

BULLINGTON CROSS WIND FARM

AN OBJECTION BY

KEEP HAMPSHIRE GREEN

**Winchester City Council Reference: 13/00800/FUL
Basingstoke and Deane Borough Council: 13/00046/FUL
Test Valley Borough Council: 13/00753/FULLN**

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[pdf 2: Section 2]

2 Planning Policy Framework

- 2.1 The primary legislation governing the planning process is contained in the Town and Country Planning Act 1990, as amended. The Planning and Compulsory Purchase Act 2004 provides the statutory basis for the ‘plan-led system’ of development control. Section 38(6) states:

“If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”

- 2.2 In determining planning applications, local planning authorities are required to have regard to the provisions of the development plan and to other material considerations which will include national planning policies and the Government’s energy strategy.

- 2.3 It is often claimed by wind farm developers that the urgent need to achieve government national renewable energy targets takes ‘primacy’ for any renewable energy schemes proposed over conflicting policies in the development plan. This has been tested¹ in the High Court where Mrs Justice Lang dismissed such a contention:

“..as a matter of law it is not correct to assert that the national policy promoting the use of renewable resources in PPS1 paragraph 22 negates the local landscape policies or must be given primacy over them.”

The recent announcement by the Secretary of State for Communities and Local Government regarding new planning guidance for onshore wind farms also indicated that this concern was one of the key reasons for their introduction.

- 2.4 The introduction of the National Planning Policy Framework (NPPF) on 27th March 2012 represents one of the biggest overhauls of national planning policy in many years, cancelling as it does a large number of previous national policies including PPS 22, the previous main national renewable energy policy. Although the Companion Guide to PPS 22 retains its status as guidance not policy. The policies contained in the NPPF are material considerations in planning decisions but there is no change in the statutory approach to planning decision making which remains plan-led. Therefore, this application for planning permission must still be determined in accordance with the development plan unless material considerations indicate otherwise.

¹ Sea & Land Power & Energy Ltd vs Secretary of State for Communities before Hon Justice Lang - EWHC 1419; May 2012

National Planning Policy Framework

- 2.5 Whilst at the heart of the NPPF is a presumption in favour of sustainable development the policy makes clear that this does not give carte-blanc for all so called ‘sustainable developments’ to be approved irrespective of any adverse impacts. The NPPF says²:

“At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.

For decision-taking this means:

- approving development proposals that accord with the development plan without delay; and*
- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:*
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits; when assessed against the policies in this Framework taken as a whole; or*
 - specific policies in this Framework indicate development should be restricted.*

Thus the NPPF is clearly stating that any development where the adverse impacts outweigh the benefits should be refused planning permission. Some wind farm developers claim that all wind turbine developments are sustainable development because they use a renewable energy resource and over their lifetime will be carbon positive. However, it is irrefutable that a development where the harm outweighs the benefits cannot be considered to be sustainable.

- 2.6 The NPPF continues, at paragraph 17 in setting out a number of core planning principles that should underpin decision-taking including, *inter alia*, the following:
- Seeking to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings;
 - Taking account of the different roles and character of different areas...and recognising the intrinsic character and beauty of the countryside;
 - Supporting the transition to a low carbon future in a changing climate;
 - Contributing to conserving and enhancing the natural environment and
 - Conserving heritage assets in a manner appropriate to their significance.

² NPPF - Para 14

- 2.7 Paragraph 98 of the NPPF confirms that when determining applications for energy development, local planning authorities should approve the application ‘*unless material considerations indicate otherwise*’ and ‘*if its impacts are (or can be made) acceptable*’.
- 2.8 The footnote to paragraph 97 of the Framework advises that in assessing the likely impacts of potential wind energy development, the approach in the National Policy Statement for Renewable Energy Infrastructure (EN-3) read with the Overarching National Policy Statement for Energy Infrastructure (EN-1), should be followed. Paragraph 2.7.55 of EN-3 provides that the 1997 report by ETSU for the Department of Trade and Industry *The Assessment and Rating of Noise from Wind Farms* (ETSU-R-97) should be used for assessing the impact of noise from a wind farm.
- 2.9 Section 11 of the NPPF addresses the issue of conserving and enhancing the natural environment. Paragraph 109 states that the planning system should contribute to and enhance the natural and local environment by, *inter alia*, protecting and enhancing valued landscapes and recognising the wider benefits of ecosystem services.
- 2.10 The NPPF continues, at paragraph 123, in stating that planning policies and decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development and mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through use of conditions. Furthermore, planning policies and decisions should aim to identify and protect areas of tranquillity which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason.
- 2.11 Section 12 of the NPPF addresses the issue of conserving and enhancing the historic environment. Paragraph 129 states that local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this into account when considering the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset’s conservation and any aspect of the proposal.
- 2.12 Paragraph 132 of the NPPF states that, ‘*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....Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification.*’
- 2.13 Paragraph 133 states that where a proposed development will lead to substantial harm to a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial

harm is necessary to achieve substantial public benefits that outweigh that harm.

- 2.14 The NPPF superseded PPS22 Renewable Energy but the Companion Guide remains in force. Paragraph 5.4 of the Companion Guide lists the key issues that should be taken into account by development control officers in determining applications for renewable energy schemes. This includes, *inter alia*, addressing issues of landscape and visual impact at the scheme-specific level.
- 2.15 Section 8 of the Companion Guide deals specifically with wind turbines. Paragraph 39 confirms that '*the material question is whether the proposal would have a detrimental effect on the locality generally, and on amenities that ought, in the public interest, to be protected.*' The Guide continues, at paragraph 40, in stating that there are a number of issues specific to wind turbine developments that need to be considered when determining an application for planning permission. These include, *inter alia*, the noise generated by wind turbines, landscape and visual impact and impact on listed buildings.
- 2.16 The determination of an onshore wind farm planning application depends upon an assessment of the balance between two potentially conflicting sets of planning policies. On the one hand there are policies promoting renewable energy production, including onshore wind, and on the other there are numerous policies protecting the countryside, wildlife, the cultural heritage, the recreation and the general amenity of people living, working and travelling in the vicinity. This is the situation here where the development plan exhibits precisely such conflicting policies. Thus a balancing exercise has to be undertaken to determine whether the adverse impacts of the turbines outweigh the benefits of the electricity produced. The role of the determining authority is to carry out this balancing exercise.
- 2.17 The NPPF specifically recognises³ this by requiring local planning authorities to design policies to maximise renewable and low carbon energy development **while ensuring that adverse impacts are addressed satisfactorily**. This is the crux of the principle of determining renewable energy generating planning applications. If adverse impacts cannot be addressed satisfactorily then the application must be refused. We will show that this is precisely the situation that applies here.
- 2.18 KHG is fully supportive of the need to increase the amount of renewable energy generated but renewable energy developments are only of long term value if the benefits outweigh the adverse impacts.
- 2.19 It is obvious that in any balancing exercise the same degree of thoroughness has to be applied in quantifying both sides of the equation. The ES spends hundreds of pages in assessing the negative impacts in detail but the amount of electricity forecast to be produced is based on an unjustified assumption

³ NPPF - Para 97

with no evidential basis. It is purely illustrative. This is unacceptable and leaves the decision maker without the necessary information to make a reasoned judgement. There has been no attempt to erect an anemometer mast to obtain the necessary site specific wind data. In a low wind speed area such as this where electricity generation will be significantly less than the average such an exercise becomes even more important. This issue is investigated in more detail in section 11 on benefits.

- 2.20 The NPPF also provides more detailed guidance in some areas. Thus on design it stresses⁴ the importance of design as a key aspect of sustainable development and requires LPAs to concentrate in policy terms on guiding the overall scale, density, massing, height, landscape, layout and access of new development in relation to neighbouring buildings and the local area more generally. It also says that planning decisions should address the integration of new development into the natural, built and historic environment.
- 2.21 The NPPF, when talking about conserving and enhancing the natural environment⁵ states that the aim should be to minimise adverse effects on the local and natural environment..
- 2.22 Finally within the NPPF the first key principle⁶ states that planning should empower local people to shape their surroundings and plans should be based on joint working and co-operation, with succinct local and neighbourhood plans setting out a positive vision for the future of the area. It also makes clear⁷ that applicants will be expected to work closely with those directly affected by their proposals to evolve designs that take account of the views of the community and that proposals that demonstrate this should be looked on more favourably. Such consultation has been noticeable by its absence in this instance.

National Policy Statements - EN 1/3

- 2.23 Published in July 2011 the National Policy Statements (NPS) set out national policy against which proposals for major energy projects will be assessed and decided by the Planning Inspectorate's National Infrastructure Directorate. For onshore wind this means projects greater than 50MW. The two NPSs relevant to this application are EN1 which provides an overarching statement on the Government's policy on energy in general and EN 3 which provides a more specific statement on renewable energy in particular.
- 2.24 Whilst this scheme falls below this 50MW limit, it is stated in the NPSs that they could be a material consideration in decision making on planning applications that fall under the Town and Country Planning Act 1990. However, crucially whether or to what extent they should be afforded weight

⁴ NPPF - Para 56/59/61

⁵ NPPF - Para 110

⁶ NPPF - Para 17

⁷ NPPF - Para 66

should be judged on a case by case basis.

2.25 There are a number of issues contained within EN 1/3 which are relevant if the Councils do attach weight to these policies.

- Applicants are obliged⁸ to include in their ES, as a matter of fact, information about the main alternatives they have studied. This should include an indication of the main reasons for the applicant's choice, taking into account the environmental, social and economic effects. In some circumstances the relevant energy NPSs may impose a policy requirement to consider alternatives particularly with regard to biodiversity, flood risk and landscape and visual impacts. Alternatives have not been considered by the applicant.

- Good design⁹ is a means by which many of the policy objectives in the NPS can be met, for example, the impact sections show how good design, in terms of siting can help mitigate adverse impacts such as noise.

- The grid connection¹⁰ should be considered as part of a single planning application and where this is not the case then the applicant should ensure that they provide sufficient information to comply with the EIA Directive including the indirect, secondary and cumulative effects, which will encompass information on grid connections.

- The applicant¹¹ should consult the MOD, CAA, NATS and any aerodrome, licensed or otherwise, likely to be affected by the proposed development in preparing an assessment of the proposal on aviation or other defence interests.

- The predicted wind speed¹² is a key consideration as the amount of electricity produced increases disproportionately with increases in wind speed and this in turn affects the carbon emission savings.

- All wind turbines generate sound¹³ and, as such, appropriate distances should be maintained between wind turbines and sensitive receptors to protect amenity.

- Developers¹⁴ should include the full extent of the access tracks necessary and an assessment of their effects.

- Generally¹⁵ the wind turbines themselves will always be decommissioned with the concrete foundations dug out to a certain depth to ensure that the

⁸ EN 1 - Para 4.4.2

⁹ EN 1 - Para 4.5.2

¹⁰ EN 1 - Section 4.9

¹¹ EN 1 - Para 5.4.11

¹² EN 3 - Para 2.7.4

¹³ EN 3 - Para 2.7.6

¹⁴ EN 3 - Para 2.7.12

¹⁵ EN 3 - Para 2.7.14/15

use of the site can continue. Applications for onshore wind farms should set out the details of what will be decommissioned and removed from the site at the end of the operational life of the generating station.

- The applicant¹⁶ should have assessed the various potential routes to the site for delivery of materials and components where the source of the materials is known at the time of the application and selected the route that is considered to be most appropriate. Any sections of the route which will require modification to allow for the transportation of components to site should be identified and potential effects assessed as part of the ES.

Onshore Wind Farm Planning Guidance

2.26 On the 6th June DCLG issued a press release stating that new planning guidance on onshore wind farms will be produced shortly. The main thrust of this guidance will be for the opinions of local communities to be given much greater weight. The press release accompanying the announcement says:

Communities will have a greater say over the siting of onshore wind farms, and reap increased benefits from hosting developments that do proceed, as a result of changes announced today.

The package of measures will include a five-fold increase in the value of community benefits paid for by developers, and proposals will require communities to be consulted earlier in the application process.

Current planning decisions on onshore wind are not always reflecting a locally-led planning system. New planning guidance supporting the planning framework from DCLG will make clear that the need for renewable energy does not automatically override environmental protections and the planning concerns of local communities. It will give greater weight to landscape and visual impact concerns.

Ministers will be writing to the Planning Inspectorate and councils immediately to flag up that new guidance will become available shortly.

The Government will be expecting the industry to revise its Community Benefit Protocol by the end of the year, to include an increase in the recommended community benefit package in England from £1,000/MW of installed capacity per year to £5,000/MW/year for the lifetime of the windfarm.

Energy Minister, Michael Fallon said:

“Today we are putting local people at the heart of decision making on onshore wind.

¹⁶ EN3 - Para 2.7.75/6

“We are changing the balance to ensure that they are consulted earlier and have more say against poorly sited or inadequately justified turbines.”

Eric Pickles, Secretary of State for Communities and Local Government, said:

“We want to give local communities a greater say on planning, to give greater weight to the protection of landscape, heritage and local amenity.”

- 2.27 This is a major shift in policy and puts the opinions of local communities right at the forefront of determining the acceptability of any onshore wind turbine planning application. The statement that ministers will be writing immediately to the Planning Inspectorate and councils shows that it is the intention that this new policy direction should be taken into account immediately and hence that it should be given significant weight in the determination of this application.

Regional Planning Policy - South East Plan (2009)

- 2.28 The Localism Act gained Royal Assent on 15th November 2011 and gives the power to the Secretary of State to revoke the Regional Spatial Strategies. The South East Plan has been formally revoked and carries no weight in this determination.

- 2.29 Thus the targets for renewable energy that were contained within the Regional Spatial Strategy no longer apply. The ES tries to argue that whilst the regional targets have no bearing on this application the analysis that went into arriving at them still has some relevance and hence the performance of the Region towards these obsolete targets should be taken into account. Whilst it is true that the removal of the regional layer of planning policy does not reduce the national drive behind renewable energy the regional targets were only a way of encouraging the regions. As the ES says¹⁷:

The need to develop renewable energy has always been a national need , not a regional need.

Thus if the national targets are being met the performance of an individual region or county is irrelevant. It has always been accepted that different parts of the country will deliver varying levels of renewable energy dependant on the potential in their area for the different renewable technologies. The 2012 Renewables Roadmap Update highlighted the growing importance of solar power, which is now accepted as a key technology. In a low wind speed area such as this with nationally designated landscapes in the immediate vicinity it is highly unlikely that onshore wind will constitute a large part of the renewable mix. The rapidly growing number of solar farms applying for and being granted planning permission in the local area shows that there is a proven commercial alternative supporting the limited need for commercial scale onshore wind.

¹⁷ ES - Planning Statement - Para 5.4

Local Plans

- 2.30 In all three cases the Council has a Local Plan adopted in 2006 with policies saved in 2009. All Councils have all started on developing Core Strategies for the new Local development Framework, reaching different positions at the current time. The Planning Statement in the ES attempts to argue that in the light of the introduction of the NPPF local plans that do not have a specific renewable energy policy, and where other policies do not mention the balancing exercise inherent in the NPPF, then these policies should be ignored. This runs directly counter to the stated position of the Localism Bill and indeed the ministerial foreword to the NPPF which says:

Planning must be a creative exercise in finding ways to enhance and improve the places in which we live our lives.

This should be a collective enterprise. Yet, in recent years, planning has tended to exclude rather than include, people and communities. In part, this has been a result of targets being imposed, and decisions taken, by bodies remote from them. Dismantling the unaccountable regional apparatus and introducing neighbourhood planning addresses this.

- 2.31 The saved policies of the local plans are a vital part of the Development Plan and should be given significant weight in the determination of this application. They comprise the clear decisions of the LPAs in setting out the direction in which they wish the strategic development of their district to move and the criteria against which to judge any development proposals put forward. Whilst it is accepted that a balancing exercise needs to take place, weighing the harm caused against the benefits obtained, the Local Plan provides clear indications of the weight that the local area wishes to place on the different elements in the balance. Thus if a local policy states that a development will be refused permission if it creates adverse harm, say to the landscape, then, even if it does not mention an overall balancing exercise, it still provides important evidence that great weight should be applied to the impact of harm to the landscape when judging a development in the balance. To just say that such a policy should be totally disregarded is to misinterpret the thrust of what the NPPF is trying to achieve.
- 2.32 It is not intended to go through all of the individual local plans in detail, even though the ES does not do so. Each LPA will be fully conversant with their own planning policies and we merely restrict this document to identifying those that are relevant to this application.

Winchester City Council

- 2.33 The Joint Core Strategy (JCR) for Winchester City Council, including the new South Downs National Park Authority has been adopted by the Council. It includes a renewable energy policy CP12. The supporting text to this identifies that there are landscape and environmental constraints to large scale wind. The policy itself states that the LPA is supportive of the

generation of renewable and decentralised energy in the District particularly for larger-scale developments where there is a strong degree of community benefit and/or ownership. In this it is reflecting the new national planning guidance that is due to be produced regarding onshore wind. The criteria which need to be taken into account include, amongst others:

- impact on areas designated for their local, national or international importance including the South Downs National Park, conservation areas and heritage assets including their setting.
- contribution to renewable energy targets
- connection to the electricity network
- effect on the landscape and surrounding location.

- 2.34 The JCR also includes a statement regarding the NPPF presumption in favour of sustainable development, although we argue that any scheme where the harm outweighs the benefits cannot be considered to be sustainable. This says:

The Council will work proactively to find solutions which mean proposals that accord with planning policies can be approved wherever possible and to secure development that improves the economic, social and environmental conditions in the area.

We show that there will be a degrading not improvement of the economic, social and environmental conditions in the area as a result of this scheme.

- 2.35 The saved local policies from the Local Plan that are relevant to this application are:

DP3 on general design criteria
 DP4 on landscape and the built environment
 DP11 on un-neighbourly uses
 DP12 on pollution
 DP14 on public utilities and alternative sites
 HE1 on heritage assets
 HE2 on heritage assets of unknown extent and their settings
 HE4 on settings of conservation areas
 CE8 on SSSIs
 CE10 on sites not designated for nature conservation
 CE11 on creating and improving habitat of nature conservation interest

Test Valley Borough Council

- 2.36 The Local Plan saved policies include a policy on renewable energy which will be the starting point for this application. Policy EN32 permits proposals for the development of renewable energy schemes provided that the impact on the landscape is not detrimental and it does not adversely affect features or areas of ecological, historical or cultural interest and it minimises the impact on local land use. The supporting text makes clear that the encouragement of the development of renewable energy sources must be

weighed carefully against the policies in the plan to protect the environment. It also makes the point that both the benefits and negatives must be considered, so it is requiring a balancing exercise be carried out.

2.37 The relevant saved policies in the Local Plan are:

- SET03 on development in the countryside
- ENV01 on biodiversity and geological conservation
- ENV03 on SSSIs
- ENV04 on sites of importance for nature conservation
- ENV05 on protected species
- ENV07 on North Wessex AONB
- ENV11 on archaeology and cultural heritage
- ENV16 on registered parks and gardens
- ENV17 on settings of heritage assets
- HAZ06 on safeguarded aerodromes and technical sites
- TRA08 on public rights of way
- DES01 on landscape character
- DES02 on settlement character
- DES05 on layout and siting
- DES06 on scale, height and massing
- DES08 on trees and hedgerows
- DES09 on wildlife and amenity features
- AME04 on noise effects

2.38 The Test Valley Core Strategy of the LDF has completed consultation on its pre-submission version but there is no policy dealing with the delivery of renewable energy. The relevant general policies are:

- E1 on creating and retaining environmental quality
- E2 on protecting and enhancing landscape quality
- E5 on biodiversity
- E8 on pollution
- E9 on heritage

Basingstoke and Deane Borough Council

2.39 The Local Plan has a saved policy on renewable energy A6 which says that proposals will be permitted provided that there is no significant adverse effect on the historic and natural landscape, landscape character, townscape or nature conservation issues and no impact on amenity in respect of noise, dust, odour and traffic generation. There also needs to be provision for removal if the site ceases to be operational. The supporting text does provide recognition of a form of balancing exercise.

2.40 Other saved policies that are relevant are:

- E1 on new development
- E2 on setting of listed buildings
- E3 on conservation areas

E4 on archaeology
E5 on historic parks and gardens
E6 on landscape character
E7 on nature conservation interests

- 2.41 The Core Strategy Pre-submission Document has been quashed by the courts and a revised document will be published for consultation in the near future. However, it can be given little weight as it is so early in the adoption process.