



Department for  
Communities and  
Local Government

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BH21 1PB

Our Ref: APP/MO993/A/12/2185234  
Your ref: WB042

28 January 2014

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)  
APPEAL BY WINDBERRY ENERGY LTD  
FIELD ADJACENT TO HARBARROW FARM, STANTON WITH ADGARLEY,  
BARROW-IN-FURNESS  
APPLICATION REF: SL/2012/0448**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Richard McCoy BSc MSc DipTP MRTPI IHBC, who undertook a site visit on 6 August 2013 as part of his consideration of your clients' appeal under Section 78 of the Town and Country Planning Act 1990 against the decision of South Lakeland District Council ("the Council") to refuse planning permission for the erection of a single turbine with a maximum blade tip height of 62m, widening of an existing field access, creation of a new access track and associated infrastructure, dated 22 May 2012, in accordance with application ref: SL/2012/0448.
2. The appeal was recovered for the Secretary of State's determination on 11 October 2013, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, following the Secretary of State's announcement on 10 October 2013 of his intention to consider for recovery appeals for renewable energy developments to enable him to consider the extent to which the new practice guidance (referred to in paragraph 5 below) is meeting the Government's intentions.

**Inspector's recommendation**

3. The Inspector recommended that the appeal be dismissed. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

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## **Policy Considerations**

4. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. The saved policy of the Cumbria and Lake District Joint Structure Plan to which the Inspector refers (IR4) had been revoked along with the Regional Spatial Strategy for the North West on 20 May 2013, before this application had been submitted. The Secretary of State has therefore had regard to the South Lakeland Local Development Framework Core Strategy (CS), adopted in October 2010 as the development plan for the area; and he agrees with the Inspector that the policies most relevant to this case are those described in IR4.
5. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework – March 2012); the National Policy Statement (NPS) for Renewable Energy Infrastructure (EN-3); the Overarching NPS for Energy (EN-1); the Written Ministerial Statements on ‘Local Planning and onshore wind’ (DCLG) and ‘Onshore wind’ (DECC); the Planning Practice Guidance for renewable and low carbon energy; Planning Policy Statement (PPS) 5 Planning for the Historic Environment Practice Guide; and Circular 11/1995: Use of Conditions in Planning Permission. The Secretary of State has had regard to the fact that on 28 August 2013 Government opened a new national planning practice guidance web-based resource. However, given that the guidance has not yet been finalised, he has attributed it limited weight.
6. In accordance with section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, the Secretary of State has paid special regard to the desirability of preserving listed structures or their settings or any features of special architectural or historic interest which they may possess.

## **Main issues**

7. The Secretary of State agrees with the Inspector that the main considerations are those set out at IR1.

## **Visual amenity**

8. For the reasons given at IR6-12, the Secretary of State agrees with the Inspector’s conclusions at IR12 that the scale of the proposal and its open and prominent position would present little in the way of visual linkage or association with comparable structures or regular land cover patterns, thereby resulting in it exerting a dominant influence which would degrade the rural character of the area. He therefore also agrees that, for the reasons given at IR13, the proposed development would be contrary to the provisions of the CS.

## **Setting of Gleaston Castle**

9. The Secretary of State agrees with the Inspector that, for the reasons given at IR14-15, the turbine would have no more than a peripheral presence in views from the Grade I listed Gleaston Castle (which is also a Scheduled Ancient Monument), resulting in a minor effect on the significance of the heritage asset. Accordingly, the Secretary of State agrees with the Inspector (IR19) that this minor effect would

equate with less than substantial harm for the purposes of paragraph 134 of the Framework; and he weighs it accordingly against the public benefits of the appeal proposal.

### **Other matters**

10. For the reasons given at IR16, the Secretary of State agrees with the Inspector that the appeal proposal is unlikely to cause significant noise or shadow flicker nuisance to any nearby residents. He also agrees (IR17) that it is unlikely that there would be significant impacts on birds, bats or badgers, or that the proposal would compromise highway safety.

### **Benefits**

11. The Secretary of State agrees with the Inspector (IR18) that the proposal would contribute to the generation of renewable energy which would assist in meeting national targets that seek to reduce carbon emissions in order to tackle climate change.

### **Conditions**

12. The Secretary of State has considered the Inspector's reasoning and conclusions on conditions, as set out at IR22-23. He is satisfied that they are reasonable and necessary and would meet the tests of Circular 11/95 and paragraph 206 of the Framework. However, like the Inspector, he does not consider that they overcome his reasons for dismissing the appeal.

### **Overall conclusions**

13. The Secretary of State acknowledges that the appeal proposal would be acceptable on highway safety, living conditions and protected species/ecology grounds and would accord with some development plan and national policy aims for the generation of renewable energy. However, he considers that the scale of the turbine would have a significantly adverse impact on a sensitive, small scale landscape and that this, along with the less than substantial harm which its impact would have on the significance of the heritage asset at Gleaston Castle, would not be outweighed by the acknowledged environmental benefits.

### **Formal Decision**

14. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the erection of a single turbine with a maximum blade tip height of 62m, widening of an existing field access, creation of a new access track and associated infrastructure, dated 22 May 2012, in accordance with application ref: SL/2012/0448.

### **Right to challenge the decision**

15. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

16. A copy of this letter has been sent to South Lakeland District Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

**Jean Nowak**

Authorised by the Secretary of State to sign in that behalf

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# **Report to the Secretary of State for Communities and Local Government**

**by Richard McCoy BSc MSc DipTP MRTPI IHBC**

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

**Date: 29 November 2013**

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**Town and Country Planning Act 1990**

**South Lakeland District Council**

**Appeal by**

**Windberry Energy Ltd**

Site visit made on 6 August 2013

Field adjacent to Harbarrow Farm, Stainton with Adgarley, Barrown-in-Furness

File Ref(s): APP/M0933/A/12/2185234

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**File Ref: APP/M0933/A/12/2185234**

**Field adjacent to Harbarrow Farm, Stainton with Adgarley, Barrown-in-Furness**

- 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 Windberry Energy Ltd against the decision of South Lakeland District Council.
- The application Ref SL/2012/0448, dated 22 May 2012, was refused by notice dated 5 September 2012.
- The development proposed is the erection of a single turbine with a maximum blade tip height of 62m, widening of an existing field access, creation of a new access track and associated infrastructure.

**Summary of Recommendation: That the appeal should be dismissed.**

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**Main considerations**

1. I have identified the following main considerations in this case:
  - 1) the effect of the proposal on the character and appearance of the landscape,
  - 2) the effect of the proposal on the setting of Gleaston Castle, and
  - 3) whether any harm, in the light of the development plan, would be outweighed by the national objective of promoting renewable energy generation.

**Reasons**

*Policy*

2. The National Planning Policy Framework (NPPF) states a presumption in favour of sustainable development at paragraph 14. This presumption requires that planning permission should be granted unless any adverse impacts of a proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF. Paragraph 93 of the NPPF makes clear that the provision of renewable energy infrastructure is central to the economic, social and environmental dimensions of sustainable development.
3. The NPPF also states that even comparatively small scale projects can make a significant contribution to meeting national need. This is reflected in the Planning Practice Guidance for Renewable and Low Carbon Energy (July 2013) which states that increasing the amount of energy from renewable and low carbon technologies will help to make sure the UK has a secure energy supply, reduce greenhouse gas emissions to slow down climate change and stimulate investment in new jobs and businesses. The Guidance goes on to state that planning has an important role in the delivery of new renewable and low carbon energy infrastructure in locations where the local environmental impact is acceptable.
4. Saved policy R44 of the adopted Cumbria and Lake District Joint Structure Plan 2001-2016 (SP) is supportive of proposals for renewable energy outside the National Park and designated Areas of Outstanding Natural Beauty if there is no significant adverse effect on landscape character, biodiversity, natural heritage or local amenity and if all practicable measures are taken to reduce such impacts. Policy CS7.7 of the adopted South Lakeland Local Development Framework Core

Strategy (CS) supports appropriately located schemes for wind energy in line with the provisions of the Cumbria Joint Wind Energy Supplementary Planning Document (SPD) which was adopted by the Council in 2007. In addition, CS Policy CS8.2 seeks to protect and enhance landscape character by being informed by, and sympathetic to, the distinctive character landscape types identified in, amongst other documents, the Cumbria Landscape Character Guidance and Toolkit (LCG). Saved Policy C26 of the adopted South Lakeland Local Plan 2006 and Alterations (LP) sets out different but generally complementary criteria while saved SP Policy E37 seeks to protect landscape character.

5. These policies reflect those of the NPPF which in paragraph 98 states support for renewable energy development if its impacts are (or can be made) acceptable. In addition, Section 12 of the NPPF sets out the policy for determining applications for development within the setting of a designated heritage asset as reflected in the policies of the development plan for the area. This proposal for a single turbine falls to be considered against this policy background.

#### *Visual amenity*

6. The appeal site forms part of an agricultural field, bordered by mature hedgerows. It is situated on raised land in open countryside, close to the coast line of Morecambe Bay, around 270 metres to the southwest of Harbarrow Farm. Proposed is a single wind turbine measuring around 44 metres to the hub and around 62 metres to the blade tip. The settlements of Dendron, Gleaston and Stainton with Adgarley are located around 460 metres, 720 metres and 1.1 kilometres from the appeal site respectively. The road between Gleaston and Dendron passes within around 300 metres of the proposal and public footpaths pass close by to the east and south of the field containing the appeal site.
7. The proposal would be situated in an area where 2 classifications of landscape meet. These are defined in the LCG as "Open Farmland and Pavements" and "Drumlin Field" sub types. The former includes the coastal limestone in the vicinity of the appeal site and the latter contains tracts of hills with rounded tops and steep slopes. The LCG advises that uncluttered skylines and key views to and from the coastal limestone area should be protected from large scale energy infrastructure developments such as large scale wind turbines, pylons or telecommunication masts. It further cautions that such developments could also cut across the grain of the landscape and introduce vertical structures that could dominate drumlin features. The LCG goes on to advise that the siting of large scale wind energy developments should be avoided in open and prominent areas where they could degrade the rural character of the area.
8. The SPD gives general guidance on wind energy developments and the capacity of various county landscapes to accommodate wind turbines. The Drumlin landscape type is adjudged to have a low/moderate capacity to accommodate single turbine developments while areas of coastal limestone have a low capacity. The SPD states that turbine developments have the potential to compromise the picturesque coastal limestone scenery around Morecambe Bay, with little scope for visual linkage or association with comparable structures or regular land cover patterns. I observed that the area around the appeal site is characterised by undulating fields separated by hedgerows containing some isolated specimen trees. With the exception of small scale electricity pylons there are few tall man

made structures. Large scale pylons may be seen in the wider landscape but these are some distance away to the west and would not feature prominently in any views which would take in the proposed turbine. As such the immediate area is for the most part clutter free and unspoilt.

9. The LCG does not define 'large scale' but I consider the proposal would be of a moderate scale in terms of turbine height. In addition, the SPD does not preclude turbine development in all circumstances and it is the case that the turbine proposed is smaller than those with which the SPD, in the main, concerns itself. Nevertheless, although there are no special landscape designations applicable to the area and no hard and fast rules about how suitable areas for renewable energy should be identified, I consider that at around 62m, the proposal would be of a sufficient height to have a significant impact on the character and appearance of the landscape.
10. The submitted Zone of Theoretical Visibility shows that the turbine would be seen over a wide area although I note the photomontages highlight that in certain longer range viewpoints the turbine would be partly screened by landform and vegetation. However, given its siting towards the higher end of a sloping field the proposal would occupy a prominent, elevated position which together with the movement of the blades, would make it a dominant feature in the landscape.
11. The scale of the proposal would stand in stark contrast to the gently undulating nature of the surrounding landscape which contains few other large vertical features. Notwithstanding the appellant's arguments that Natural England raised no objections in terms of the effect on the natural environment and the Council did not conduct a detailed landscape and visual assessment, in my judgement, a turbine of the proposed scale would have a significant visual impact and would feature prominently in viewpoints obtained from the local surrounding road network and from the footpaths which pass close to the appeal site.
12. The turbine, and its associated cabinet and access, would stand as an isolated development that would be seen as a tall vertical feature against the open, undulating surrounding coastal landscape and uncluttered skyline. Within this setting, the scale of the proposal, and its open and prominent position, would present little by way of visual linkage or association with comparable structures, or regular land cover patterns. As a result, it would exert a dominant influence on this drumlin landscape as it rolls down towards the coastal strip which would degrade the rural character of the area. In my judgement, the site specific characteristics of the area around the appeal site are such that it has a low capacity for a development of the scale, and in the position, proposed.
13. The SPD and LCG which benefit from the support of the CS identify the local landscape as sensitive to wind turbine development in the Cumbrian context. Whilst they do not preclude all wind turbine development, I consider that the proposal would be out of scale with the local landscape types identified in the LCG, contrary to CS Policy CS8.2, SP policies E37 and R44, and the landscape protection objectives of the SPD as supported by CS Policy CS7.7.

#### *Setting of Gleaston Castle*

14. Concerns were raised regarding the effect of the proposal on the setting of the Grade I listed Gleaston Castle which is also a Scheduled Ancient Monument. The NPPF defines the setting of a heritage asset as the surroundings in which it is

experienced. The extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance, or may be neutral.

15. Having special regard to the desirability of preserving the settings of listed buildings, where those settings would be affected by the proposed development, in line with Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I consider that the intervening distance and topography would be such that there would be very limited inter visibility between the proposal and the heritage asset. The turbine would have no more than a peripheral presence in views from Gleaston Castle and in the few views which would take in Gleaston Castle and the proposal. Consequently, the effect on the significance of the heritage asset would be minor.

#### *Other matters*

16. I note from the officer's report that it was considered that the distance to the nearest dwellings was such that the proposal would not harmfully change the living conditions of the occupiers in respect of noise and shadow flicker. An assessment of likely noise generation has been carried out and has been accepted by the Council subject to conditions attached to any grant of planning permission. An assessment of shadow flicker has also been submitted which demonstrates that nearby dwellings would be outwith the turbine's zone of influence which would be around 330 metres. On this basis, I find that the proposal is unlikely to cause significant noise or shadow flicker nuisance to any nearby residents.
17. In terms of effects on ecology, an Ecological Impact Assessment was carried out including An Extended Phase 1 Habitat Survey and a Bat Activity Survey. This demonstrated that the habitats within the survey area were of low ecological value and neutral impacts on birds, bats and badgers were not anticipated. Furthermore, although I do not have the consultation response of the highway authority before me, from my assessment of the evidence and from what I observed, I have no reason to conclude that the proposal would compromise highway safety.

#### *Benefits*

18. The development plan provides in-principle support for renewable energy and the NPPF at paragraph 98 recognises that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions. The proposal would have an output of around 330kW and would contribute to the generation of renewable energy which would assist in meeting national targets that seek to reduce carbon emissions in order to tackle climate change.

#### **Conclusions**

19. The proposal would be acceptable on highway safety, living conditions and protected species/ecology grounds, and would accord with some development plan and national policy aims for the generation of renewable energy. It would however, have a minor effect on the significance of a heritage asset as a development within its setting which would equate to less than substantial harm for the purposes of paragraph 134 of the NPPF.

20. The overall conclusion is that a turbine of this scale would have a significantly adverse impact on a sensitive, small scale landscape. The harm to the landscape and the less than substantial harm to the significance of the heritage asset would not be outweighed by the acknowledged environmental benefits.
21. In coming to this decision, I have had regard to the Written Ministerial Statement to Parliament on Local Planning and Onshore Wind and DCLG Planning practice guidance for renewable and onshore energy which followed in July 2013. I have also had regard to the effect of the revocation of the Regional Strategy but in the light of the facts in this case the revocation does not alter my conclusion.

### **Conditions**

22. The Council suggested 5 conditions (appended to this report) that it considers would be necessary if planning permission were to be granted. I have examined them in terms of Circular 11/95; *The Use of Conditions in Planning Permissions* and the tests within it. I have made some changes to wording in the interest of precision, notably to exclude "or such period as may be otherwise agreed in writing by the Local Planning Authority".
23. Condition 1 would give a 3 year commencement period while condition 2 would require details of the colour and finish of the turbine to be submitted for approval, in the interests of visual amenity. For the avoidance of doubt, condition 3 requires the development to be carried out in accordance with the approved plans. Condition 4 is necessary in the interest of visual amenity to ensure the turbine is removed and the site restored should the turbine cease operation while condition 5 provides for an archaeological watching brief in the interests of recording and safeguarding any archaeological evidence which the site may contain.

### **Recommendation**

24. I recommend that the appeal should be dismissed. In the event that the Secretary of State disagrees, the Annex to this report sets out the conditions that I consider should be attached to a grant of planning permission.

*Richard McCoy*

INSPECTOR

### **Annex – Schedule of suggested conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) No development shall take place until details of the colour and finish of all external surfaces of the turbine and mast have been submitted to, and approved in writing by, the Local Planning Authority. The development shall be carried out in accordance with the approved details and retained as such thereafter.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans: WB042/01 Rev D, WB042/02 Rev D and WB043/01 Rev D
- 4) If the turbine ceases to operate for a continuous period of 12 months, the turbine, mast and base shall be removed and the site restored to its former state not later than 6 months after the expiry of that period.
- 5) An archaeological watching brief shall be undertaken by a qualified archaeologist during the course of the ground works of the permitted development. The archaeological watching brief shall be undertaken with a written scheme of investigation which has been submitted by the applicant and approved by the Local Planning Authority in advance of the permitted development. Within 2 months of the completion of the permitted development, 3 copies of the report shall be furnished to the Local Planning Authority.



## Department for Communities and Local Government

### **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

#### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;**

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

#### **SECTION 2: AWARDS OF COSTS**

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

#### **SECTION 3: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.