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## Appeal Decision

Inquiry held on 25 - 28 August 2015

Site visit made on 28 August 2015

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

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

**Decision date: 11 February 2016**

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**Appeal Ref: APP/Q3305/A/13/2194751**

**Piltown Farm, Piltown, West Pennard, Glastonbury, Somerset BA6 8NQ**

- 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 Paul Chant the Executor for Frank Naish against the decision of Mendip District Council.
  - The application Ref 2012/1315, dated 5 June 2012, was refused by notice dated 11 January 2013.
  - The development proposed is the erection of 2 no. GAIA 133 11kW wind turbines.
  - This decision supersedes that issued on 30 October 2013. That decision on the appeal was quashed by order of the High Court.
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### Procedural matters

1. The Written Ministerial Statement (WMS) on Local Planning by Greg Clark MP on 18 June 2015 (HCWS42) and the Department for Communities and Local Government's amended online guidance on renewable and low carbon energy were made after the appeal was submitted. The main parties and interested persons have taken the opportunity to comment on any relevant implications of the WMS and amended guidance to their cases, and I have had regard to their comments and to the WMS and amended guidance, in determining the appeal.
2. The parties confirmed that the description of development as set out above is accurate as the proposal has been amended to delete the erection of a substation. I have dealt with the appeal on this basis.
3. In a letter dated 7 October 2014 it was confirmed that the appeal should travel in the name of Paul Chant, the Executor for Frank Naish (deceased). I have dealt with the appeal on this basis.

### Decision

4. I dismiss the appeal.

### Main Issues

5. The main issues are:
  - a) the effect of the proposed wind turbines on the surrounding area in terms of landscape character and visual impact,
  - b) the effect on the setting of heritage assets in the vicinity,

- c) the effect on the living conditions of the occupiers of nearby dwellings in respect of any noise disturbance,
- d) the effect on ecology and protected species; and
- e) whether any harm, in the light of the development plan, would be outweighed by the national objective of promoting renewable energy generation.

## **Reasons**

### *Background and Policy*

- 6. The appeal site is an agricultural field, located around 170m from Page Lane, around 190m from Stockbridge Lane and around 370m from the A361. It stands in the countryside near the village of West Pennard, around 420m to the northeast of the main built form of Piltown Farm and around 5.5km to the east of Glastonbury. Proposed is the installation of 2 no. tubular tower wind turbines, each twin bladed with a hub height of around 18m and a blade tip height of around 24.5m.
- 7. The National Planning Policy Framework (NPPF) states a presumption in favour of sustainable development at paragraph 14 and paragraph 93 makes clear that the provision of renewable energy infrastructure is central to the economic, social and environmental dimensions of sustainable development. This is reflected in the national planning practice guidance (PPG) which states that increasing the amount of energy from renewable and low carbon technologies will help to make sure the UK has a secure energy supply, reduce greenhouse gas emissions to slow down climate change and stimulate investment in new jobs and businesses. It goes on to state that planning has an important role in the delivery of new renewable and low carbon energy infrastructure in locations where the local environmental impact is acceptable.
- 8. The PPG also makes clear that there are no hard and fast rules about how suitable areas for renewable energy should be identified, but in considering locations, local planning authorities will need to ensure they take into account the requirements of the technology, and critically, the potential impacts on the local environment, including from cumulative impacts. The views of local communities likely to be affected should be listened to and local planning authorities should only grant planning permission if, following consultation, it can be demonstrated that the planning impacts identified by affected local communities have been fully addressed and therefore the proposal has their backing.
- 9. While the adopted Mendip Local Plan 2006-2029 (LP) does not designate specific areas appropriate for, and there is no specific policy dealing with, wind turbine development, LP Policy CP1 provides that development in the open countryside will be strictly controlled. Moreover, LP Policies DP3 and DP4 seek to safeguard the significance of heritage assets and prevent development that would degrade the quality of the landscape, respectively. DP4 in this regard refers to the Council's Landscape Assessment of Mendip District (1997) (LAMD).
- 10. In addition, LP Policy DP5 requires development proposals to ensure the protection, conservation and where possible enhancement of species and makes clear that proposals with the potential to cause adverse impacts on protected and/or priority species will be resisted. LP Policy DP7 requires

development proposals to demonstrate that they will protect the amenity of neighbouring buildings while LP Policy DP8 requires all development proposals to demonstrate that there would be no adverse impacts, including on ambient noise levels, biodiversity and residential amenity. This proposal falls to be assessed against this policy background.

*Landscape character and visual impact*

11. The appeal site has no local or national landscape designation. It is situated within National Character Area 143 *Mid Somerset Hills* while the LAMD places it within Area E1.3 *Whitlelake Lowlands Character Area*. This is characterised by gently undulating farmland, arable and pasture in distinct zones; very open areas with low hedges; more enclosed areas with small hedges; and views of surrounding ridges.
12. I observed that the local landscape has an attractive, rural quality, and I heard that this is appreciated by visitors and residents alike. The surrounding landform has a gentle gradient as it slopes down from the hill to the south towards the appeal site. The general area is interspersed with hedgerows, individual trees and pockets of woodland and contains man-made vertical features such as timber electricity poles, the Priddy mast and a line of electricity pylons. This is apparent from the submitted Landscape Visual Impact Assessment (LVIA) which includes photo-montages that show the turbines from what are claimed to be representative viewpoints, and a Zone of Theoretical Visibility map. I note that the LVIA originally submitted by Myriad CEG was updated by Mosscliff Environmental.
13. The LVIA notes that the timber poles in the vicinity of the appeal site introduce an element of verticality into the landscape while the proximity of the busy A361, collections of farm buildings and electricity pylons contribute to a strong sense of existing human activity and development in the area. In my judgement, over longer range views these features, along with the modest scale of the turbines, would allow the proposal to sit within the landscape without appearing prominent or overbearing. Furthermore, over these longer range views, the visual interruption provided by vegetation, along with the medium scale of the landform, would enable the proposal to assimilate with its surroundings such that its visual impact and harmful effect on landscape character would be limited.
14. However, the presence of existing man-made intrusions in the countryside does not of itself justify the addition of more. Despite their modest size, the turbines would be of sufficient height to render them noticeable features in the local landscape when seen at close quarters, such as from the roads and public footpaths in the vicinity of the appeal site. These include local roads (A361, Page Lane, Stockbridge Lane and Pennard Lane) (LVIA viewpoints 1, 2b and 6) and footpaths (WS14/51, WS14/52 and WS14/06). Footpath WS14/51 traverses an adjoining field and the Council estimates that it would pass around 25m from the turbines. While overgrown in part at the time of my visit, I consider it likely that at other times of the year when vegetation has died back, it would be more accessible.
15. Although an undesignated landscape, I observed that the area around the appeal site possesses an attractive and tranquil quality. I did not find it to be characterised by man-made features but rather is a rural, pastoral landscape that contains limited examples of built features such as agricultural buildings,

roads and pylons. Within this context, from the closer range views outlined above, the turbines would appear as prominent, alien features that would often be seen against the skyline. As tall vertical features with moving blades they would be a visually jarring element in this tranquil, rural landscape.

16. Against this background, I consider that the proposal, when seen from surrounding roads and footpaths, would have an overbearing presence such that it would significantly degrade the quality of the local landscape, both in terms of its effect on landscape character and its visual impact, contrary to LP Policy DP4.

#### *Setting of the heritage assets*

17. The NPPF defines the setting of a heritage asset as the surroundings in which it is experienced. The extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset; may affect the ability to appreciate that significance; or, may be neutral. The significance of an asset is defined in the NPPF as its value to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 makes clear that special regard should be paid to the desirability of preserving the settings of listed buildings, where those settings would be affected by proposed development.
18. The appellant submitted a revised Historic Visual Impact Assessment (HVIA) which assessed the heritage assets that lie within around 10km of the proposal (paragraph 2.9 of the HVIA). For the majority of the identified heritage assets there would be no inter-visibility with the proposal. However, the turbines would be seen within the settings of Ponter's Ball linear earthworks, St Michaels Church Glastonbury Tor, Tithe Barn Pilton and Fenny Castle (all Scheduled Ancient Monuments); Church of St John the Baptist Pilton, and Church of St Nicholas and Churchyard Cross West Pennard (all Grade I listed buildings); Old Farmhouse, Church of St Peter North Wootton, Norwood Park Farmhouse, The Manor House and attached wall, and Westholme House (all Grade II\* listed buildings); Gladstone House and attached chapel, Laverley Farmhouse, Newton Farmhouse, Mulberry Farmhouse, Pennard Farmhouse, Old House Yew Cottage, Havyvatt Farmhouse, Priory Cottage, Sticklinch Manor Farmhouse, Higher West Holme Farmhouse, Westholme Cottage, Hearne House, Middle Wick Farmhouse, Higher Wick Farmhouse, Edgarley Lodge and Edgarley Farmhouse (all Grade II listed buildings), and Pilton Conservation Area.
19. With regard to Pilton Conservation Area, given the separation distance and intervening landscape features, I consider that this heritage asset is only experienced and appreciated in peripheral views from the appeal site. The appeal site itself is not integral to its understanding or appreciation and I consider that the proposal would not result in any harm, under NPPF paragraph 132, to the significance of this heritage asset as a development within its setting.
20. However, I note that the HVIA in paragraph 2.9 concludes that there would be negative/minor impact for several of the other identified heritage assets and this was considered by Historic England to clearly outline some potential for harm to their settings. In an email dated 7 August 2015, the Council's

Conservation Officer described the level of harm as less than substantial. This was accepted by the appellant's heritage witness at the Inquiry. From my assessment, I have no reason to disagree and consider that while the small scale of the turbines, intervening distances, difference in levels and presence of buildings, pylons and electricity poles in existing views would ameliorate the impact to some extent, there nevertheless would be a minor reduction in the contribution setting makes to the significance of these assets, resulting from the proposed development.

21. This minor harm, both individually and aggregated, on the significance of the heritage assets arising from the proposal as a development within their settings would be contrary to LP Policy DP3 and would equate to less than substantial harm for the purposes of NPPF paragraph 134. This requires to be weighed against the public benefits of the proposal, including securing the optimum viable use of the designated heritage assets, a matter to which I return below.

### *Noise*

22. Concerns were raised that the proposal would be harmful to the living conditions of nearby residents in respect of noise disturbance. It was claimed that the effect of noise would be apparent for the occupiers of Old Farm and the dwelling to the south of the appeal site on the A361. In particular, concerns were raised that the appellant had not correctly applied the guidance within the Institute of Acoustics Good Practice Guide (IOAGPG) and ISO 9613-2 correctly. It was alleged that had he done so, the noise level experienced at Old Farm would exceed the ETSU-97 limit of 35dBA by 4.5dB.
23. The parties agreed on the use of ETSU-R-97, IOGAPG and ISO 9613-2 for this proposal, and further agreed:
- a) ground level input data of 4m prediction height and a ground absorption factor of 0.5,
  - b) a distance from Old Farm to the turbines of around 226m,
  - c) that if the noise level at Old Farm is acceptable it would follow that the noise level at the 2<sup>nd</sup> closest receptor would also be acceptable, and
  - d) that 35dB is suitable for this development.
- Nevertheless, the Lloyd Green party was concerned that if the 2dB and 3dB penalties are both imposed then ETSU-R-97 would be breached.
24. However, I am satisfied that the IOAGPG guidance has a suitable uncertainty figure factored into the calculation. In which case, I have no reason to conclude from the evidence that the ETSU-R-97 35db limit would be exceeded at Old Farm. Although the turbines may be audible from Old Farm, (as is traffic noise from nearby roads) I nevertheless consider it unlikely that the proposal would give rise to a harmful change in living conditions for the occupiers in respect of ambient noise levels, subject to the suggested IOAGPG example noise planning condition being attached to any grant of planning permission.
25. In addition, concerns were also raised regarding excessive amplitude modulation (EAM). The understanding of EAM is emerging and while the turbines would be "downwind" models which would cause a wind shadow during each rotation of the blades, I consider from the evidence that the small scale of the blades, at around 6m, would be such that the turbines would be unlikely to give rise to a harmful change in the living conditions of the occupiers of Old Farm as a consequence of EAM.

26. Accordingly, there would be no conflict with LP Policy DP8.

### *Ecology*

27. Concerns were raised that the proposal would have an adverse effect on bats and starlings. Bats are a protected species under Schedule 5 of the Wildlife & Countryside Act and the EC Habitats Directive 1992, implemented in Great Britain by the Habitats Regulations. The parties disputed the species of bat that may be present and whether the proposal constituted a micro-generation scheme.
28. I heard that Eurobats 2014 is the only guidance that deals specifically with small-scale wind turbines but it was pointed out that this has not been formally adopted in the United Kingdom. In which case I was invited to prefer the Natural England Technical Information Note (TIN051) but I note that this guidance is not intended for use in respect of micro-installations, being aimed instead at turbines of between 50-125m in height.
29. Furthermore, while the main parties agreed that bats are to be found at the appeal site, the Lloyd Green expert witness in ecology was unable to adduce evidence to substantiate the claim that Noctules are present. Against this background, I have no reason to demur from the outcome of the appellant's submitted desk study which did not find any records of rare or vulnerable bat species at the appeal site.
30. In respect of starlings, I consider that it was not demonstrated that starlings roost nearby. I heard that starlings range over a very wide area and the proposed turbines would take up a tiny part of this range. From the evidence, it would appear that the impact of the proposal on the starling population in the area is likely to be negligible.
31. In this regard, I note that the County Council's Ecologist considered (notwithstanding the criticism of their comments by the Lloyd Green party's ecology expert) that the proposal would be unlikely to affect local bird populations and that a risk of severance or displacement of bats would also be unlikely, subject to the mitigation measures set out in the appellant's SLR Report which could be secured by suitably worded conditions were planning permission to be granted.
32. From my assessment, I have no reason to disagree and consider that were planning permission to be granted, given the proposed height of the turbines, their position relative to nearby hedges and trees, and subject to the suggested conditions regarding the implementation of the submitted mitigation strategy, the proposal would be unlikely to have an adverse impact on bats and starlings. Accordingly, there would be no conflict with LP Policy DP5.

### *Other matters*

33. From what I observed, views of the proposal from nearby dwellings, including Old Farm, would be tempered by distance, vegetation (notwithstanding the coppicing of 1 of the hedgerows that stands between Old Farm and the appeal site), topography and the orientation of the main aspects of the dwellings relative to the proposed turbines. These factors, either individually or in combination, along with the modest height of the proposed turbines and the limited degree of the available panorama they would occupy, would mean that

they would be unlikely to harmfully change the living conditions of the occupiers of these dwellings in respect of any loss of outlook.

34. The appellant's LVIA includes an assessment of cumulative landscape impact. This document identifies the operational and consented wind turbine developments within the general area, of which I heard there are 5 consented schemes. In my judgement, the intervening distance, the modest height of the proposed turbines, topography, intervening buildings, man-made infrastructure and mature vegetation, would have an ameliorating influence such that this proposal and the other identified turbines would, in the main, have distinct and discrete effects on both the landscape and the settings of the heritage assets.

#### *Benefits*

35. The turbines would each have a power rating of around 11kW and a generating capacity of around 36,700kWh per annum. This would lead to CO2 savings of around 20 tonnes per annum. The electricity generated would be used by the farm which would help to sustain the farm business economically and lower associated carbon emissions by reducing the use of energy originating from fossil fuels.
36. The development plan provides in-principle support for contributing to international climate change goals and the NPPF at paragraph 98 recognises that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions. The development would contribute to the generation of renewable energy which would assist in meeting national targets that seek to reduce carbon emissions in order to tackle climate change. It would also make a contribution to supporting rural enterprise and economic activity.

#### *Planning balance*

37. As set out above under *Noise, Ecology and Other matters*, there would be no negative effects arising from the proposal (subject in certain instances to conditions being attached to any grant of planning permission) in respect of these matters. The proposal would also be reversible insofar as it would be likely to be in place for a limited period of around 25 years. In terms of benefits, the proposal would generate renewable energy that would contribute to cutting greenhouse gas emissions and counter climate change, objectives which are enshrined in Government policy and given statutory force in the Climate Change Act 2008. In addition, the proposal which would also bring about economic benefits for a rural enterprise, by contributing to farm diversification. These considerations carry substantial weight in favour of the proposal.
38. The proposal falls into the 'transitional provisions' of the WMS, as a valid planning application for a wind energy development had already been submitted to a local planning authority at the time the WMS was published, and it would appear that the development plan does not identify suitable sites. In such circumstances the WMS provides that "...local planning authorities can find the proposal acceptable if, following consultation, they are satisfied it has addressed the planning impacts identified by affected local communities and therefore has their backing".

39. In which case, applying the transitional provision of the WMS, to which I attach significant weight as the most recent expression of government planning policy for onshore wind development, I am not satisfied that the planning impacts identified by affected local communities have been addressed. Concerns regarding the effect of the proposal on landscape character and its visual impact were raised by the Council, by the Lloyd Green party and by other interested parties and individuals in representations to both the Council and to the Planning Inspectorate. I have found that the proposal would significantly degrade the quality of the local landscape in terms of landscape character and visual impact when seen from nearby vantage points. In which case, the proposal would not meet the transitional arrangements and I give significant weight to this non-compliance.
40. Furthermore, the proposal would cause less than substantial harm to the significance of several heritage assets as a development within their settings. Accordingly, giving considerable importance and weight to the desirability of preserving the setting of the listed buildings under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and heritage assets under NPPF paragraph 132, this finding of harm is a consideration to which I attach considerable importance and weight.
41. Having weighed up all of the relevant considerations, I conclude that the factors which weigh in favour of the proposed development do not outweigh its shortcomings and the conflict identified with national policy.

### **Conclusion**

42. For the reasons given above, I conclude that there are material considerations which significantly and demonstrably outweigh the benefits of the proposal and indicate that the appeal should be dismissed.

*Richard McCoy*

Inspector

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

|                                                  |                                                     |
|--------------------------------------------------|-----------------------------------------------------|
| Mr H Mohamed of Counsel                          | Instructed by the Council Solicitor                 |
| He called<br>Mr O Marigold BSc.,<br>DipTP, MRTPI | Principal Planning Officer, Mendip District Council |

### FOR THE APPELLANT:

|                                                                                                                     |                                                                                                                                                                                     |
|---------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Mr G Collett of Counsel                                                                                             | Instructed by Mosscliff Environmental Ltd                                                                                                                                           |
| He called<br>Mr A Campbell MSc<br>Dr S Walls BArch<br>(Hons), MA<br>Ms L Boulton<br>Mr T Olver BEng (Hons),<br>MIOA | Principal Consultant, SLR Consulting Ltd<br>Director, South West Archaeology Ltd<br>Head of Planning, Mosscliff Environmental Ltd<br>Senior Acoustic Consultant, SLR Consulting Ltd |

### For Lloyd Green:

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| Mr H Campbell, Solicitor                                                                                                            | Instructed by Lloyd Green                           |
| He called<br>Dr T Reed BA, MA, D.Phil,<br>MBOU, CBiol, MRSB<br>Mr J Yelland MA,<br>DPhil (Oxon) MInstP,<br>FIET, MIOA<br>Mr L Green | Chartered Biologist<br>Consultant<br>Local Resident |

### INTERESTED PERSONS:

|                   |                                       |
|-------------------|---------------------------------------|
| Mr D Warburton MP | Local Member of Parliament            |
| Cllr Green-Halgh  | Ward Councillor                       |
| Mr G Wilcox       | Chairman, West Pennard Parish Council |
| Mr T Hodgson      | West Pennard Parish Council           |
| Ms J Hutchinson   | Local resident                        |
| Mr I Mapstone     | Local resident                        |
| Mrs I Baber       | Local resident                        |
| Mr R Evans        | Local resident                        |
| Mr R Eddy         | Local resident                        |

## **DOCUMENTS**

- 1 Council letters of notification
- 2 Letters of representation from interested parties
- 3 Letters received in response to the Written Ministerial Statement
- 4 Council's email exchange dated 7 August 2015 with Historic England
- 5 Evidence of Mr Warburton MP
- 6 Evidence of Mr Wilcox
- 7 Evidence of Cllr Green-Halgh
- 8 Statement of Common Ground
- 9 Suggested timetable for Inquiry
- 10 Extract from Guidelines for Landscape and Visual Impact Assessment
- 11 Letter from Secretary of State DECC dated 3 September 2013
- 12 Dr J Yelland Rebuttal Proof of Evidence
- 13 SLR Consulting requested records on protected species supplied by Somerset Environmental Records Centre
- 14 Court of Appeal Judgement Woodborough Park
- 15 Noise Statement of Common Ground
- 16 List of nearby approved turbine developments
- 17 Suggested conditions
- 18 Evidence of Mr Lawrence
- 19 Extracts from Wind Turbine Amplitude Modulation Research Documents by Hoare LEA & ISVR Consulting
- 20 IOC Good Practice Guide example planning condition
- 21 Council's suggested noise condition
- 22 Extract from Local Plan
- 23 Revised conditions list

## **PLANS**

- 1 Plan showing distance of turbines from Old Farm
- 2 Map showing listed buildings
- 3 Map showing Rights of Way