
Appeal Decision

Site visit made on 4 September 2013

by R P E Mellor BSc DipTRP DipDesBEnv DMS MRICS MRTPI

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

Decision date: 5 November 2013

Appeal Ref: APP/T2350/A/13/2190784

Laneside Farm, Pendleton, Clitheroe BB7 1PU

- 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 M Gornall against the decision of Ribble Valley Borough Council.
 - The application Ref 3/2012/0526, dated 30 May 2012, was refused by notice dated 13 December 2012.
 - The development proposed was first described in the application as '20kW Micro Wind Turbine on a 18m monopole for business use.'
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Decision

1. The appeal is allowed and planning permission is granted for the proposed installation of a 15kW Micro Wind Turbine on a 15m monopole for business use at Laneside Farm, Pendleton, Clitheroe BB7 1PU in accordance with the terms of the application, Ref 3/2012/0526, dated 30 May 2012, subject to the conditions set out on the attached schedule.

Application for costs

2. An application for costs was made by Mr M Gornall against Ribble Valley Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. The appeal form confirms that the application was amended to reduce the height of the turbine hub from 20m to 15m. The officer report confirms this and that the installed capacity would be 15kW and not 20kW as originally proposed. The appeal has accordingly been determined on the basis of the revised description on the decision notice which is: 'Proposed installation of a 15kW Micro Wind Turbine on a 15m monopole for business use'.
4. There is confusion over the elevation drawing. The drawings submitted with the appeal include an elevation drawing with the reference No CF15e_15m MAST. The Appellant confirmed at the site visit that this refers to the 15m hub height and 15kW capacity which he proposes to install. However that drawing also bears the title: 'Overall Dimensions for CF20 Turbine: 20kW Generator/15m MAST/6m Blades'. As CF15e refers to the generator capacity then there is apparently an error in the drawing title. The drawing held by the Council shows a turbine of identical dimensions and appearance that has the number CF20_15 MAST but which also refers to a 20kW generator.

5. The Design and Access Statement submitted with the application refers to 6.5m turbine blades and to the CF15e generator. That is said to be a turbine with the characteristics of a 20kW turbine but rated at 15kW to allow it to run into a single phase electricity supply. As the parties clearly do not dispute that this should be a 15m mast with a 15kW generator and of agreed appearance then the matter of the drawing reference number and title can be addressed by planning condition without prejudice to the interests of any party.
6. It is commonplace for wind turbines to be installed for a fixed period, usually 25 years. The Appellant has not objected to a condition proposed by the Council which would limit the life of the permission to 25 years. The appeal has therefore been determined on that basis.

Main Issues

7. Having regard to local and national policy the main issues are considered to be what impacts the development would have in respect of: aviation safety; all other relevant matters including landscape and visual impact, heritage, wildlife, and residential amenity; and whether any identified harm may be outweighed by any benefits of the development.

Policy Context

8. The development plan here comprises the saved policies of the Ribble Valley Districtwide Local Plan (1998) (the LP). Whilst there are a number of potentially relevant policies that are generally applicable to development, I accord the greatest weight to the specifically relevant policies for renewable energy at ENV24, ENV25 and for wind energy at ENV26. These policies are generally supportive of such development subject to no unacceptable harm to interests of acknowledged importance in the local environment and to particular regard being given amongst other things to: landscape: the Area of Outstanding Natural Beauty (AONB); residential amenity; and the local and wider benefits of the proposal. ENV26 provides more detailed criteria including what is effectively a sequential test requiring it to be demonstrated that all wind energy proposals within an AONB: 'cannot be better located outside such ... areas'. It does not specifically refer to impacts on radar installations although it does require that a proposal: 'does not interfere with electromagnetic signals.'
9. The National Planning Policy Framework (the Framework) is a material consideration. Paragraph 215 provides that due weight should be given to relevant policies in existing development plans according to their degree of consistency with the Framework. The Framework is generally supportive of renewable energy for its environmental benefits and provides that an application should be approved: 'if its impacts are (or can be made) acceptable'. In relation to AONBs the Framework advises amongst other things that planning permission should be refused for 'major' developments except in exceptional circumstances. In such cases consideration should be given amongst other things to the scope for developing instead outside the designated area. LP Policy ENV26 is inconsistent with the Framework in this respect because it does not distinguish between 'major' and other development when seeking to apply the sequential test.
10. The draft '*Core Strategy 2008-2028 A Local Plan for Ribble Valley*' (the draft CS) has been subject to public consultation and then submitted to the

Secretary of State for examination. It is a material consideration but may yet change prior to adoption as part of the development plan which limits its weight. The Council has asked that draft Policies DMG1, DMG2 and DME3 be taken into account but has not expressed any view as to whether or not the proposed development is in conformity with these policies. I have taken the reference to Policy DME3 (renewable energy) to be a misprint as the most relevant policy copied to me is Draft Policy DME5: Renewable Energy. This combines into one policy a number of criteria that are similar to LP Policies ENV24-26. They include the sequential test for all such development proposed in the AONB but also provide that regard will be had to the Renewable Energy Position Statement (see below). There is no reference to aviation safety, radar or electromagnetic signals.

11. The appeal site is within the Forest of Bowland Area of Outstanding Beauty (AONB). The AONB Joint Advisory Committee (JAC) has published a Renewable Energy Position Statement (REPS) which is a material consideration but of limited weight, particularly as I have not been advised either that it has been adopted by the Local Planning Authority or that it was subject to public consultation in its preparation. The Statement refers to advice in the former national Planning Policy Statement 22 'Renewable Energy' (PPS22) which has however been replaced by the Framework. Nevertheless the statement defines a turbine of less than 25m in height as a micro turbine which may be appropriate within the AONB. The Statement further provides that any scheme is to be viewed on its own merits but that a location within the AONB should not be a reason for refusal unless significant environmental impacts are envisaged. That the JAC considers that micro turbines of this scale can be acceptable in the AONB supports the view that this should not be considered as a 'major' development in the AONB. Furthermore the Screening Opinion issued by the Council on 8 March 2012 concluded that no Environmental Impact Assessment was required because, amongst other reasons, this would 'not be a major development of more than local importance'. The turbine should thus not be subject to the sequential test for major development sought by the Framework, or the more stringent sequential test set out in the LP.
12. The Council's Decision Notice also refers to the Companion Guide to PPS22 which has however been recently replaced by national Planning Practice Guidance for Renewable and Low Carbon Energy (PPGRLCE). That amplifies the Framework but does not alter its policies. Paragraph 31 includes guidance on air traffic and safety which is a condensed version of the previous guidance. It generally advises amongst other things that there should be consultation in relation to civilian radar within 15km of a turbine. Reference is also made to a 32km advisory zone but the guidance comments that objections can be raised to developments beyond 32km. In relation to Ministry of Defence (MoD) radar the PPGRLCE refers to a 'c.15km' statutory safeguarding zone and states that there should be consultation with the MoD if a proposed turbine is 11m to blade tip or taller and/or has a rotor diameter of 2m or more.
13. The '*Landscape Sensitivity to Wind Energy Development in Lancashire*' assessment carried out by the County Council is also material. The hillside location is on the lower slopes of Pendle Hill within the Pendleton Landscape Character Area which is assessed there as having a moderate-high level of sensitivity to wind energy development.

Reasons

Aviation Safety

14. The application was refused planning permission for a single reason concerning alleged interference with a radar installation at Warton airfield. This related to an objection by the Ministry of Defence (MoD). However on 10 May 2013, that objection was withdrawn and the matter is not being pursued by the Council.
15. The appeal site is estimated to be 38.7km from Warton airfield. As this is beyond the usual consultation and advisory zones, and because the turbine would be a single structure and relatively small compared to commercial wind farm turbines, this all suggests that the risk of dangerous interference would be small. However I am aware that the MoD has objected to a number of wind turbine developments of this and smaller size around Warton. This appears to be due to concern about the proliferation of multiple developments. I am aware that aviation safety and the convenient routing of air traffic can be compromised if turbines appear on a radar screen as images similar to real aircraft. The more such images that appear in a given area, the more difficult becomes the air traffic controller's task.
16. With the appeal statement the Appellant submitted a consultant's report which acknowledged that large turbines and multiples of them in wind farms may cause problems for Air Traffic Control radar but suggested that there is no published evidence of single small turbines generating ill effects and that no adverse safety reports have been published by the Civil Aviation Authorities or anyone else. That is not determinative as to the absence of problems as it could reflect that the control of development may have been effective in preventing a problem from arising. However the consultants suggest that in this case they calculate that the subject turbine will not be detected by the Warton radar at all and could not therefore produce unacceptable interference. It is suggested that the radar will not be desensitised and that real aircraft will always be seen.
17. The letter of 10 May 2013 is not specific as to the reason for withdrawing the MoD objection. It simply suggests that further work by BAE Systems (which has a plant at Warton) and the radar manufacturer SELEX '*... has resulted in further refinements to the criteria that BAE Systems apply in order to establish whether or not a wind turbine will have a detrimental effect on aviation operations conducted by BAE Systems. In the light of these refinements the MoD can withdraw its objection.*'
18. As the MoD has withdrawn its objection and the reason for refusal is no longer being pursued by the Council there are now no matters at issue between the Council and the Appellant and no evidence of conflict with local or national policy with regard to the aviation issue. It is concluded that aviation safety and traffic is unlikely to be materially harmed by the development.
19. Nevertheless a number of other matters have previously been considered by the Council which merit review including some which are relevant to the application of conditions to any permission. In that regard it is appropriate to consider the appeal as if the application had been made to the Secretary of State in the first instance.

Landscape and Visual Impact

20. The turbine would be within the AONB and in an area of moderate high landscape sensitivity. The overall height of the turbine to blade tip would be just under 22m and thus a micro turbine as defined by the REPS. In the terms of the Framework (which in this respect outweighs LP Policy ENV26 as a material consideration) this would not be a major development and thus it is unnecessary to demonstrate that it would be 'better' located outside the AONB, particularly as it would support a farming enterprise within the AONB.
21. It would be seen over a wide area within the valley including from Clitheroe Castle, from nearby public footpaths and a bridleway, from parts of the A59 and from nearby high ground including land with open access. However the structure would be smaller than many commercial wind turbines and there is some support in the REPS for turbines of this smaller scale within the AONB. In the submitted landscape and visual impact assessment the significance of the landscape and visual impacts is judged to be moderate in close proximity to the turbine (which would include in some near views from a public footpath and bridleway) and only minor beyond a distance of about 1km and especially beyond 1.5km. In these public views the turbine would be dwarfed by the large scale and expansive landscape. There would be no unacceptable harm to any key characteristics of that valued landscape or adjacent landscape character areas or to the objectives for the designation of the AONB. I agree with these conclusions which are also similar to the Council's conclusions as set out in the officer report.

Heritage Assets

22. The turbine would be within sight of several listed buildings including Grade II Laneside Farm and Great Mearley Cottage, and Grade II* Little Mearley Hall. A heritage asset assessment was submitted with the application and has not been disputed by the Council. Having regard to Section 12 of the Framework and to Section 66 of the Planning (Listed buildings and Conservation Areas) Act 1990, the Council concluded that the wind turbine would not have a significant impact on the setting of those listed buildings. I agree with those conclusions.

Wildlife

23. The Council determined that the development would not be likely to have an impact on any wildlife species. The officer report noted that the turbine would be at least 50m from likely food sources for bats (or birds). That is however relevant to proposals to reinstate a former hedge close to the turbine. To maintain that 50m separation it would be necessary to avoid new planting within that distance. A submitted indicative drawing of new hedge planting suggests that new sections of hedge would be planted to just beyond that distance. However that would leave a visually incongruous gap in the field boundary. That location for a hedge has also been criticised by the Council's landscape adviser as it would create a visual scale relationship which could make the turbine appear larger than it otherwise would. Hedge planting proposed elsewhere beside the bridleway would not have that disadvantage and would screen some views of the turbine once the hedge matures. That would mitigate the visual impact. Nevertheless these are issues which can best be resolved by reserving the hedge planting details for subsequent determination.

Residential Amenity

24. The officer report does not refer to residential amenity or allege any harm in that regard. The nearest dwellings occupied by those without any obvious financial involvement appear to be roughly 350-450m from the turbine site. That would be far enough to avoid an overbearing visual impact at any dwelling. Trees shield some views.
25. The risk of shadow flicker has been assessed by the Appellant against national guidance and indicates that no dwellings are likely to be affected. The Council has not disputed those conclusions.
26. A noise report for a CF20 20kW turbine was provided but does not indicate what noise immissions can be expected at the distance of the nearest dwellings. Neither has there been any survey of current local background noise levels. The Design and Access Statement does not comment on likely noise impacts other than in relation to the Appellant's own dwelling.
27. The Design and Access Statement suggests that Government recommended noise guidance in the document which is usually referred to as ETSU-R-97 (or just ETSU) would advise a noise immission limit at the affected dwellings of 37dB(A) (or 45dB(A) if there is a financial involvement) or 5dB above background noise level. However that is not an accurate summary of ETSU which in low noise environments suggests a day-time limit of 35-40dB(A). The actual level chosen is to depend upon the number of dwellings in the area, the effect of noise limits on electricity generation, and the duration and level of exposure. There is insufficient information here to determine whether that figure should be 37dB(A) or another figure. ETSU allows higher limits at night when people are usually indoors. Whilst a limit of 5dB above background levels can be used at higher wind speeds (when background noise rises due to increased wind noise around vegetation and structures) the assessment of the appropriate levels requires extensive noise survey work.
28. In the alternative ETSU advises a simpler fixed 35dB(A) limit at wind speeds up to 10m/s at 10m height.
29. The officer report makes no reference to noise and the Council has not suggested any conditions to control noise. Neither have any Environmental Health observations been reported. The nearest dwellings would be upwind of the turbine in prevailing wind conditions which should reduce noise impacts. The affected dwellings would also then be downwind of the A59 road which is a local source of background noise. Having regard to the scale of the turbine and to the separation distance from those dwellings with no financial involvement, the risk of noise nuisance is considered to be small. However as the information before me does not allow for the precise forecasting of noise levels there remains some risk. I therefore consider that the simplified 35dB(A) noise limit condition should be applied. It would be open to the Appellant to negotiate an alternative condition or the deletion of that condition on application to the Council if that application were to be supported by more comprehensive noise-forecasting information and if there were an agreed methodology for investigating any complaints should a condition relating to background noise be applied.

Benefits of Development

30. The LP, the emerging CS and national policy all require that regard be had to any benefits of renewable energy. In this case the turbine would make a positive contribution to renewable energy production. It would make a modest contribution towards national targets which seek to reduce carbon emissions, tackle climate change, and improve energy security. The electricity produced and the income in respect of any surplus electricity exported from the site would also help to support a rural enterprise with associated economic benefits.

Conditions

31. The Council has suggested conditions to be imposed should the appeal be allowed. Condition 1 is to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990. Condition 2 is needed for the avoidance of doubt and to ensure that the development is carried out in accordance with the submitted plans. But it requires amendment to include the relevant drawing numbers and to resolve uncertainty as to which elevation drawing is approved. Conditions 3 and 4 are needed in order to prevent the structure remaining on site after its use has terminated, in the interests of the visual amenity of the area and in order to avoid conflict with the Local Planning Authority's control of development within the open countryside. But Condition 3 also requires amendment as the Council's wording does not specify when the turbine would be removed and is thus unenforceable. Also it is not necessary to refer to any alternative permission that may be sought to extend the life of the development as any such an application would be determined on its own merits. Condition 5 is needed to protect the area's character and appearance. A tree protection condition and a bird nest protection condition are not needed as no trees or hedgerows need to be removed to implement the permission. Condition 6 is needed to protect the character and appearance of the area by requiring the subsequent approval of details of a scheme for mitigation planting to protect the character and appearance of the area, but it has been amended to tailor it more specifically to the subject proposal. It relates mainly to hedgerow planting on the field boundary with the bridleway to the west but may also include planting to restore the land around the turbine after construction. An additional condition is needed to reduce the slight risk of noise nuisance at nearby dwellings, as discussed above.

Conclusions

32. Having regard to all the above considerations it is concluded that there is now no evidence of a significant adverse impact on aviation safety. Whilst there would be a moderate adverse landscape and visual impact close to the turbine within the AONB (which can be only partially mitigated by a condition requiring details of new hedgerow planting), and a minor adverse landscape and visual impact at a greater distance, together with a minor adverse impact on the setting of identified heritage assets, these impacts are acceptable in that they would be outweighed by the environmental and economic benefits of the development. A slight risk of noise nuisance can be suitably controlled by a planning condition. This would thus be a sustainable development generally in accord with the Framework and the adopted development plan. Whilst there is some apparent conflict with a sequential test for development in the AONB as set out in the LP and the emerging CS, that test does not have regard to whether this is a major development. The scoping opinion concluded that it

was not a major development. The REPS also confirms in effect that this is not considered to be a major development and that this scale of development can be acceptable in the AONB. The REPS is supported by the emerging CS.

33. For the above reasons the appeal should be allowed.

R P E Mellor

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) Notwithstanding any indication to the contrary on the various submitted drawings, permission is hereby granted for a monopole mast with 15434mm hub height, 13100mm blade swept diameter, and overall height of 21979mm with a rated 15kW generator. Development shall not commence until the Appellant has made any necessary amendment to the title and reference number of the submitted drawings to conform to that description and has supplied that title and reference number on a drawing submitted to the local planning authority with such number of copies as the local planning authority shall specify.
- 3) The permission shall relate to the development as shown on Drawing Reference No's: Location Plan 1:10000; Site Plan 1:2500; and to the drawing to be provided in accordance with Condition 2 above.
- 4) This permission shall expire after 25 years following the date that electricity generated from the turbine is first connected to the grid. The Local Planning Authority shall be notified of such date in writing not later than one month from the making of such connection. Within 12 months of the end of the 25 year period the structure hereby authorised shall be removed from the site and the land reinstated to its former condition.
- 5) Within 12 months of the cessation of electricity generation, or if the turbine ceases to be operational for a continuous period of 6 months, the turbine and mast shall be removed and the land restored to its former condition.
- 6) The colour of the blades and turbine head shall be Matt Grey (RAL 7045) in colour unless otherwise agreed in writing with the local planning authority.
- 7) The development hereby permitted shall not be commenced until details of hedgerow/landscaping mitigation planting scheme has been submitted to and agreed in writing by, the Local Planning Authority. The scheme shall indicate, as appropriate, the types and numbers of trees and shrubs, their distribution on site, those areas to be seeded, turfed, paved or hard landscaped, including details of any changes of level or landform and the types and details of all fencing and screening. The approved landscaping scheme shall be implemented in the first planting season following completion of the development, whether in whole or part and shall be maintained thereafter for a period of not less than 5 years to the satisfaction of the Local Planning Authority. This maintenance shall include the replacement of any tree or shrub, which is removed, or dies, or is seriously damaged, or becomes seriously diseased, by a species of similar size to those originally planted.
- 8) In accordance with guidance in ETSU-R-97 '*The Assessment and Rating of Noise from Wind Farms (1996)*', the operational noise immissions from the turbine when measured at a height of 1.5m at a distance of 1m from the façade of any affected dwelling shall at no time exceed 35dB(A) LA90 10min at wind speeds up to 10 metres per second measured at a height of 10m.