (NP) for wind power and avoid or mitigate any adverse effects. The policy further states that support will be given to renewable and low carbon energy generation developments that are led by, or meet the needs of local communities. It also states that when considering such development, 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.
8. Development is expected to be of a high quality design which maintains and enhances the distinctive natural and historic character of Cornwall under CLP Policy 12. Amongst other matters, 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 aims to these policies requiring development to take into account and respect the sensitivity and capacity of the landscape asset, including any cumulative impact.
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 such assets must be justified. Proposals causing harm will be weighed against the substantial public, not private, benefits of the scheme.
10. 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.

² Cornwall Renewable Energy Planning Advice 2016

11. There is a national imperative to develop renewable energy as set out in the numerous documents referred to by both main 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.
12. National planning policy as contained within the National Planning Policy Framework (the Framework) requires the planning system to contribute to and enhance the natural and local environment (paragraph 109) and 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.
13. The Framework's core planning principles include the account that should be given to the intrinsic character and beauty of the countryside; the conservation and enhancement of the natural environment; the conservation of heritage assets in a manner appropriate to their significance and the support that should be given to the transition to a low carbon future in a changing climate, including the encouragement of the use of renewable resources (for example, by the development of renewable energy).
14. 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). The Framework also requires approval of renewable energy applications if the impacts can be made acceptable, unless material considerations indicate otherwise. Economic growth in rural areas is also supported by the Framework.
15. 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. This advice is reflected in the Planning Practice Guidance (PPG).
16. The PPG advises that the cumulative landscape impacts are important considerations as to the effects of a proposed development on the fabric, character and quality of the landscape. Such an assessment is concerned with the degree to which a proposed renewable energy development would become a significant or defining characteristic 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

17. 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 has addressed the planning impacts 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. There is no NP for the area.

18. The appellant submits that because there are no sites identified as being suitable for wind energy development within the CLP and because there is no NP for the area that the transitional provisions set out in the WMS apply in this case. My attention has been drawn to a number of planning appeal decisions³ to support this view.
19. Whilst noting the appellant's submissions, I do not consider that the transitional provisions apply in the case of this appeal. The WMS makes it clear that such 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.
20. The appeal site has not been identified as being suitable for wind energy development in either a local plan or NP. The transitional provisions set out in the WMS and PPG 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. Given my finding in this regard, whilst there was both support and opposition to the scheme, and whilst taking note of the several consultation exercises undertaken by the appellant which included a reduction in height of the turbines, it is not necessary to consider whether or not the proposal has the backing of the affected local communities.

Landscape Character

21. The site lies within the St Austell or Hensbarrow China Clay Area landscape character area (LCA17) as identified in the Cornwall and Isles of Scilly Landscape Character Study (LCS). It is close to Newlyn Downs landscape character area (LCA14) lying to the west and north, and in close proximity to other landscape character areas as set out in the main parties' evidence.
22. The LCS notes several relevant key landscape characteristics of LCA17 including high extensive spoil heaps and vivid blue settling ponds, lakes and mica dams; the huge scale of spoil heaps contrasting with the small scale of farmland; small areas of pastoral farmland and rough grazing and fragmented

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

- areas of lowland heathland, scrub and broadleaved woodland with areas of natural regeneration and restoration of heathland, woodland and rough ground.
23. The Council's renewable energy document indicates that within LCA17 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. This is not disputed by the appellant.
24. Scarcewater Tip is in part an operational tip, and along with Pines Tip and Melbur Tip forms a prominent and defined western edge to the china clay landscape in this area, visible over a wide area. To the north and east of the appeal site are China Clay workings, and to the north west, approximately 1 kilometre distant, is the village of St Stephen. The A3058 runs to the south of the site at a distance of approximately 700 metres.
25. The new turbines would be located along the upper south facing slopes of the tip and would be 92.5 metres in height. The proposal would introduce development on the slopes of this tip where there is none at present. The siting and resultant scale of the proposal would result in the turbines being prominent, dominant features in the wider landscape, out of keeping with the undeveloped ridges of the area.
26. Furthermore, whilst the new turbines would draw attention to the scale of the spoil heap, I find that their presence would detract from the form and appearance of this landscape feature, in a particularly sensitive location on the outer edges of the clay workings in the area. They would be visible over a wide area, including from nearby roads, public rights of way and from residential properties in nearby villages and hamlets, as identified in the appellant's Landscape and Visual Impact Assessment (LVIA).
27. Although there are existing wind turbines in the area close to the appeal site and a number of solar farms, as identified in the appellant's LVIA, and as seen on my site visit, these are sited at a considerably lower level than the appeal proposal would be and I find that they satisfactorily integrate into the wider landscape. By contrast, the new turbines would be some of the tallest features in the area. They would not be static features like the CERC chimney; their turning blades would draw attention to them exacerbating the harm that I have identified.
28. Given the findings of the LVIA, and the number of receptors where significant effects would be observed, I do not concur with the appellant's conclusion that the overall effect on the LCA would not be significant. I appreciate that over time the approved restoration scheme for the tip which includes landscaping may filter certain views of the proposal. However, as the restoration scheme is unlikely to extend to the upper parts of the tip and having regard to the height of the new turbines, I find that the visual effects of the scheme and its impact on the wider landscape character of the area would be likely to remain the same as that identified. Furthermore, whilst it is proposed to remove the wind turbines and most of the ancillary equipment after 25 years, the appellant

accepts within the LVIA that the effects would be long term. I have no reason to disagree with this assessment.

29. In terms of the cumulative impact of the scheme it is clear that wind turbines are a feature of the area, visible over a wide area, and a feature as one travels through the area. The proposal would introduce 3 turbines in close proximity of each other on a prominent, elevated site. I find that this would draw the viewer's attention to the preponderance of turbines in the landscape, including those nearby at Penhale Farm, Menna Farm, Glebe Farm and at the Melbur Blockworks. I have not included the proposed turbines at Pines Tip in this assessment as they do not benefit from planning permission at this time. 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 and would result in more than occasional wind energy development which would be in conflict with the Council's renewable energy document referred to earlier in my Decision.
30. In light of the foregoing, I find that the scheme would adversely affect the largely undeveloped edge of the china clay industry and would lead to a significant reduction in the landscape quality of the area. The presence of topography, landscape features and settlements would not mitigate the harm identified. The impacts of the proposed development on landscape character and appearance would both singly and cumulatively, be unacceptably adverse contrary to CLP Policies 2, 12, 13, 14 and 23, and national planning policy as contained within the Framework and PPG.

Historic Environment

31. 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.
32. 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.
33. The appellant's study found that the proposal would have an impact on a number of heritage assets, albeit that such impact would not be significant. The Council does not dispute the appellant's findings, other than in relation to the Church of St Stephen, a grade I listed building. The Church's setting includes its position as a locally prominent element on the skyline.
34. I share the concern of the Council and Parish Council that the proposal would compete with the tower of the church, being significantly elevated above it in the landscape and townscape. The new wind turbines would be visible on the skyline and would result in a prominent and distracting moving feature which would detract from the significance of this important heritage asset in the village. The proposal would not preserve the setting of this heritage asset.

The significance of this heritage asset would not be sustained and enhanced by the proposal.

35. Having regard to this issue, as well as the effect of the proposal on other heritage assets in the area, I consider that the harm that would be caused to the significance of these heritage assets would be less than substantial. This is the same view reached by both the Council and Historic England. 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 and Planning Balance

36. 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.
37. The proposal has the potential to generate up to 6.9MW which it is submitted would generate an annual average of approximately 14,000MWh of electricity, sufficient to meet the average annual electricity needs of 3,400 Cornish homes. This would make a meaningful contribution to the reduction of greenhouse gas emissions in producing electricity, which attracts considerable weight in favour of the proposal.
38. Some of the energy produced could be used by Imerys Minerals Limited, upon whose land the turbines would be sited. A Memorandum of Understanding⁴ 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 Undertaking⁵ which would make provision for community ownership of all or part of the scheme, which amounts to social and environmental benefits. 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.
39. The Council's report states that there were equal numbers of representations made in support and objection to the proposal. One of the affected Parish Councils raised no objection to the scheme, and 2 of the Parish Councils raised concerns. It is clear therefore that the scheme had the support of some of the affected communities. This provides some further weight in favour of the proposal.
40. However, I find that the harm that would be caused to landscape character would be significant. Harm would also be caused to the significance of heritage assets. Even if I had found that the transitional provisions set out in the WMS applied in this case, given that these matters were raised by the local community and 2 of the nearby Parish Councils, I would have found that the scheme had not

⁴ Dated 20 February 2017

⁵ Dated 20 February 2017

addressed the concerns raised, and accordingly the proposal should not be granted.

41. Whilst the harm would not be permanent, it would be for a long period of time and I find that the benefits of the scheme would not compensate for the harm identified. Accordingly the benefits of the scheme, including public benefits do not outweigh the identified harm. As well as the policies quoted earlier in my Decision, the proposal would conflict with CLP Policies 1 and 24, the statutory test and the Framework in respect of heritage assets.

Conclusion

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

R C Kirby

INSPECTOR