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## Appeal Decisions

Site visit made on 15 September 2015

**by Mrs Zoë Hill BA(Hons) DipBldgCons(RICS) MRTPI IHBC**

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

**Decision date: 7 January 2016**

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**Appeal A Ref: APP/V2635/A/14/2228508**

**Riverside Business Centre, Crossbank Road, King's Lynn, Norfolk**

**PE30 2DH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.
  - The appeal is made by Mr Michael Stollery against the decision of King's Lynn and West Norfolk Borough Council.
  - The application Ref: 14/00936/F, dated 25 June 2014, was refused by notice dated 15 September 2014.
  - The application sought planning permission for the erection of a 500kw wind turbine without complying with a condition attached to planning permission Ref: 14/00398/F, dated 4 June 2014.
  - The condition in dispute is No. 11 which states that: Prior to the installation of the turbine hereby approved details of how the turbine shall be set up to prevent blades rotating when they are overhanging Byway Open to All Traffic No.1 shall be submitted to and approved in writing by the Local Planning Authority. The turbine shall be installed in accordance with the agreed details and thereafter maintained in accordance with them.
  - The reason given for the condition is: In order to preserve the amenity of users of the by-way.
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**Appeal B Ref: APP/V2635/W/15/3005780**

**Riverside Business Centre, Crossbank Road, King's Lynn, Norfolk**

**PE30 2DH**

- 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 Michael Stollery against the decision of King's Lynn and West Norfolk Borough Council.
  - The application Ref: 14/01381/F, dated 23 September 2014, was refused by notice dated 12 February 2015.
  - The development proposed is to erect a 500Kw Wind Turbine, Max hub height 75m, Max tip height 102m.
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### Preliminary Matters

1. On the 18 June 2015 a Written Ministerial Statement (WMS) was made in respect of on-shore wind turbine development. The main parties have been given the opportunity to comment on this WMS which I shall refer to in this Decision.

2. In terms of Appeal B the appellant has requested that I consider a larger red-line application site to accommodate a different wind turbine with larger blades (but the same maximum tip height) to that considered by the Council. I am not satisfied that this would be acceptable given that all consultations and all assessments (including visual, noise and ecological assessments) on which consultations were made relate to a different scheme. I therefore shall deal with the appeal on the basis of the scheme which the Council considered.
3. The Council's Statement for Appeal B says that the BOAT is the subject of a stopping up order. However, nowhere else is this referred to and there is no indication that the byway has been stopped up. I therefore have dealt with it on the same basis as the main appeal documentation before me; that is that there is no restriction on the BOAT No.1.

## **Decisions**

### **Appeals A and B**

4. Both appeals are dismissed.

### **Application for Costs**

5. An application for costs was made by Mr Michael Stollery against King's Lynn and West Norfolk Borough Council in respect of Appeal A. That application is the subject of a separate Decision.

### **Main Issue for Appeal A**

6. The main issue in Appeal A is whether the condition is necessary, having regard to the impact of the wind turbine upon the users of the Byway Open to All Traffic (BOAT), and reasonable in all other respects having regard to the advice on the use of conditions set out in the Planning Practice Guidance.

### **Reasons - Appeal A**

7. The wind turbine, the subject of this appeal, has already been erected. I saw that the blades would fully oversail the BOAT which runs along the river bank to the north-east side of the Great Ouse. Whilst there maybe limited risk to pedestrians or drivers from the oversailing, given the scale and height of the structure, it is likely to be an overwhelming sight when crossing directly underneath and I note that in respect of the linked appeal, of which all parties are aware, the owners of No 1 Point Cottages, which only gains access along this route, have safety concerns about the oversailing. Point Cottages consist of a group of 4 cottages. Also accessed by this route is Point Green Nature Reserve which is managed by Natural England. In terms of access along the route I consider that oversailing by such large blades would, for some people, diminish enjoyment of that route or cause anxiety, whether on foot, using a bicycle or in a vehicle, because of a perception of risk from the oversailing. Whilst perception of risk is not the same as safety concerns, the harm to the enjoyment of this public right of way is a matter to which I attach weight.
8. However, I agree with the Council that the biggest safety risk, is likely to be that for horse riders who are entitled to use a BOAT. The appellant has provided, for the purposes of the appeal, an assessment of activity on the track which indicates no equestrian use. However, it is not clear why the dates surveyed were chosen. The supporting text refers only to 1-24 October 2014.

It is unclear as to whether such a period is likely to reflect times of greatest use. Nor is there evidence relating to what else might have been happening on the route at that time which may have affected the findings, for instance development works for the installation of the wind turbine. This limits the weight I can afford it. Moreover, it was evident at the site visit that horses/ponies are kept in the paddocks near to the turbine area, a matter also recorded in the Council's committee report when considering the proposal to erect the wind turbine, and so there is a strong likelihood of use of this track for equestrian purposes. Furthermore, it is reasonable to consider the impacts on all user groups of a public right of way (PROW).

9. In line with the PROW officer's initial assessment, and as I heard on site, the noise from the wind turbine is likely to be significantly greater for those on the track approaching the turbine when the blades are in a position which will oversail the route. Thus, the visual impacts would be exacerbated by the associated noise, which may be particularly alarming for horses, and would further diminish the attractiveness of the route for walkers. Whilst in a later report the PROW officer suggests the open nature of the path is likely to give approaching horses chance to adjust to the presence of the turbine I do not consider that openness is particularly helpful in this location. This is because it does not give a rider the comfort of an alternative route. Rather there is a bramble covered bank at one side and a scrubby bank at the other beyond which there is the tidal channel of the River Great Ouse.
10. It is not for me to consider whether or not it was acceptable to locate a turbine so close to a BOAT in dealing with this appeal. However, I have no doubt that the condition imposed on the wind turbine I saw, which is so close that it fully oversails the BOAT, was in accord with the requirements for conditions as it was necessary to resolve a concern that could only be addressed by the condition or else the scheme should have been refused. As such, the condition does not unreasonably restrict development; rather it allows for it to happen.
11. In terms of reasonableness and viability the appellant, in a new point made since the Council considered the proposed removal of the condition, has provided a letter which sets out that adapting the yawing action of the wind turbine to restrict its movement over the BOAT is likely to significantly impact on the viability of the wind turbine as it could well result in production being reduced by 60%<sup>1</sup>. However, the developer has constructed the wind turbine in full knowledge of the condition which it is clear would have required some consideration of the restriction in advance of the build given that the details of the scheme for shutting down had to be agreed with the Council prior to commencement. It is also likely that the turbine was constructed after the appellant received the letter regarding impact on viability given it was dated 30 September 2014. Thus, whilst that may be a significant issue for the appellant, it was a developer risk of which he should have been aware before the time of construction.
12. Moreover, it adds to my concerns as it implies that the wind turbine would spend much time oversailing the BOAT increasing potential risk to equestrian users and reducing the attractiveness of the BOAT for them and other users of this right of way. This also clearly contradicts the reported evidence supplied to the Council at the time the application for this wind turbine was submitted as

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<sup>1</sup> This is a little unclear from the letter which says "*the expected production will be reduced with at least 60%*". But the interpretation I have used reflects that of the appellant

the committee report states 'the applicant has provided wind direction data that indicates the prevailing wind direction is from the southwest and that consequently the turbine will spend most of its time aligned with the blades along a northwest-southeast axis. In this position the blades would not over-sail the highway'.

13. I am satisfied that the condition is acceptable in respect of the other tests for conditions set out in the Framework, in that the condition is relevant to planning and to the development, precise and enforceable. On that latter point I note the Council Officer appears to have thought, in dealing with the application to which this appeal relates, that it was not possible to close down the turbine when it oversails the BOAT. However, from my professional experience I am aware that this is both possible and enforceable and I also note that the appellant does not dispute this point.
14. The Framework makes it clear that planning policies should protect and enhance public rights of way, and should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings. I consider protection of this public right of way from the active oversailing by the blades of the wind turbine is in accord with the thrust of that policy. The Framework, which the Council's Core Strategy policy CS08 is in line with, sets out that planning authorities should approve applications for renewable energy development if its impacts are, or can be made, acceptable. In terms of decision taking, it advises that, local planning authorities should look for solutions rather than problems and that they should consider whether unacceptable development could be made acceptable through the use of conditions. It seems to me that the Council has acted in the spirit of that national policy and it has sought to support development to the point to which it can be regarded as sustainable.

### **Conclusion - Appeal A**

15. In terms of the Appeal A I conclude that the condition is both reasonable and necessary and satisfies all other tests for conditions and, as such, the appeal is dismissed.

### **Other Matter - Appeal A**

16. Whilst the application to which this appeal relates was in respect of one condition, the appellant seeks another condition is considered too. However, I have dismissed the appeal on the condition which had been the subject of the application and so will not be drafting a new decision which would necessitate looking at the other conditions.

### **Main Issues for Appeal B**

17. The main issues for Appeal B are the effect of the proposed wind turbine on:-
- (a) the character and appearance of the surrounding landscape, having particular regard to cumulative impacts with existing wind turbines;
  - (b) the setting of the King's Lynn Conservation Area; and,
  - (c) the benefits of the scheme and how they balance with conclusions on the first two main issues.

### **Reasons - Appeal B**



## **Character and Appearance**

### **- Landscape**

18. The landscape surrounding the appeal site is identified in the Landscape Character Assessment for this Area (prepared by Chris Blandford Associates in 2007) as being within the long stretch of drained coastal marshes of North Wootton. Sea banks are a key element on the skyline in views to the west, evoking a strong sense of place. Openness, with vast skies, is apparent throughout the area, brought about by the flat, low-lying landform with its lack of built structures and vertical elements. The main land use in this uncomplicated landscape is farming. Field boundaries include drainage ditches. There is some vegetation with tree groups, isolated farmsteads and caravan parks. It is described as tranquil though tranquillity is disturbed at the urban edge, and urban fringe characteristics such as pony paddocks are noted. The landscape planning guidelines include conservation of panoramic views and screening of the King's Lynn settlement edge. This descriptive landscape character document reflects what I saw although I also observed that there are some pylons on the urban fringe and approaches to King's Lynn.
19. I have also noted the appellant's comments regarding the Wind Turbine Development – Landscape Character Assessment, Evaluation and Guidance Report Adopted 2003 which, as he explains, describes the character of the landscape in similar terms. The appellant also records that this document concludes that this engineered flat landscape has capacity for wind turbines, including for single and small scale groups.
20. Clearly things have changed since those documents were produced. More recent Government advice in the Planning Practice Guidance (the Guidance) identifies that the impact of wind turbines can be as great in predominantly flat landscapes as in hilly or mountainous areas. In more site specific terms, I have seen that two wind turbines have been erected in the urban fringe/river corridor. However, those changes, whilst introducing striking features of vertical emphasis, with added rotational movement, do not significantly dominate the wider landscape.
21. That said adding a further turbine, possibly of slightly different form to those existing (which themselves are of differing design), would begin to significantly consolidate the wind turbine development along that part of the Great Ouse which flows from King's Lynn to the sea. The consolidation would be more significant as the proposed turbine would fill a gap in between two existing wind turbines. This consolidation of turbine development would be particularly noticeable from rural view points on both sides of the river, for instance at viewpoint 5 (North Wootton) and from the lanes in this area, at viewpoint 7 (the Ferry Terminal), and at viewpoint 3 (Clenchwarton) and the lanes towards the sewage works. The impact on viewpoints 3 and 7 would appear more significant as the backdrop appears more open when seen from the opposite side of the river, beyond its expanse, and the existing turbines appear more strident.
22. On the matter of landscape impact I concur with the Council that there would be harm, but in my view moderate harm, as a result of the consolidation. The harm would be that the landscape would become defined as one where the eastern side of the coastal river approach to King's Lynn, would begin to appear lined by wind turbines. I note that the riverside location renders the

character of this site as different to the wider area of agricultural land. In my view the development would, because of the cumulative impact and particular location, have an adverse influence on the wider landscape character of the coastal marsh area.

**- Local Character**

23. Closer to, when arriving at the proposed turbine site the sequential approach takes one through the industrial estate such that the first turbine approached appears in keeping and the relationship is eased by the distance from the PROW. However, in approaching the proposed turbine site along the PROW the existing furthest wind turbine is a dominating and significant feature, particularly given its proximity to the track. Adding a further wind turbine would have the effect of consolidating the urbanised appearance of the route this track takes and would render it a much less pleasant coastal route to Point Cottages and the nature reserve as can be seen in viewpoint 1 (Public Byway BOAT1). I note that this photomontage lines up an existing turbine with the proposed turbine reducing the impact from the viewpoint, a situation which would only be seen at one point along the track, so that it does not provide a particularly useful image of what would be seen for those using the route. That photomontage is also directed towards the town rather than towards the open countryside and sea beyond so represents the least impact when seen from this track. Even so, the harm that would arise is notable.
24. I have already concurred with the owner of one of the cottages that the oversailing by the blades of a turbine would appear overwhelming for people using this route, adding a further turbine which would oversail would significantly exacerbate that harm even if the blades were not moving.
25. In terms of localised character the proposed development, both individually (given its proximity) and cumulatively, would detract from the character and appearance of the area and, in particular, of BOAT No.1. This harm counts considerably against the scheme.
26. The Guidance identifies the need to consider both landscape and visual impacts. The proposed development would harm the character and visual appearance of the surrounding area, particularly in respect of cumulative impacts with existing wind turbines. The scheme would fail to accord with the Council's Core Strategy policy CS06 insofar as it seeks to maintain the local character and high quality of the rural area. This broadly accords with the Framework but is a general policy rather than one specific to renewable energy.
27. Policy DM20 of the Draft Management Policies Document, to which I can only accord limited weight given it relates to a pre-submission document and so may be liable to change, requires consideration of various factors, including landscape, when assessing renewable energy schemes. Where the impacts can be satisfactorily mitigated such schemes will be supported but that would not be the case here so that conflict with the provisions of this policy would arise too.

**Conservation Area**

28. The appeal site is not situated within a Conservation Area. However, being situated seaward from the heart of King's Lynn, the Council considers that it

would adversely affect the setting of the King's Lynn Conservation Area and particularly the St. Margaret's Area. The Conservation Area Statement records, in terms of setting and location, that King's Lynn is a low-lying conurbation, with salt marshes to the north and the dyke-lined Fens stretching away to the south and west, often below sea level. Huge skies dominate the nearly featureless landscape. It also records 'one of the best views is from West Lynn over the River Great Ouse to the long and varied quays of the town'. The surrounding low lying fields and watercourses significantly contribute to the setting of the town, giving it both visual status and direct links to its historic establishment and development derived from water for both transport and agricultural purposes. The landscape is largely rural in appearance although there are power lines which serve the settlement.

29. From within the quayside area there would be views out towards the proposed wind turbine. Viewpoints 2 and 6 clearly show that the wind turbine would have a distinct impact on views out along the River towards the sea. I appreciate that two existing wind turbines can be seen in this view, one being the wind turbine which is the subject of Appeal A and the other being a turbine located closer to the town on land near to the dockside industrial estate. That latter turbine, despite being closer is less prominent because its main mast is screened from view by buildings and, as I saw, views are largely limited to a single blade, out of three, being seen at any one time.
30. The proposed wind turbine would be seen between the two existing wind turbines and, in this instance, in some quayside views the whole of the proposed structure would be seen. I appreciate that it would also be seen with the existing linear features, of electricity pylons situated to the north of the King's Lynn, and that there is a strong vertical emphasis within the townscape at this point formed by buildings, street furniture and quayside features, as well as by boat masts when tied alongside or anchored nearby. Despite those elements which would help assimilate the proposed wind turbine, it would add to visual clutter in views out of the Conservation Area towards the sea. The existing clutter detracts from the 'nearly featureless' landscape in which views to the level horizon, formed by the tidal river and the surrounding, nearly flat, drained land form a distinct setting for the historic core of the settlement seen from the quayside. As such, the addition of a further turbine would result in cumulative harm to the historic setting of the Conservation Area which would detract from its significance by eroding the historic landscape setting that links the town to the sea and the visual importance of the quayside within the Conservation Area.
31. The quayside in the St. Margaret's area of the Conservation Area is not a large area, and I acknowledge that from other parts of the King's Lynn Conservation Area there would be no change seen as a result of the scheme as can be seen, for example, in viewpoint 8 from the Tuesday Market. However, because this part of the Conservation Area is so closely linked with the sea and the associated shipping route that harm is, in my view, a moderate harm to significance that must be weighed in the planning balance. My assessment accords with that of English Heritage<sup>2</sup> who expressed concern that the presence of a further tall turbine with rotating blades would detract from the panoramic

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<sup>2</sup> English Heritage has now been separated into two organisations, with advice been given by Historic England. However, I have referred to English Heritage as that was the body whom submitted to consultee responses in this case.

views of South Quay such that there would be harm to the significance of the Conservation Area which should be weighed in the planning balance.

32. I conclude that the proposed development would harm the setting of the King's Lynn (St. Margaret's) Conservation Area. It would conflict with policy CS12 of the Core Strategy which seeks, amongst other things, to preserve and, where appropriate enhance, the qualities and characteristics of the historic environment. This policy largely accords with the Framework so I afford it considerable weight although the requirement to undertake a balancing of benefits and harms is required. Similarly, and noting I cannot accord the Draft Management Policies full weight, the scheme would fail to accord with policy DM20 because harm to this designated heritage asset would not be satisfactorily mitigated. The Guidance explains that the significance of a heritage asset derives not only from its physical presence, but also from its setting and that careful consideration should be given to the impact of wind turbines on such assets and that is what I have done in this case. However, the harm identified does not amount to substantial harm and thus, in accordance with the Framework, I must weigh that harm against the public benefits of the scheme.

### **Other Considerations**

33. Although not a matter raised specifically in respect of Appeal B, I am mindful that the proposed wind turbine in this case would oversail the BOAT as does the wind turbine in Appeal A. For the same reasons I am not satisfied that this is acceptable. Moreover, the cumulative impact of two wind turbines oversailing the BOAT would be significantly worse and would exacerbate the harm identified for users of this PROW both in terms of perception of threat to walkers and those in vehicles, and in terms of risk to safety for equestrian users.

### **Benefits of the Scheme**

34. In final comments it is indicated that the turbine would provide 1,650kwh a year which reflects the original submission prediction. However, also in the final comments the appellant indicates that the current turbine (the Appeal A turbine) is saving £100,000 per annum. Further, it is suggested, that the power which could be generated for export to the grid could be between 1,800,000 to 4,200,000kwh enough, it is claimed, to power 180-500 homes in the local area. Alternatively this energy could be used by their industrial partner so reducing their costs and helping to keep local people employed. This potential energy export figure covers a wide range, which limits the certainty of the benefits at the upper end of the scale. Moreover, in Appeal A the appellant has indicated that energy generation might be reduced by as much as 60% by the need to avoid oversailing, reducing the benefits from that turbine, a situation which would be likely to impact on these figures even if not considering the comparable situation for this appeal site.
35. The wide range given for potential electricity generation, the questions over viability of the existing turbine (which might similarly apply in this case), and the suggestion that a turbine of other dimensions is likely to be required, make it difficult to attach well-defined benefits to the scheme.
36. Nonetheless, I accept that the benefits of providing electricity to local businesses and improving job security would be a positive benefit of the



scheme (albeit partly a private benefit). I also accept the energy generated would result in carbon saving which would be a public benefit. The Framework makes it clear that all contributions to cutting greenhouse gas emissions are valuable and that renewable energy schemes should be approved if its impacts are or can be made acceptable; this follows the thrust of the National Policy Statements relating to energy EN-1 and EN-3. I shall therefore deal with the planning balance on that basis.

### **Planning and Heritage Balances**

37. As set out above there would be harm to the setting of the King's Lynn (St. Margaret's) Conservation Area. That harm, when weighed in the balance with benefits identified from the level of energy anticipated from the scheme before me, would not be outweighed. As such, the harm to this heritage asset counts significantly against the scheme.
38. Turning to the planning balance, the harm to the setting of the Conservation Area combined with the harm to the landscape and to the visual amenities of the surrounding area which derives, in part, from cumulative impacts are such that the adverse impacts would significantly and demonstrably outweigh the benefits. This is the test established by the Framework for situations where the development plan does not have relevant up-to-date policies, which applies here. I therefore consider that the appeal should fail. Concerns regarding the impact on the users of the BOAT in terms of the perception of risk and harm to safety for equestrian users add to that harm even with the potential to restrict oversailing by condition although this in turn would reduce benefits.
39. The parties have had the opportunity to comment on the WMS as set out above. The appellant points to the fact that there were 10 letters in support of the scheme, that the wind turbine would be sited with two existing wind turbines and that the scheme had gained officer support. He also notes that no letter of objection was made by anyone living close to the site and that no-one had attended his public meeting. However, there were clearly concerns raised about the proposal by local representatives as set out in the committee documentation. English Heritage raised concerns, as did the non-resident owner of one of the nearest properties. The Written Ministerial Statement requires that regard is taken of local views. Those limited views have been taken into account. However, the critical issues, which are also raised by the WMS relate to cumulative impacts, landscape impact and heritage assets and I am satisfied that the decision reached accords with the advice of the WMS along with local and national planning policy and guidance.

### **Other Matters**

40. The Ministry of Defence sought conditions regarding aviation lighting were the appeal to succeed. Given infrared lighting could have been used this does not add to my concerns in respect of impact on the surrounding area or heritage assets.
41. Matters relating to ecology are not at issue between the main parties and Natural England does not object to the proposal having specifically considered the risk to bird populations. From the evidence before me relating to this particular proposal I find no reason to disagree. However, the Royal Society for the Protection of Birds remains concerned about the impact on the Herring Gull breeding colony nearby given that the collision risk is close to the 1%

threshold. As such, they were only prepared to remove their objection on the basis of a monitoring condition. Given my decision it is not necessary to do so, but this reinforces my concerns that an amended scheme of the type sought by the appellant would necessitate a new application so that all implications can be properly considered by consultees.

42. From the evidence before me it appears that an archaeological watching brief would be justified were I to have found the scheme acceptable.

**Conclusion - Appeal B**

43. The Framework sets out the presumption in favour of sustainable development. However, the harms identified are such that the scheme would not accord with that presumption. There would also be conflict with the development plan, in so far as its policies are relevant, and the draft plan in terms of the policy cited. Thus, for the reasons set out above and having had regard to all matters raised, I conclude that the appeal should fail.

*Zoë Hill*

Inspector