



Department for
Communities and
Local Government

Mr N C Leaney
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Our Ref: APP/D0840/A/12/2189476

15 April 2014

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)
APPEAL BY MUREX ENERGY LTD
LAND AT FURSDON FARM, HORNINGTOPS, LISKEARD
APPLICATION REF PA12/03543**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Paul Griffiths BSc(Hons) BArch IHBC, who held a site visit on 10 September 2013 in regard to your appeal against a decision of Cornwall Council to refuse planning permission for the erection of a single wind turbine with maximum blade tip height of 67m, formation of new vehicular access track and associated infrastructure, on land at Fursdon Farm, Horningtops, Liskeard, PL14 3PZ.
2. On 11 October 2013, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 to Schedule 6 to, the Town and Country Planning Act 1990, because it involves a renewable energy development.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed and planning permission granted, subject to conditions. For the reasons given below the Secretary of State agrees with the Inspector's conclusions, except where indicated otherwise, and agrees with his recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

4. Following the close of the inquiry, on 18 March 2014 the Secretary of State wrote to the main parties to seek their views on the planning guidance which was

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published on 6 March 2014 and on a recent High Court decision concerning how heritage assets are to be taken into account in planning decisions.

5. Responses were received from the appellant dated 19 March and from Council dated 2 April, with further comments from the appellant dated 3 April. The Secretary of State has taken account of these responses in his consideration of the appeal before him. As the responses were copied to the main parties, he does not consider it necessary to summarise their responses here or attach them to this letter. Copies of the correspondence can be obtained upon request to the address at the bottom of the first page of this letter.

Policy considerations

6. In deciding the 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.
7. In this case the adopted development plan for the area comprises the saved policies of the Caradon Local Plan First Alteration 2007 (IR4.1). The Secretary of State considers that the local plan policies listed at IR4.2 – 4.6 are those which are most relevant to this appeal.
8. The Secretary of State notes that the 'Cornwall Local Plan Strategic Policies Document' has reached pre-submission stage, but as this plan is still a draft and is liable to change he attributes it little weight.
9. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework); the accompanying planning guidance and National Policy Statements (NPS) for Energy (EN-1) and Renewable Energy (EN-3). The Secretary of State has also taken into account Ministerial Written Statements on renewable energy published in June 2013 by the Secretary of State for Energy and Climate Change and by the Secretary of State for Communities and Local Government.
10. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, the Secretary of State has paid special regard to the desirability of preserving those listed structures or their settings, or any features of special architectural or historic interest which they may possess, that are potentially affected by the scheme.

Main issues

Renewable energy benefits

11. For the reasons given at IR9.3 – 9.5 the Secretary of State agrees with the Inspector's view that the renewable energy that would be produced by the proposal is a material consideration that attracts significant weight in its favour. For the reasons given at IR9.6 he also agrees that the income produced by the turbine is a benefit, and he attaches some weight to this.

Landscape

12. The Secretary of State notes the Inspector's view that the harm to the landscape would be temporary and reversible, and that this needs to be accounted for in the balancing exercise (IR9.17). However he considers that the scheme duration of 25

years would be a substantial period for those who would have to endure any adverse effects and that the reversibility of the scheme should not be an influential factor in determining this appeal. Having taken this into account, for the reasons given at IR9.8 – 9.16 the Secretary of State still agrees with the Inspector's conclusion that the proposal would cause a limited degree of harm to the landscape (IR9.27). He attaches some weight to this consideration against the proposal.

Designated heritage assets

13. In determining this appeal, the Secretary of State has given considerable importance and weight to the desirability of preserving any listed buildings and their settings that may be affected by the proposal. He has therefore given very careful consideration to the Inspector's assessment of impacts on the settings of the Grade II listed Lean Farmhouse, Great Treherne Farmhouse and its associated Cider House. For the reasons given at IR9.18 – 9.21 he agrees with the Inspector that visibility of the wind turbine from these listed buildings, or a view of the wind turbine together with these listed buildings, would have no harmful impact on their settings, or their significance as designated heritage assets. On that basis, he agrees that the proposal would not run contrary to Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 or the relevant local plan policy, or paragraph 132 of the Framework.

Other matters including living conditions

14. For the reasons given at IR9.23 – 9.24, the Secretary of State agrees with the Inspector that the proposal would have no undue impact on the living conditions of local residents and there would be compliance with relevant local plan policies, the Framework and the subsequent guidance in this regard. For the reasons given at IR9.26 he agrees that the proposal would cause no significant impact in highway safety terms.

Conditions

15. The Secretary of State has considered the Inspector's assessment regarding conditions at IR9.30 – 9.36 and is satisfied that the proposed conditions at Annex A of the Inspector's report and this letter would meet the tests of Circular 11/95 and paragraph 206 of the Framework.

Planning balance and overall conclusions

16. The Secretary of State agrees with the Inspector's balancing exercise at IR9.27 – 9.29. He gives significant weight to the benefits of the renewable energy that would be generated. The proposal would cause a limited degree of harm to the landscape and the proposal would therefore not accord with LP Policies CL9 or CL2 and this carries some weight against the proposal. However, because the harmful impact on the landscape would be limited and outweighed by the benefits of the proposal, that harmful impact would not be unacceptable. As such, there would be compliance with LP Policies REN1 and REN2. With regard to paragraph 98 of the Framework, the Secretary of State considers that the landscape impacts of the proposal would be acceptable in this case, as would other impacts subject to the relevant conditions.

17. The proposal would not cause any significant harm to the living conditions of nearby residents or highway safety.

18. The turbine would have no harmful impact on the settings of any nearby listed buildings, or their significance as designated heritage assets. On this basis, the proposal not run contrary to Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 or the relevant local plan policy, or paragraph 132 of the Framework.
19. The Secretary of State agrees with the Inspector that the considerable benefits of this proposal far outweigh the limited harm that would be caused, and therefore that the planning balance falls in favour of the proposal. He concludes that the proposal would be sustainable development to which the presumption in favour set out in Framework would apply (IR204).

Formal decision

20. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation at IR10.1. He hereby grants planning permission for the erection of a single wind turbine with maximum blade tip height of 67m formation of new vehicular access track and associated infrastructure, for an operation period of 25 years in accordance with application reference PA12/03543 dated 25 March 2012, subject to the conditions listed at Annex A of this letter.
21. An applicant for any consent, agreement or approval required by a condition of this permission has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the local planning authority fails to give notice of their decision within the prescribed period.
22. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than that required under section 57 of the Town and Country Planning Act 1990.
23. This letter serves as the Secretary of State's statement under Regulation 21(2) of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999.

Right to challenge the decision

24. 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.
25. A copy of this letter has been sent to Cornwall Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Julian Pitt

Authorised by Secretary of State to sign in that behalf

ANNEX A: CONDITIONS

Application Reference PA12/03543

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1117-FN-001 Figure 1: Location Plan; 1117-FN-021 Figure 9: Proposed Development and Access Track; 1117-FN-023 Figure 11: Application Area; E359-25-05-O: Elevations, Sections & 3D Views; and 1000901 Rev.03: General Arrangement DIRECTWIND 54 – HH 40.
- 3) The wind turbine hereby permitted shall not exceed 67 metres in overall height measured to the tip of the blades, when the blade tip is at its highest point, from original ground level immediately adjacent to the turbine base.
- 4) No development shall take place until details of the colour and finish of the wind turbine have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details and retained as such thereafter.
- 5) The development hereby permitted shall be implemented in accordance with the Construction Traffic Management Plan submitted on 24 May 2012.
- 6) The wind turbine hereby permitted shall be fitted with 25 candela omni-directional red or infra-red lighting with an optimised flash pattern of 60 flashes per minute, of 200 to 500ms duration, at the highest practicable point on the wind turbine. The lighting shall be retained and operated for the duration of the planning permission.
- 7) The wind turbine approved herein shall not be operated until a protocol for the assessment and alleviation of shadow flicker, in the event of a complaint being received by the local planning authority, has been submitted to and approved in writing by the local planning authority. Operation of the wind turbine shall accord with the approved protocol.
- 8) The noise emissions from the wind turbine approved herein shall not exceed a sound pressure level LA90 10 minutes of 35dB at the curtilage of any non-financially involved dwelling lawfully existing at the date of this permission, or 45dB at the curtilage of any financially involved dwelling, at wind speeds up to and including 10m/s at 10m height. Any measurement shall be made at a height of 1.2m and at a minimum distance of 3.5m from and façade or other acoustically reflective surface. For the purposes of this condition, curtilage means the boundary of a domestic garden area lawfully existing at the date of this permission.
- 9) The permission hereby granted shall endure for a period of 25 years from the date when electricity is first exported from the wind turbine to the electricity grid (the 'First Export Date'). Written notification of the First Export Date shall be given to the local planning authority no later than 14 days after the event. No later than 18 months before the permanent cessation of electricity generation at the site, a

decommissioning and site restoration scheme, which shall include a timetable, shall be submitted for the written approval of the local planning authority. The decommissioning and site restoration scheme shall be implemented and completed, in accordance with the approved details.

- 10) If the wind turbine hereby permitted ceases to produce electricity for a continuous period of 12 months, unless the wind turbine is under repair, then a scheme for the decommissioning and removal of the wind turbine and restoration of the site, and a timetable for all that, shall be submitted to the local planning authority for written approval within 6 months of the end of the 12 month period. The scheme shall be completed in accordance with the approved details.



The Planning
Inspectorate

Report to the Secretary of State for Communities and Local Government

by Paul Griffiths BSc(Hons) BArch IHBC

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

Date: 19 December 2013

The Town and Country Planning Act 1990

Appeal by

Murex Energy Ltd

Against the decision of

Cornwall Council

Site Visit on 10 September 2013

Land at Fursdon Farm, Horningtops, Liskeard PL14 3PZ

File Refs: APP/D0840/A/12/2189476

Appeal Ref: APP/D0840/A/12/2189476

Land at Fursdon Farm, Horningtops, Liskeard PL14 3PZ

- 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 Murex Energy Ltd against the decision of Cornwall Council.
- The application Ref.PA12/03543, dated 25 March 2012, was refused by notice dated 29 November 2012.
- The development proposed is the erection of a single wind turbine with maximum blade tip height of 67m; formation of new vehicular access track; and associated infrastructure.

Summary of Recommendation: The appeal be allowed and planning permission granted, subject to conditions.

1. Procedural Matters

- 1.1 The accompanied element of the site visit took in the position of the wind turbine proposed and its relationship with the immediate surroundings. After that, I took in the wider area, the location of the listed buildings referred to by the Council, and more distant viewpoints, on an unaccompanied basis.

2. The Site and its Surroundings

- 2.1 The site of the proposed wind turbine is within an arable field at a level of 125m AOD, near the top of a south-facing plateau, on the gentle slopes of a tributary valley of the East Looe River. The B3252 runs approximately 200m to the east. The nearest dwelling, unconnected to the proposal, is Furnsdon Cottage, approximately 450m to the south-east of the site. The nearest settlements are Horningtops and Higher Clicker, about 600m to the north, and Trewidland, about 1500m to the west.

3. The Proposal

- 3.1 The proposal involves the erection of a single wind turbine with a hub height of 40m and a rotor diameter of 54m. The maximum height of the structure would be 67m. The wind turbine would stand on a reinforced concrete foundation and there would be an adjacent hard standing to act as a crane base.
- 3.2 A 4m wide access track would be laid from the B3252 to the turbine base and a transformer unit enclosed within a GRP housing would be positioned adjacent to the foundation and access track head. All this is detailed on the submitted plans and other material submitted with the originating application.

4. Planning Policy

- 4.1 In their reasons for refusal, and in submissions on the appeal, the Council has referred to policies in the Cornwall Structure Plan 2004. However, this was revoked by the Secretary of State, along with the RPG10¹, in May 2013. On that basis, the policies referred to no longer hold sway and they have no bearing on the consideration or determination of the appeal. In that context, the relevant development plan policies are found in the Caradon Local Plan First Alteration².

¹ South West Regional Planning Guidance 10

² Referred to hereafter as LP

- 4.2 Amongst a range of policies referred to³, LP Policy REN1 is permissive of proposals for the generation of energy from non-fossil fuel sources provided that the proposal has no unacceptable impact on the character and appearance of the immediate and wider landscape, and on areas of natural, cultural, historical or architectural interest; the proposal does not overshadow or have an overbearing effect on nearby habitations; the proposal must be capable of being operated and serviced with no unacceptable impact on the amenity of nearby habitations through, of relevance, noise; the proposal must not create a threat to road safety through traffic generation; and the proposal taken with the effects of similar development nearby must not have a materially adverse effect on the interests previously identified.
- 4.3 LP Policy REN2 deals specifically with on-shore wind energy. In areas like that in which the appeal site lies, wind turbines are permitted if, of relevance, they would not cause unacceptable damage to amenity, landscape, scientific, archaeological, nature conservation, or historic interests, and there is no adverse impact on nearby land falling within certain designated areas⁴. In all cases, proposals must comply with LP Policy REN1 and the development must not unacceptably affect the amenities of neighbouring properties by reason of noise emissions, visual dominance, shadow flicker, or reflected light.
- 4.4 LP Policy CL8 defines Areas of Great Landscape Value⁵. The appeal site lies within the Looe and Seaton Valleys AGLV where LP Policy CL9 does not permit development that would materially harm the character of the particular area and if it does not closely reflect the traditional building styles and local materials, or the characteristic pattern of settlement, in the particular area.
- 4.5 LP Policy CL2 is permissive of farm diversification schemes unless they would be out of keeping with the scale and design of existing farm buildings and introduce incongruous features or materials that do not reflect local vernacular tradition; cause danger and inconvenience to existing highway users resulting from inadequacy of the local highway network to accommodate the traffic generated; harm the rural character and appearance of the locality; or adversely affect the viability of agricultural holdings or result in the loss of best and most versatile agricultural land.
- 4.6 Following the statutory provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990⁶, that I return to below, LP Policy EV3 sets out that all proposals for works⁷ that affect, of relevance, the setting of a listed building, must have special regard to the desirability of preserving that setting.
- 4.7 Broadly speaking, the Framework⁸ is supportive of renewable energy and in paragraph 98 tells us that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions. Moreover, paragraph 28 supports the development and diversification of agricultural and other land-based rural businesses.

³ All attached to the Questionnaire

⁴ Referred to as AONBs, HC, SSSIs, NNRs, SAM, and best and most versatile agricultural land

⁵ Referred to hereafter as AGLV

⁶ Referred to hereafter as the Act

⁷ And I take that to include proposals for development like that at issue in this case

⁸ The National Planning Policy Framework

4.8 I return to the Framework in more detail below as well as the Written Ministerial Statement of 6 June 2013 and the subsequent Planning Practice Guidance for Renewable and Low Carbon Energy⁹.

5. The Case for the Council

- 5.1 The Council refused the originating application for three reasons. Having subsequently considered further information that was submitted by the appellant, just before the application was determined, the Council has withdrawn the third reason for refusal relating to the potential adverse impact on the living conditions of occupiers of Fursdon Cottage through noise generated by the wind turbine proposed.
- 5.2 However, the Council maintains its position in relation to the other two reasons for refusal. In particular, the proposal would be located in an area recognised county-wide for its scenic beauty and quality. The development plan and the Framework seek to balance the benefits of alternative power sources against an overall aim to maintain the quality and character of the countryside. The appellant accepts¹⁰ that the wind turbine proposed would be a prominent feature in a radius of 2 kilometres of the site and would have significant effects upon local footpaths and moderate/adverse effects upon the locality.
- 5.3 Furthermore, within 800m of the wind turbine proposed there are three Grade II listed buildings; two 17th Century farmhouses and a cider house associated with one of them. These designated heritage assets are closely associated with their surroundings. They would be viewed in association with the wind turbine, especially from the public footpath and the hill upon which the wind turbine would stand forms part of their settings. The prominence and scale of the wind turbine would significantly and adversely affect those settings.
- 5.4 The provision of energy from renewable sources is a benefit in both public and environmental terms. The proposal would make a small contribution in those terms. However, this would be at the expense of the character and appearance of the surrounding landscape, an AGLV, and the setting of three listed buildings. The Council's position is that the harmful impacts of the proposal outweigh the benefits it would bring and the proposal falls contrary, therefore, to the development plan, and the provisions of the Framework, the WMS, and the subsequent guidance.

6. The Case for the Appellant

- 6.1 As an example of a proposal that would assist in meeting national targets for the generation of renewable energy, without causing undue harm, the proposal accords with the development plan, the Framework, the WMS and the subsequent guidance.
- 6.2 The proposal does not lie within a nationally designated landscape nor is it located within a site of historical, cultural or archaeological significance. The harmful impact on the surrounding landscape would be limited and any effect on the setting of designated heritage assets would be minor.

⁹ Referred to hereafter as the WMS and the subsequent guidance

¹⁰ In the submitted Landscape and Visual Impact Assessment (LVIA)

- 6.3 There would be no harmful effect on the living conditions of nearby residents through visual impact, noise, shadow flicker or anything else, and no diminution of highway safety.
- 6.4 The benefits of the proposal in terms of the generation of renewable energy, and in terms of the ongoing viability of the farming enterprise, far outweigh those harmful impacts. It is relevant to note that the Council Officer who dealt with the originating application took a similar view.

7. Third Parties

- 7.1 Along with a number of representations made at application stage¹¹, others were made on the appeal. In brief, these draw attention to the WMS and subsequent guidance, and raise similar concerns to the Council in terms of the impact on the landscape, noting the potential for cumulative impact with the wind turbine recently erected at Trethawle, 2.4km to the north-west¹², also within the AGLV, and on the setting of listed buildings.
- 7.2 On top of that, concerns are raised about highway safety, and driver distraction in particular, shadow flicker generally, and the impact of the proposal on occupiers of Fursdon Cottage through visual impact and in terms of noise. However, it is relevant to note that the actual occupiers of Fursdon Cottage raise no such concerns and have made representations to that effect.

8. Conditions

- 8.1 The Council suggest a range of conditions to be attached in the event that planning permission is granted¹³.
- 8.2 These cover commencement (No.1), the submitted plans (No.2), the Construction Traffic Management Plan (No.3), the height of the wind turbine (No.4), aviation lighting (No.5), shadow flicker (No.6), noise (No.7), the temporary nature of the proposal and decommissioning (No.8) and what must happen if the wind turbine fails to operate (No.9).

9. Inspector's Conclusions

- 9.1 The appeal was called in by the Secretary of State on 11 October 2013. The reason given for the direction was because the appeal involves a renewable energy development.
- 9.2 In the light of the Council's revised position, the main issue to be considered in the appeal is whether any benefits of the proposals are sufficient to outweigh any harmful effects on the character and appearance of the surrounding landscape, and the setting, and thereby the significance, of nearby listed buildings, in particular.

¹¹ Attached to the Questionnaire

¹² Also in the AGLV but granted planning permission by the Council

¹³ Within the original Officer's Report to Committee attached to the Questionnaire

- 9.3 Reflective of wider Government energy policy¹⁴, one of the core planning principles of the Framework is to encourage the development of renewable energy. Paragraph 93 explains that planning plays a key role in helping shape places to secure radical reductions in greenhouse gas emissions, and minimising vulnerability, and providing resilience, to the impacts of climate change, and supporting the delivery of renewable and low carbon energy and associated infrastructure. Paragraph 98 says that applicants for energy development are not required to demonstrate the overall need for renewable or low carbon energy and recognises that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions.
- 9.4 According to the figures based on an average wind speed for the area of 6.6m/s, provided by the appellant in the Design and Access Statement, and not disputed by the Council, the wind turbine proposed would produce 1,761 MWh of renewable energy per year. This would be enough to power approximately 429 dwellings based on the UK average household consumption. Bearing in mind the approach of the Framework, reflective of wider Government energy policy, this would be a valuable contribution to cutting greenhouse gas emissions, amongst other things.
- 9.5 Moreover, paragraph 38 of the recent guidance indicates that the capacity factor can be useful information in considering the energy contribution to be made by a proposal, particularly when a decision is finely balanced. In that overall context, the renewable energy that would be produced by the proposal is a material consideration that attracts significant weight.
- 9.6 The proposal would also produce an income that would assist in securing the ongoing viability of the farming enterprise. While LP Policy CL2 only supports farm diversification where there would be no harm to the character and appearance of the locality, a matter addressed below, paragraph 28 of the Framework strongly supports the development and diversification of agricultural and other land-based rural businesses in order to support a prosperous rural economy. The income produced must be seen as a benefit of the proposal, therefore.
- 9.7 It is with these matters in mind that I turn to the concerns about the potentially harmful impacts of the proposal highlighted by the Council, and local residents.

Landscape

- 9.8 One of the core planning principles of the Framework is that the intrinsic character and beauty of the countryside should be recognised. Paragraph 109 tells us that the planning system should contribute to, and enhance, the natural and local environment by protecting and enhancing valued landscapes. There is no further definition in the Framework or elsewhere of what a 'valued' landscape consists of. However, it could be argued that designation as an AGLV through LP Policies CL8 and CL9 suggests that the landscape that the wind turbine would sit within ought to be considered 'valued'.

¹⁴ The Overarching National Policy Statement for Energy (EN-1), The National Policy Statement for Renewable Energy Infrastructure (EN-3) and the UK Renewable Energy Roadmap Update 2012, in particular

- 9.9 Moreover, the WMS and subsequent guidance stress that local topography should be a factor in assessing whether wind turbines have a damaging impact on the landscape and set out that decisions should take into account the cumulative impact of wind turbines and properly reflect the increasing impact on, of relevance, the landscape.
- 9.10 As might be expected of any structure of the height and nature proposed, the wind turbine would be a prominent feature in the landscape, and significant landscape effects as a result of it would be experienced from a considerable distance around the site. However, as EN-1 and EN-3¹⁵ make clear, energy developments, and in particular, commercial-scale wind turbines, are inevitably going to lead to significant landscape and visual effects for a number of kilometres around a site.
- 9.11 The Framework tells us that we should recognise the intrinsic character and beauty of the countryside. Flowing from that general approach, the imposition of a 67m high, man-made, moving structure, on the landscape is bound to cause a degree of harm to the AGLV which would bring the proposal into immediate conflict with LP Policy CL9 and the reference in the Framework to 'valued' landscapes. However, it is not correct to choose one element of the Framework, like paragraph 109, and use it to suggest that the failure of a proposal to accord with that, means that it fails to accord with the Framework overall. The correct place to carry out that exercise is when balancing all the disparate considerations that come to bear. I return to that below.
- 9.12 On top of that, EN-1, the relevance of which is emphasised by paragraph 97 of the Framework and footnote 17, advises against using local landscape designations in such a prescriptive way¹⁶. The Council's approval of the wind turbine at Trethawle, also in the AGLV, demonstrates that they do not use the designation or apply LP Policy CL9 in a slavish way. That must be correct because LP Policies REN1 and REN2 do not preclude renewable energy development in an AGLV. With their references to unacceptable impact or damage to the landscape, these policies presage the Framework, and in particular, paragraph 98 which sets out that such applications should be approved if impacts are (or can be made) acceptable.
- 9.13 In that context, the task of the decision-maker is to assess the degree of landscape harm that would be caused. According to the Cornwall and Isles of Scilly Landscape Character Study, the site lies within Landscape Character Area CA22: South East Cornwall Plateau¹⁷. The inland element of the area is described as having an open, pastoral appearance with sparse tree cover, dispersed patterns of development, and strong hedgerows. It is a relatively undisturbed, medium-sized landscape.
- 9.14 The wind turbine would feature most prominently in views from the B3252, to the east of the site, and the public footpaths that pass to the north and south. From many of the lanes that surround the appeal site, the wind turbine would be visible only from field gates, because the sunken nature of the lanes, and the height of the hedgerows, would provide a significant degree of screening.

¹⁵ Paragraphs 5.9.18 and 2.7.48 respectively

¹⁶ Paragraph 5.9.14 refers

¹⁷ Referred to hereafter as LCA

- 9.15 Where the wind turbine would be visible, it would be a prominent feature. However, as set out in the LCA, the landscape is open and has a medium scale. In that context, a 67m high wind turbine would not appear altogether incongruous. Coupled with that, the influence of mankind on the landscape, in terms of its pastoral character, but also in terms of the nearby and more distant settlements, the electricity pylons that cross the site, and the nearby road, would allow the wind turbine to be accommodated into the landscape without a significant degree of harm.
- 9.16 The view from Bin Down¹⁸ especially, gives a representation of how successfully the impact of the wind turbine would be absorbed by the wider landscape. This view is also the main one in which the proposal would be seen in conjunction with the recently erected wind turbine at Trethawle. However, the degree of separation is such that both would be seen as individual features in the landscape. There would be no visual tension between the two and no harmful cumulative impact on the landscape of any great measure.
- 9.17 It is also relevant to note that the proposal is promulgated to last for twenty five years after which it would be decommissioned and the site restored. The limited harm that would be caused to the landscape would be both temporary and reversible. This needs to be accounted for in the balancing exercise.

Designated Heritage Assets

- 9.18 Paragraph 132 of the Framework sets out 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. The more important the asset, the greater the weight should be. It goes on to note that significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. Similarly, the WMS confirms that great care should be taken to ensure heritage assets are conserved in a manner appropriate to their significance, including the impact on views important to their settings. The subsequent guidance says that a wind turbine within the setting of a heritage asset may cause substantial harm to the significance of the asset.
- 9.19 The Council has raised concern about the impact of the proposal on the setting and thereby the significance of Lean Farmhouse, which dates from the 17th Century, Great Treherne Farmhouse, which also dates from the 17th Century, and the associated 18th Century Cider House, which are all Grade II listed buildings. These buildings are all situated at a much lower level than the site of the proposed wind turbine, part way down the valley side of the next tributary valley to the north-west.
- 9.20 Inter-visibility between the listed buildings and the wind turbine would be limited and there are not many places, other than field gate openings on the higher stretch of the lane between Bylane End and Pensipple, and the footpaths, where the listed buildings and the wind turbine would be seen in the same view. Nevertheless, that there would be inter-visibility, and some places where the listed buildings and the wind turbine would be seen in concert, means that the wind turbine would sit within the setting of the listed buildings.

¹⁸ Figure 8b Viewpoint 2

- 9.21 However, the listed buildings are strongly wedded to the lower ground where they are situated, within tree cover, and sheltered from the elements. It is this, more immediate part of their settings, from which they derive an element of their overall significance. This relationship with the landscape allows the observer to understand their location within it. The higher ground upon which the wind turbine would be located contributes nothing to that relationship with the landscape or an understanding of it. As such, visibility of the wind turbine from the listed buildings, or a view of the wind turbine together with the listed buildings, would have no harmful impact on their settings, or their significance as designated heritage assets.
- 9.22 On that basis, the proposal would not run contrary to Section 66(1) of the Act, LP Policy EV3, or the provisions of paragraph 132 of the Framework.

Other Matters

- 9.23 In terms of living conditions, it is one of the core principles of the Framework that planning should always seek to secure a good standard of amenity for all existing and future occupiers of land and buildings. Paragraph 15 of the recent guidance sets out that the protection of local amenity is an important consideration which should be given proper weight in planning decisions.
- 9.24 From what I saw, notwithstanding that the wind turbine would be elevated above it because of the topography, the separation distance between Fursdon Cottage and the proposed wind turbine, is such that there would be no significant visual impact. The same is true in terms of residents further afield. The Council is satisfied that the proposal would operate within the parameters of ETSU-R-97¹⁹ and that any issues around noise can be addressed through a suitably worded condition. They take a similar stance in relation to shadow flicker. On the basis of the evidence presented, there is no good reason to reach a different conclusion.
- 9.25 Viewed in the round, the proposal would have no undue impact on the living conditions of local residents and there would be compliance with LP Policies REN1 and REN2, the Framework, and the subsequent guidance in this regard.
- 9.26 The B3252 is a relatively busy road and the wind turbine proposed would be readily visible from it. However, wind turbines are not such unusual features of Cornwall, or indeed elsewhere, that they cause undue surprise or distraction to drivers. The Construction Traffic Management Plan demonstrates that the erection of the wind turbine need cause no undue disruption or danger to traffic. The proposal would cause no significant impact in highway safety terms and comply with LP Policy REN1 in this respect, therefore.

The Balancing Exercise

- 9.27 The proposal would bring forward considerable benefits in terms of the generation of renewable energy and in securing the ongoing viability of the farming enterprise. It would do that without causing harm to the living conditions of nearby residents, highway safety, or the setting and thereby the significance of nearby listed buildings and while causing but a limited degree of harm to the landscape; harm that would be temporary and reversible.

¹⁹ ETSU-R-97: *The Assessment and rating of Noise from Wind Farms*

- 9.28 While the WMS and subsequent guidance make clear that the need for renewable energy does not automatically override environmental protections, and the planning concerns of local communities, in my judgement, these considerable benefits far outweigh the limited harm that would be caused.
- 9.29 The proposal would not accord with LP Policies CL9 or CL2. However, because the harmful impact on the landscape would be limited, and outweighed by the benefits of the proposal, that harmful impact would not, in my judgement, be unacceptable. As such, there would be compliance with LP Policies REN1 and REN2. For much the same reasons, there would be compliance with paragraph 98 of the Framework. The harmful impacts are (or can be made) acceptable.

Conditions

- 9.30 I have considered the suggested conditions in the light of advice in Circular 11/95²⁰ and the Framework. As well as the standard commencement condition, another is needed to set out the approved plans.
- 9.31 As it is not entirely clear from the submitted plans, a condition is necessary to specify the maximum blade tip height but I have amended that suggested in the interests of precision. Similarly, the plans do not specify colours or finishes for the wind turbine. A condition is necessary to address that shortfall.
- 9.32 Given the potential for disruption to the highway, it is necessary to apply a condition to ensure that development is carried out in accordance with the submitted Construction Traffic Management Plan.
- 9.33 For reasons of air safety, it is reasonable to apply a condition specifying the installation of warning lights to the wind turbine but the condition suggested needs to ensure that it is retained and properly operated for the duration of the planning permission.
- 9.34 There is the potential for shadow flicker to affect the living conditions of local residents and any resulting adverse impact needs to be controlled by condition. I have simplified that suggested in the interests of precision.
- 9.35 Similarly, a condition is necessary to control noise from the wind turbine. Again though, that suggested can be simplified. Given that the suggested condition sets noise limits, in accordance with those suggested in ETSU-R-97, for financially and non-financially involved dwellings, there is no need to set out a procedure for what must occur if those limits are breached. That would be a matter for the appellant to address in the event of any breach. I have adjusted the definition of curtilage to reflect the situation that currently persists. It would be unreasonable for the operation of the wind turbine to be prejudiced by any future extension of domestic gardens.
- 9.36 Finally, conditions are necessary to deal with the temporary nature of the proposal and decommissioning and the situation where the wind turbine fails to operate for a significant period. I have amended both those suggested in the interests of precision and modified the latter to deal with the situation where the wind turbine is under repair.

²⁰ Circular 11/95: *The Use of Conditions in Planning Permissions*

10. Recommendation

- 10.1 The appeal be allowed, and planning permission granted subject to the conditions set out in Annex A.

Paul Griffiths

INSPECTOR

Annex A: SUGGESTED CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1117-FN-001 Figure 1: Location Plan; 1117-FN-021 Figure 9: Proposed Development and Access Track; 1117-FN-023 Figure 11: Application Area; E359-25-05-O: Elevations, Sections & 3D Views; and 1000901 Rev.03: General Arrangement DIRECTWIND 54 – HH 40.
- 3) The wind turbine hereby permitted shall not exceed 67 metres in overall height measured to the tip of the blades, when the blade tip is at its highest point, from original ground level immediately adjacent to the turbine base.
- 4) No development shall take place until details of the colour and finish of the wind turbine have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details and retained as such thereafter.
- 5) The development hereby permitted shall be implemented in accordance with the Construction Traffic Management Plan submitted on 24 May 2012.
- 6) The wind turbine hereby permitted shall be fitted with 25 candela omnidirectional red or infra-red lighting with an optimised flash pattern of 60 flashes per minute, of 200 to 500ms duration, at the highest practicable point on the wind turbine. The lighting shall be retained and operated for the duration of the planning permission.
- 7) The wind turbine approved herein shall not be operated until a protocol for the assessment and alleviation of shadow flicker, in the event of a complaint being received by the local planning authority, has been submitted to and approved in writing by the local planning authority. Operation of the wind turbine shall accord with the approved protocol.
- 8) The noise emissions from the wind turbine approved herein shall not exceed a sound pressure level LA90 10 minutes of 35dB at the curtilage of any non-financially involved dwelling lawfully existing at the date of this permission, or 45dB at the curtilage of any financially involved dwelling, at wind speeds up to and including 10m/s at 10m height. Any measurement shall be made at a height of 1.2m and at a minimum distance of 3.5m from and façade or other acoustically reflective surface. For the purposes of this condition, curtilage means the boundary of a domestic garden area lawfully existing at the date of this permission.
- 9) The permission hereby granted shall endure for a period of 25 years from the date when electricity is first exported from the wind turbine to the electricity grid (the 'First Export Date'). Written notification of the First Export Date shall be given to the local planning authority no later than 14 days after the event. No later than 18 months before the permanent cessation of electricity generation at the site, a decommissioning and site restoration scheme, which shall include a timetable, shall be submitted for the written approval of the local planning authority. The decommissioning and site restoration scheme shall be implemented and completed, in accordance with the approved details.

- 10) If the wind turbine hereby permitted ceases to produce electricity for a continuous period of 12 months, unless the wind turbine is under repair, then a scheme for the decommissioning and removal of the wind turbine and restoration of the site, and a timetable for all that, shall be submitted to the local planning authority for written approval within 6 months of the end of the 12 month period. The scheme shall be completed in accordance with the approved details.

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: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for permission to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: 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 4: 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.