

**SW/13/1571 - New Rides Farm wind turbines, note on suggested reasons for refusal**

**Introduction**

1. At the Swale Borough Council planning committee meeting on 8<sup>th</sup> January 2015 a motion was proposed by a councillor that the application should be refused and the councillor suggested some potential reasons for refusal. Before this motion was voted on, the head of planning 'called in' the application to consider the strength of the suggested reasons for refusal and the potential chances of success, risks and costs associated with taking the application to appeal.
2. The application is due to be reconsidered as a deferred item at the 29<sup>th</sup> January 2015 planning committee, where a report from planning officers on the strength of the suggested reasons for refusal and the appeal implications will be taken into account. The application could be approved or refused at this further committee meeting or any variations thereof.
3. The suggested reasons for refusal ("SRFR") put forward by the councillor are understood to be as follows:
  - (i) demonstrable harm to landscape through cumulative impact;
  - (ii) demonstrable harm to birdlife; and
  - (iii) cumulative impact of acoustic issues on local residents.
4. This note provides the applicant's view on the suggested reasons for refusal and consequences of sending the application to the inevitable appeal should it be refused.

**Demonstrable harm to landscape through cumulative impact ("SRFR1")**

**Potentially inconsistent approach on this application**

5. The planning officer carefully considered the landscape and visual implications of the proposal in the officer's report in paragraphs 9.17 - 9.28. In paragraph 9.28 the planning officer concludes:

*'However, and as noted above, the turbines are set against wider views of open landscape and whilst they may present a prominent feature I do not believe that they would be so significant or dominant over that wider view as to be seriously visually harmful to the character and appearance of the landscape as to justify a reason for refusal on those grounds. Accordingly, I do not consider the proposal will have a significantly detrimental impact on the landscape character or to visual dominance and have no serious objections to the proposal in this regard.'*

6. This is a clear and unequivocal statement. The planning officer has not wrestled with this issue; after carefully considering the matter, and visiting the site and its environs several times, the council's planning officer has firmly concluded that the broad open landscape could accommodate the proposal. It is understood that the case officer's committee report was discussed internally with senior members of the planning team and that it was signed off. The officer's view on landscape and visual issues has therefore been sanctioned by other officers within the planning department.
7. In addition, it should be acknowledged that there are relatively few consultees that have raised landscape and visual issues in their responses to the application, and even

fewer have raised the specific issue of cumulative effects. For example, Natural England, who are the government's appointed advisors on landscape and visual issues did not raise any concerns on this issue in their response. Even the Kent branch of the CPRE, who are a campaign organisation rather than a formal statutory consultee, did not raise specific concerns about the cumulative landscape effects of the scheme.

8. If the application goes to inquiry, the applicant will scrutinise the inconsistency between the clear conclusions reached on landscape and visual at the application stage and the council's altered position on this at appeal.

**Potentially inconsistent approach compared to the Stanford Hill scheme**

9. This is of course not the first time that the consultees, planning officers and the planning committee has considered the landscape and visual effects of wind turbines in this part of Sheppey. In May 2011 a different case officer carefully considered these issues. The officer concluded the following on page 73 of the report to committee:

*'I concur with the conclusion in that I consider the turbines would sit well within the open landscape and would not detrimentally affect its character and value, and would have no negative impact on the adjacent land designated as a Special Landscape Area in the Swale Borough Local Plan 2008.'*

10. The minutes of the committee meeting state that:

*'Members raised the following points: threats to bird breeds and it was a site of international importance for birds; turbulence and aircraft problems; and welcome the sustainability of the development.'*

11. It is clear that landscape and visual issues were not a key issue for the planning committee when the original two turbines were approved by the planning committee. This is inconsistent with the argument that the councillor (who was in attendance at the Stanford Hill meeting) is now making about the local landscape being unique and of very high, even national, value

12. If the application is sent to inquiry, the applicant will closely examine the inconsistency of the current application being refused for landscape and visual reasons whilst the original scheme was approved without this being a major factor.

**Inspector's approvals in similar circumstances**

13. There are numerous cases where planning inspectors at appeal have concluded that similar open, relatively flat marsh landscapes have the capacity to accommodate wind turbines.

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14. ~~The most relevant parallel case is the Turncole application near Burnham-on-Crouch on the Dengie peninsula on the opposite side of the Thames Estuary, about 30 km to the north of the New Rides Farm site. This went to inquiry in May 2013 and was recovered by the Secretary of State.~~

15. This consisted of seven, 126.5m to tip turbines, approximately 1.3km south of the approved Middlewick wind farm which comprised nine, similarly sized turbines. The area is known as the Dengie Marshes which can be described as an area of extensive open space dominated by the sky, with a predominantly flat low-lying landscape consisting of salt marshes and reclaimed farmland. The Turncole proposal lies within an area designated as a

Special Landscape Area (SLA), whilst the New Rides Farm proposal lies, outside of, but on the edge of an SLA.

16. Due to the close proximity of the Middlewick scheme, and other wind schemes further away, the cumulative landscape effects of the Turncole scheme were a key issue at appeal. Interestingly, during the application process Natural England raised no objection on landscape grounds and went as far as to say that 'very open landscapes have a greater capacity for wind turbine developments'.

17. Despite the Turncole and Middlewick schemes being notably larger in extent than the New Rides and Standford Hill schemes, the Inspector concluded that the combined effects of the existing and proposed turbines would be of no more than moderate significance. The Inspector found that no cumulative threshold of acceptability for wind turbine development on the Dengie peninsula would be breached as a result.

18. In February 2014, the Secretary of State issued his decision and approved the scheme, agreeing with the inspector that the cumulative landscape effects of this proposal within a Special Landscape Area were not sufficient to result in a refusal.

**Potential contradictions between the council's landscape ground and its policy context**

19. The Council's new local plan was issued for formal consultation on 19th December 2014 and it is anticipated that it will be adopted within the timescale of any appeal on the New Rides scheme. The plan includes the Energy Opportunities Map (attached) from the Swale Renewable Energy and Sustainable Development Study undertaken by AECOM on behalf of the council in 2011, and which forms part of the plan's evidence base.

20. The Energy Opportunities Map (EOM) shows that the New Rides site lies within one of the few red areas which are categorised as 'High Potential Areas for installation of large scale wind energy'.

21. It would be illogical for the council to show an area of high potential for large scale wind energy and then refuse an application which comes forward in this area due to cumulative effects. This is a stance which will be very difficult to substantiate at appeal.

22. It is not the case that the consultants who drew up the EOM had no regard to landscape and visual issues. Regard was had to the North Kent Marshes Special Landscape Area as this is shown as being excluded from the area of high potential.

23. The new local plan includes policy DM20 on renewable energy, a supportive rather than a restrictive policy which states that planning permission will be granted where various criteria are satisfied. One of these criterion (no 2) requires it to be demonstrated that opportunities highlighted in the EOM have been exploited. Also of relevance is criterion 7 which requires that: '*Landscape, visual and heritage impacts as well as impacts on geology, soils, and flood risk, including cumulative impacts are minimised and mitigated to acceptable levels.*' Both of these criteria are comfortably met by the New Rides scheme.

24. The supporting text of the new local plan states at paragraph 7.6.18: 'There are particular opportunities for wind energy generation on the Isle of Sheppey (a number of turbines are already operating there)'. This has been drawn from the Swale Renewable Energy study, however this study is not the only independent consultant's report which has highlighted the potential for wind turbines on the Isle of Sheppey. The Swale Borough Council Climate Change Strategy undertaken for the council in 2010 by consultants CEN also states that:

*'The large scale, relatively simple nature of this landscape but with a degree of remoteness indicates that it has a medium sensitivity to commercial scale turbine development.'*

25. In addition, the Sustainable Design and Construction Guidance Document published by Swale Borough Council in 2010 states that

*'...the large scale, relatively simple nature of this landscape but with a degree of remoteness indicates that it has a medium sensitivity to commercial scale turbine development. ....many sites would be suitable for the installation of wind turbines, and would provide sufficient generation to make them cost effective. This would particularly be true in areas of higher ground and where building density is low with obstruction free orientation towards the prevailing south west wind.'* (page 40)

26. A similar commentary was made in the report entitled East of England Regional Assembly, Placing Renewables in the East of England undertaken by Arup.

27. The incompatibility of the council's suggested reason for refusal on cumulative landscape grounds with the suitability of the site for wind turbines demonstrated in the council's own policy documents, and evidence base, will be strongly emphasised if the application is sent to appeal. It is very unlikely that the council will be able to adequately defend this reason for refusal.

#### **The capacity of the area to accommodate wind turbines**

28. The use of cumulative landscape effects as a potential reason for refusal is surprising given that there are relatively few other wind energy schemes within the area. Whilst it is the case that the PFR turbines lie 1 km to the west, and that it is possible that the four turbines at Sheerness Docks approximately 9.5 km away, could eventually be constructed, this part of Kent has, no where near, reached its cumulative wind energy capacity limit compared to other parts of the UK.

29. If it was nearing its cumulative limit, instead of commissioning studies to identify areas of search for wind turbines (ie the AECOM report) the council would have brought in consultants to examine the landscape capacity of the area to accommodate further turbines as other councils have done for example, Cumbria County Council and Fenland District Council.

30. Given the above, it will be very difficult for the council to successfully argue at appeal that the scheme should be refused for cumulative landscape reasons.

#### **The additional effects of the New Rides scheme would be acceptable**

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31. ~~In this open landscape, the New Rides scheme would mainly effect an area of landscape which is already affected by the Stanford Hill wind turbines. Unlike an area of undulating or upland topography, there would be very few, if any, medium range viewpoints or stretches of road where the new wind turbines would be introduced into the view on their own.~~

32. The proximity of the turbines to the existing PFR turbines is something that is in the scheme's favour. The local landscape is one which can accommodate a group of large turbines as highlighted in the Energy Opportunities Map and the proposed turbines would be associated and seen with the PFR turbines. In effect this would become a group of six wind turbines.

**The design congruity of the New Rides and Stanford Hill turbines**

33. The New Rides and Stanford Hill turbines are sufficiently close and the relative number of turbines and height are such that from most viewpoints the turbines effectively appear as a balanced composition consisting of a six turbine wind farm.

34. The council would find it very difficult to argue that the cumulative effect is unacceptable because the schemes are separated to the point that they use up different parts of the landscape's capacity, or alternatively that the stacking of turbines creates an unacceptable in combination effect. They would appear well ordered in the landscape.

**The value and significance of the local landscape**

35. During the debate at the committee meeting on 8th January, the councillor who is proposing that the scheme should be refused for landscape reasons described the open landscape of the area as exceptional, and akin to being of national rather than just local value. This is an overstatement which the applicant would strongly contest at appeal.

36. As the planning officer correctly stated in the committee report the turbines are located within the Central Sheppey Farmlands landscape character area which is considered to be of moderate sensitivity. Immediately to the south lies the Leysdown and Eastchurch Marshes landscape area which is also considered to be of moderate sensitivity. It should be emphasised that the Sheppey Farmland LCA is not even covered by the council's lowest tier local landscape denotation, the Area of High Landscape Value (AHGL). Whilst the Leysdown and Eastchurch Marshes LCA has been given the Special Landscape Area status, this is significantly, a county level not a regional or national level designation.

37. At no point since its first proper denotation in the borough local plan in 2000, has it ever been argued that the marshland on Sheppey is of national, and therefore, Area of Outstanding Natural Beauty status. It should be remembered that it does include some detracting features such as the major set of pylons that pass through it at its western end at Neatscourt and the enlarged agricultural fields (particularly in the east of Sheppey) which contrast to the more natural marshland landscape.

38. The section within the National Planning Policy Framework on renewable energy clearly states that when determining applications regard should be had to the Overarching National Policy Statement on Energy EN-1. The following is stated about local landscape designations at paragraph 5.9.14 of the National Policy Statement on Energy:

*'Local landscape designations should not be used in themselves to refuse consent, as this may unduly restrict acceptable development.'*

39. This is a very clear and important piece of current guidance in a document that was ratified by the UK Parliament.



**Demonstrable harm to birdlife (“SRFR2”)**

**Position of the statutory consultees and non governmental organisations**

40. There are no objections or remaining reservations from Natural England, the Environment Agency (Landowner of Great Bells Farm), Kent County Council’s (KCC) ecologist or very significantly from the RSPB (who manage Great Bells Farm). Any objection on the grounds of ornithology would be contrary to the view of these expert organisations. As reported in the committee report these organisations are *‘now satisfied that the development would not give rise to ornithological impacts to such a degree that a refusal of planning permission on such grounds could be justified or reasonably defended at appeal’ (paragraph 9.11)* Again this is a very firm statement from which it will be very difficult and potentially costly for the council to do a ‘U’ turn on.

**Habitats regulations assessment**

41. On behalf of the borough council, the Kent County Council ecologist has completed an Appropriate Assessment (AA), as required under the Habitats Regulations. The AA process effectively ‘raises the bar’ in terms of acceptability of effects on statutory designated sites and linked land. The relevant designation is The Swale Special Protection Area (SPA), but the same level of protection is afforded to Great Bells Farm (as compensatory habitat).

42. Any AA must ascertain there will be no adverse effects on the integrity of Natura sites (i.e. not low or negligible levels), as was concluded for the application. Any refusal of the application on the grounds of ornithology would be in complete contradiction to the conclusions of the AA undertaken by the Kent County Council ecologist.

**Witness for the council**

43. The following question arises: who would represent the council on the issue of ornithology in the event of an appeal given the lack of objections from the official regulators and NGOs? It is likely that only local resident Mr Haynes would be in a position to defend the council’s position, should he choose to do so.

44. Mr Haynes is a volunteer warden for the RSPB and is not a scientist or professional ecologist. In many areas his views contrast to those of the RSPB who manage Great Bells Farm, and they often contradict the scientific consensus and peer-reviewed research papers.

45. A copy of Mr Haynes report was reviewed by the applicant and discussed at a meeting with NE, EA, RSPB and the KCC ecologist in April 2014 and, without exception, all of the points raised in the report or via his written submissions have been fully and robustly addressed in the ES Addendum to the satisfaction of regulators and the RSPB.

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46. It is therefore incorrect to state that data in his report was not considered by the applicant or the relevant consultees. It is also pertinent to note that Mr Haynes comments primarily relate to the operational HMP Stanford Hill turbines and displacement of birds from within Great Bells Farm. The New Rides application turbines have been deliberately located further away and it has been demonstrated that they will not lead to any detectable displacement of birds using Great Bells Farm, so the two projects are not directly comparable in this respect.

#### **Amount of bird survey effort and data**

47. The application was supported by two years' worth of field survey data. This was collected independently by a specialist consultancy, with the total survey effort exceeding that recommended in Natural England guidance. The assessment also considered data on future bird populations of Great Bells (provided by the RSPB), along with marsh harrier monitoring information from the HMP Standford Hill turbines. Additional monitoring information from other comparable UK wind farms, including Little Cheyne Court in south Kent, was also reviewed and referenced.

48. For the avoidance of doubt, the applicant would make a claim for costs on the basis of inconsistency and unfounded claims should the council send the application to appeal due to ornithology.

#### **Cumulative impact of acoustic issues on local residents ("SRFR3")**

##### **Compliance with accepted guidance**

49. The National Policy Statement for Renewable Energy Infrastructure (NPS EN-3) clearly requires that wind turbine noise should be assessed using a guidance document known as ETSU-R-97.

50. ETSU-R-97 describes a process where appropriate noise limits are derived from a background noise survey. In the Government's current online Planning Practice Guidance noise limits determined in accordance with ETSU-R-97 are described as offering a reasonable degree of protection to wind farm neighbours, without placing unreasonable restrictions on wind farm development.

51. The Institute of Acoustics' Good Practice Guide (IoA GPG) provides supplementary guidance on the noise survey procedure including advice on correcting for wind shear and on using directional filtering to remove data which could be affected by the operation of existing turbines. This guidance has been followed.

52. The IoA guidance recommends that noise monitoring positions should be agreed with the local authority, and this has been done in this case. ETSU-R-97 does not describe turbine noise predictions but the IoA GPG states an agreed calculation method to determine "realistic predictions" of turbine noise levels, based on ISO 9613-2.

53. Once the monitoring positions have been agreed, the setting of limits and determining compliance with the noise limits is largely a numerical procedure. Planning conditions can be specified with the appropriate noise limits. A noise survey can be carried out to determine compliance once the turbines are operational.

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54. Significantly, the planning officer states in the committee report:

*'the evidence before me shows that the proposed turbines can comply with Government approved noise limits and will not generate a nuisance...'* (para 9.46).

##### **Potential inconsistency if the council refuses the application on noise grounds**

55. Government policy clearly states that the ETSU-R-97 guidance should be used to assess noise from wind farms and that if a scheme meets the ETSU-R-97 noise limits no

other test of acceptability should be used. Whether a proposal complies with ETSU-R-97 noise limits is effectively a pass or fail test.

56. Based on very much a worst case assessment, the cumulative noise levels from both schemes meets the required ETSU noise limits. The reports submitted have demonstrated compliance can be achieved and these have not been disputed by the Council's Environmental Health Officer (EHO), who has responded twice in writing saying that he has no objection to the application and has verbally defended this stance at the committee meeting on 8th January.

57. If the council now gives noise as a reason for refusal this would be wholly inconsistent with its earlier position.

58. At a late stage in this project, some of the local residents commissioned a report by Dr Yelland which sought to cast doubt over various issues. The applicant responded fully to this report and the council EHO accepted the applicant's clarification. There are a number of overstatements within Dr Yelland's critique that the applicant would strongly contest at appeal such as the claim that the existing turbines have given rise to several noise complaints to the council, the local MP and the local press.

59. As the EHO explained at the committee meeting, there has only been one official noise complaint since the installation of these turbines and this related to the effects on a residents pet birds, and following monitoring this complaint was not maintained

60. It is worth emphasising that Dr Yelland has appeared, on behalf of third parties, at planning inquiries relating to wind turbines and to our knowledge his arguments have not persuaded inspectors to refuse applications.

61. For the avoidance of doubt, the applicant would make a claim for costs on the basis of inconsistency and unfounded claims should the council send the application to appeal due to noise.

### **Conclusion**

62. If the application were sent to appeal on landscape and visual grounds the applicant would scrutinise: the inconsistency of the council's position given the lack of support from technical consultees, the earlier strong and clear conclusions on this matter from planning officers, the inconsistency with the committee's approval of the PFR turbines, the contradiction between this stance and the council's policy context, the lack of a cumulative landscape capacity issue and the absence of concerns over the design congruity of the two neighbouring schemes.

63. In short, the landscape effects of the New Rides scheme, both on its own and in cumulative terms would be acceptable and the council will find it very difficult to argue that ~~the scheme would give rise to unacceptable landscape impacts above and beyond those of~~ the many wind farms that have secured permission.

64. If ornithology were used as a reason for refusal, the applicant would again major on the inconsistency of the council's position given the absence of support for it from all of the key technical statutory consultees on this issue and the earlier strong and clear conclusions on this matter from the planning officers.

65. If noise were used as a reason for refusal, again at appeal the applicant would scrutinise the inconsistency of this stance given the lack of an objection from Environmental Health and the earlier strong and clear conclusions on this issue from the planning officers.



66. To summarise, neither the statutory consultees, the planning officers or several of the councillors consider that there are sufficient grounds for the refusal of the New Rides application.

67. To refuse the application would result in the council having to defend a case at inquiry which it will find very difficult to win.

68. The council would incur significant costs in employing consultants and legal advisors to help it defend its case and it is probable that some of the applicant's costs would also have to be met.

69. For the avoidance of doubt, if the application is refused, the applicant would definitely pursue an appeal by way of a public inquiry with full legal representation, and would make a claim for costs.

