



Department for
Communities and
Local Government

Ms Kee Evans
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Our Refs:
Appeal A: APP/X1545/A/12/2174982
Appeal B: APP/X1545/A/12/2179484
Appeal C: APP/X1545/A/12/2179225

13 February 2014

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)
APPEALS BY RES UK & IRELAND LTD:**

**APPEAL A - TURNCOLE FARM, THE MARSHES, DENGIE, SOUTHMINSTER -
APPLICATION REF: FUL/MAL/10/01070**

**APPEAL B - LOWER BURNHAM ROAD AND FAMBRIDGE ROAD, NEAR COLD
NORTON, ESSEX - APPLICATION REF: FUL/MAL/12/00119**

**APPEAL C - TURNCOLE FARM, THE MARSHES, DENGIE, SOUTHMINSTER -
APPLICATION REF: FUL/MAL/11/00879**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, John Woolcock BNatRes(Hons) MURP DipLaw MPIA MRTPI, who held a public local inquiry between 23 April and 8 May 2013 into your appeals against a decision of Maldon District Council to refuse planning permission for:

Appeal A: Wind Farm Development consisting of seven three-bladed, horizontal-axis wind turbines, each up to 126.5 m maximum height to blade tip, with associated electricity transformers, underground cabling, access tracks, road widening works, crane hard-standings, control building, substation compound, communications mast and anemometry mast for a period of twenty-five years. Also temporary works including a construction compound, laydown area, rotor assembly pads, turning heads, welfare facilities and four guyed anemometry masts, in accordance with application reference FUL/MAL/10/01070, dated 14 February 2011.

Appeal B: Permanent road widening works for the purpose of facilitating access for abnormal load deliveries to the proposed wind farm at Turncole Farm. The new highway created will be fenced or similar to allow access to the abnormal

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loads only and not all traffic. The works will take place at the two road junctions between Lower Burnham Road and Fambridge Road near Cold Norton. The works will result in a change of use from residential and agricultural land to form new highway. Works in accordance with application reference FUL/MAL/12/00119, dated 8 February 2012.

Appeal C: Permanent road widening works and replacement of Twizzlefoot bridge for the purpose of facilitating access for abnormal load deliveries to the proposed wind farm at Turncole Farm. The works will result in a change of use from agricultural land to form new highway. Works in accordance with FUL/MAL/11/00879, dated 5 October 2011.

2. On 5 June 2013, the appeals were 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 they relate to proposals of major significance for the delivery of the Government's climate change programme and energy policies.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that all the appeals be allowed and planning permission be granted subject to conditions. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions 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. In reaching this position, the Secretary of State has taken into account the Environmental Statement (ES) and Supplemental Environmental Information (SEI) which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 and the Inspector's comments on the ES and SEI at IR2 and 119. The Secretary of State considers that the ES and SEI comply with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the proposals. Given that the appeals are linked, he agrees with the Inspector that they should be either all allowed or all dismissed (IR119).
5. Following the close of the inquiry, on 9 January 2014 the Secretary of State wrote to the main parties to invite them to consider whether any amendments would be appropriate to the noise condition that was considered at the inquiry. On 3 February the Secretary of State received a noise condition agreed upon by the appellant and the Council, and a representation from the Rule 6 party. These representations were circulated to the parties for final comment.
6. A list of all the responses received from parties is set out at Annex A to this letter. The Secretary of State has taken account of all these responses in his consideration of the appeals before him. As the responses were circulated to the main inquiry parties, he does not consider it necessary to summarise the 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.

Matters arising after the close of the inquiry

7. Following the close of the inquiry, The Department of Communities and Local Government (DCLG) published the 'Planning Practice Guidance for Renewable and Low Carbon Energy' (PPGRLCE) in July 2013, and cancelled 'Planning for Renewable Energy: A Companion Guide to Planning Policy Statement 22'. The Planning Inspectorate invited comments on the PPCRLCE (IR6). In reaching his decision on these appeals, the Secretary of State has taken into account the PPGRLCE and the parties' responses to this.
8. In December 2013, Renewable UK published new research and a proposed planning condition covering the regulation of Other Amplitude Modulation, with accompanying guidance notes. However this has not yet been reflected in an update to the current good practice guidance that accompanies ETSU-R-97 and has not been endorsed by Government.

Policy considerations

9. In deciding the appeals, 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.
10. In this case, following the revocation of the Regional Spatial Strategy for the East of England, the adopted development plan for the area comprises only the saved policies of the Maldon Local Plan 2005 (IR7). The Secretary of State considers that the local plan policies listed in Annex 1 of the IR are the most relevant policies to these appeals.
11. The Secretary of State notes that the Council is reviewing its Local Plan, but as this is still at consultation draft stage and is liable to change, he attributes it little weight.
12. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework); the National Policy Statements (NPS) for Energy (EN-1) and Renewable Energy (EN-3); the Community Infrastructure Levy (CIL) Regulations 2010 as amended; and Circular 11/95: The Use of Conditions in Planning Permissions. 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. He has not taken into account Planning for Renewable Energy: A Companion Guide to PPS22, as this was cancelled by the PPGRLCE.
13. 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.

Main issues

Renewable energy benefits

14. The Secretary of State agrees with the Inspector's assessment of the renewable energy benefits of the scheme at IR196-198. He agrees that it would make a

significant contribution to meeting national targets and reducing greenhouse gas emissions, and that this consideration weighs heavily in favour of the proposal.

Landscape character and appearance

15. The Secretary of State agrees with the Inspector's overall assessment and reasoning in regard to landscape and visual impacts at IR121-145. He agrees 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 these appeals (IR127). He notes that the Inspector considers that the impact of the proposal on landscape character, when taken cumulatively with the previously permitted Middlewick wind farm, would be of moderate to minor significance (IR128-134). Additionally, the proposal would have an adverse effect on visual amenity, both by itself and cumulatively, of major/moderate significance from some vantage points, but more generally of moderate significance, reducing to minor or negligible with distance (IR135-145). Like the Inspector, the Secretary of State considers that the overall adverse effect on the landscape character and visual amenity of the area would be of moderate significance, and that this consideration weighs against the proposal and brings it into conflict with the aims of several Maldon Local Plan Policies (IR145).

Living conditions

16. The Secretary of State has given careful consideration to the Inspector's assessment of the impacts on the living conditions of local residents at IR146-176. Regarding outlook, he agrees with the Inspector that the proposed Turncole turbines, either by themselves or cumulatively with other existing or proposed turbines, would not result in an overwhelming and oppressive impact on the outlook from nearby dwellings or their associated amenity space that would result in unsatisfactory living conditions. Likewise, he agrees that the limited removal of roadside vegetation along the route proposed for abnormal indivisible loads would not harm the residential amenity of nearby occupiers (IR161). Consequently he agrees with the Inspector's judgement that the proposal would not unacceptably affect amenities and the use of land and buildings which ought to be protected in the public interest (IR162).

17. Regarding noise and disturbance, the Secretary of State agrees with the Inspector that a lower fixed day-time cumulative limit of 40 dB would properly accord with the provisions set out in ETSU-R-97 (IR169). He agrees that wind turbine noise and some disturbance during construction and decommissioning would, to some extent, detract from the tranquillity of the area, but that subject to the suggested condition the scheme could operate within acceptable ETSU-R-97 limits (IR170-173).

18. Regarding the issue of Amplitude Modulation (AM), the Secretary of State has considered the representations made in response to his request for further information and the suggested additional conditions put forward by the appellant and SIEGE. He is persuaded that there is a need for an additional condition to protect the living conditions of nearby residents from unacceptable AM. He agrees with the view expressed in the appellant's representation of 10 February that, given the wider debate that is presently taking place concerning the most appropriate form that a fit for purpose AM noise condition should take, it would not be appropriate at this stage to choose between the condition put forward in the appellant's earlier response of 3 February and the alternative form of an AM noise

condition advanced in a technical report provided by SIEGE with its response of 3 February and endorsed in the Council's representation of 10 February (an 'updated' Den Brook condition). The Secretary of State agrees with the noise condition proposed in the applicant's representation of 10 February and considers that it is the most appropriate in current circumstances, because this condition will allow a properly endorsed AM noise assessment and rating methodology to be appropriately incorporated into an AM scheme to be agreed by the Council, taking account of any further advice forthcoming from the UK Institute of Acoustics and/or Government prior to commencement of operation of the development. For these reasons the Secretary of State has added Condition 25 in Annex B to this letter.

19. Overall, with the addition of Condition 25, the Secretary of State agrees with the Inspector that the evidence indicates that the combined effects of the proposed turbines on the outlook of nearby occupiers, along with operational noise in compliance with ETSU-R-97 limits, likely shadow flicker, health fears, and any disturbance or disruption during construction, operation or decommissioning, would not have a significant adverse effect on the living conditions of local residents. As a result, there would be no conflict with those parts of relevant Local Plan policies that aim to protect the amenity of neighbouring properties and their occupiers (IR176).

Heritage assets

20. In determining these appeals, the Secretary of State has had regard to its potential impacts on listed buildings, with particular regard to the desirability of preserving those buildings or their settings, as required by section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. He has given careful consideration to the Inspector's assessment of impacts on listed buildings and archaeological features at IR177-182. The Secretary of State agrees that the evidence indicates that the proposed turbines would not significantly affect views that are important to the setting of heritage assets and that there would be no conflict with relevant Local Plan policies on landscape features and buildings of historic importance. The less than substantial harm to heritage assets that would result from the solus and cumulative effects of the proposed development would be a matter to be weighed against the benefits of the scheme in accordance with the provisions of the Framework (IR183).

Other Matters

21. The Secretary of State agrees with the Inspector's reasoning and conclusions on air safety at IR184-186, nature conservation and biodiversity at IR187-189, highway safety at IR190 and other considerations at IR191-195, including an alternative delivery route for abnormal loads.

Conditions

22. The Secretary of State has considered the Schedule of Conditions at the end of the Inspector's report and national policy as set out in Circular 11/95 and the Framework. He is satisfied that the proposed conditions, and also Condition 25 that he has added for the reasons above, are reasonable and necessary and would meet the tests of Circular 11/95 and paragraph 206 of the Framework.

Planning balance and overall conclusions

23. The Secretary of State has given careful consideration to the Inspector's balancing exercise and consideration of policy matters at IR199-204, and his overall conclusions at IR212-214. He agrees with the Inspector that the benefits of renewable energy should be given significant weight. The Secretary of State also agrees that the proposed wind farm would have an adverse effect on landscape character and visual amenity of overall moderate significance, but that the adverse effects on the living conditions of those residing in the area would not be significant. He also agrees that there would be some harm to local amenity, but that this would largely be attributable to the effects on the local landscape and visual amenity of the area, which should not be double-counted. The proposal would have only a minor adverse effect on cultural heritage. Subject to the imposition of appropriate conditions the wind farm would not unduly affect air safety, biodiversity or highway safety (IR199-200).
24. The proposal would conflict with saved Local Plan policies on landscape and visual impact. However the Framework provides that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework (IR201). In this case, the Local Plan does not include criteria-based policies to enable the assessment of renewable energy schemes. Furthermore, whilst the Special Landscape Area designation in which the proposal is situated is indicative of a valued landscape, the Plan does not set criteria-based policies against which proposals for any development on or affecting such landscape areas would be judged. This is not consistent with the Framework (IR203). Having had particular regard to paragraph 98 of the Framework, the Secretary of State considers that the landscape and visual amenity impacts of the proposal would be acceptable in this case, as would other impacts subject to the relevant conditions. He agrees with the Inspector that the planning balance falls in favour of the proposal and that it would be sustainable development to which the presumption in favour set out in Framework would apply (IR204).

Formal decision

25. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's overall conclusions at IR212-213 and his recommendation at IR215. He hereby grants planning permission for the construction and operation of a wind farm and associated highway works, as described in paragraph 1 above, for an operation period of 25 years in accordance with application references FUL/MAL/10/01070, FUL/MAL/12/00119 and FUL/MAL/11/00879, dated 14 February 2011, 8 February 2012 and 5 October 2011, respectively, subject to the conditions at Annex B of this letter.
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26. 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.
27. 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.

28. 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

29. 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.

30. A copy of this letter has been sent to Maldon District 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