



Appeal Decision

Site visit made on 29 July 2019

by Tim Crouch DipUD MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 September 2019

Appeal Ref: APP/K3605/W/19/3228083

Apps Court Farm, Hurst Road, Walton-On-Thames KT12 2EG

- 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 Mr S MacGregor against the decision of Elmbridge Borough Council.
 - The application Ref 2018/2723, dated 7 September 2018, was refused by notice dated 1 March 2019.
 - The development proposed is a single small Britwind wind turbine (25m to tip).
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr S MacGregor against Elmbridge Borough Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are;
 - The effect on the openness of the Green Belt and the purposes of including land within it;
 - The effect on air traffic movement and safety;
 - Whether the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

Reasons

Openness and the purpose of the Green Belt

4. The site lies within the Green Belt and both parties agree that the proposal would be inappropriate development as defined by the National Planning Policy Framework (2019) (the Framework) as it does not fall into one of the categories of exception to this as set out in paragraphs 145 and 146. I have seen nothing that would lead me to a different conclusion.
5. Paragraph 143 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The Framework goes on to say that substantial weight should be given to any harm to the Green Belt.

6. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and that the essential characteristics of the Green Belt are its openness and permanence. While the Framework does not define openness, it is generally held that it means the absence of development. The appellant has included a Landscape and Visual Appraisal, supported by a screened zone of theoretical visibility (ZTV) and photomontages. This concluded that the proposal would not be unduly prominent or obtrusive in the local landscape. Given the design, colour, height and relative degree of visual containment provided by surrounding features including a raised reservoir, vegetation and water works, there would be limited harmful impact on the visual amenity of the area.
7. However, not being 'harmful' from a landscape and visual amenity perspective is different to there being no visual impact on openness. The development would be visible as a taller feature within the Green Belt in closer views and as such the land would clearly no longer be permanently open. The introduction of the development would therefore have a clear and discernible impact on the visual openness of the site. As a matter of fact, the introduction of development into an area where none currently exists, would also have a clear impact on openness from a purely spatial perspective. Taken together, I therefore must conclude that the development would result in a reduction to the openness of this part of the Green Belt.
8. The Green Belt is designated, in part, to protect unrestricted sprawl and safeguard the countryside from encroachment. Whilst the appellant does not consider the proposal to prejudice these objectives due to its small scale and lack of undue prominence as defined in the Landscape and Visual appraisal, the proposal would be contrary to these purposes by introducing new development into the area and failing to keep the land permanently open, visually or spatially.
9. In conclusion on this matter, I find that the development would have an adverse impact on the openness of the Green Belt (and the reasons for including land within it). These factors add to the harm caused by being inappropriate development in the Green Belt.

Air traffic safety

10. The proposal is for a 25 metre tall (base to tip) wind turbine to provide renewable energy to the various uses within the Apps Court Farm estate. The site lies close to London Heathrow Airport (LHR).
11. LHR and the National Air Traffic Services (NATS) have both identified that due to the height and location the proposal, it would be detected by air traffic control radar. This would appear as 'clutter' on the radar and whilst a single turbine within a controlled airspace is to the lower end of potential effects, it is also located close to Fairoaks aerodrome and the boundary of the Heathrow Zone which can be subject to infringements. Therefore radar clarity is important. Consequently, the proposal has the potential to risk the safety of air traffic and I give this issue significant weight.
12. The appellant has produced a Radar Impact Assessment which has been shared with LHR and NATS, as well as the Council, confirming that the turbine will be detected by the radar. Whilst NATS does not agree with all of the conclusions, it has confirmed that mitigation measures could be possible to overcome the

issue of clutter on the radar. This would be a 'modification to the radar configuration' and could be conditioned, although NATS requires a funding and commercial agreement to be entered into with the developer. No such agreement is before me, or detail of the precise mitigation, its likely costs, timings or other influencing factors to implementation.

13. The appellant states that a Grampian condition could be used to secure the mitigation, including the funding and commercial agreement. I am also directed to Overarching National Policy Statement for Energy Infrastructure (2011) (EN-1) which allows for Grampian conditions and to case law¹. However, EN-1 is focused on larger scale energy projects, and identifies that such conditions 'may' be considered. The case law suggests that a Grampian condition is not used where there is no prospect at all of it being fulfilled within the time limit imposed by the permission, which also reflects guidance within the Planning Practice Guidance (PPG).
14. Whilst the NATS responses to the appeal and its suggested conditions do not lead me to believe that there is "no prospect at all" of the mitigation being in place, there is no commentary on the detail or time limits of this, which is critical within the case law cited. I am also aware that any condition must also meet the tests of paragraph 55 of the Framework which particularly requires the conditions to be reasonable in all other respects.
15. I do not have detailed confirmation of the appellant's agreement of funding and the commercial agreement. I also do not have an indication of how long this may take to agree, or how long the resultant modification mitigation would take. I therefore cannot conclude on expected timings. Similarly, I do not have the information on the likely cost of this to the appellant or scope of mitigation works to conclude that it would be reasonable in all other respects given the scale of development. Given the weight that I have placed on air traffic safety, this current uncertainty and lack of definitive evidence before me means that I am unable to conclude positively that mitigation would be delivered and then retained in perpetuity.
16. Therefore, the proposal would have a harmful effect on air traffic movement and safety. Consequently, the proposal would be contrary to the Section 8 of the Framework, National Planning Practice Guidance and EN-1. Taken together, and amongst other objectives, these require development to create safe communities and supporting existing infrastructure. I consider this to add to the harm to the Green Belt considered above.

Other considerations

17. Paragraph 147 of the Framework acknowledges that renewable energy projects in the Green Belt have to demonstrate very special circumstances to proceed. It states that these may include the wider environmental benefits associated with increased production of energy from renewable sources.
18. The proposal would be situated on site and seek to supply most of the estate's annual electrical usage as well as deliver economic benefits. This would reduce its carbon emissions and build security and long-term resilience into the farm and its range of uses. Paragraph 148 of the Framework also identifies that

¹ FCC Environment v SOCLG and East Riding of Yorkshire Council 2014

the planning system should support renewable and low carbon energy. I therefore give this factor a significant amount of weight.

19. There is no dispute between the parties that the development would not result in harm to the character and appearance of the area, or have other impacts on flooding, transport or heritage. Nevertheless, a lack of harm in these respects are neutral factors that weigh neither for nor against the development.

Other matters

20. The site is within proximity of the South West London Waterbodies Special Protection Area. This hosts a number of European protected overwintering birds and there were initial objections to the application from Surrey Wildlife Trust and Natural England. Those objections were removed following additional information. However, given my findings on the main issues I have not considered this matter further, including whether an appropriate assessment is required.
21. I note that there were no public objections and a letter of support was received regarding the importance of renewable energy. I have included the benefits of renewable energy in my considerations. The absence of objection, given the Framework's clear stance on the requirement for very special circumstances to exist to justify inappropriate development, does not lead me to a different conclusion.

Very special circumstances

22. The development would cause harm to the Green Belt by virtue of it being an inappropriate form of development and insofar as it would have a detrimental impact on the openness of the Green Belt. I have given substantial weight to the harm caused in these respects. There would also be some additional harm resulting from potential risks to air safety, which I am not convinced can be satisfactorily mitigated by condition.
23. I have attached significant weight to the contribution the development could make to the provision of renewable energy and associated benefits to the estate. However, I find that these other considerations do not clearly outweigh the substantial weight given to the totality of the harm to the Green Belt and other harm arising from the development. Consequently, the very special circumstances necessary to justify the development do not exist.
24. Consequently, the proposal is contrary to Policy DM17 of the Elmbridge Borough Council Development Management Plan (2015) and the Framework. Taken together, and amongst other objectives, these state that inappropriate development will not be approved unless it is demonstrated that very special circumstances will clearly outweigh the harm.

Conclusion

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

Tim Crouch

INSPECTOR