
Appeal Decision

Site visit made on 26 June 2024

by Mr Cullum Parker BA(Hons) PGCert MA FRGS MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 05 July 2024

Appeal Ref: APP/N2535/W/24/3337002

Hillcrest Park, Caistor, Lincolnshire, LN7 6TG

- 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 Oliver Lawrence c/o Lincs Design Consultancy Ltd against the decision of West Lindsey District Council.
 - The application Ref 146461, dated 16 March 2023, was refused by notice dated 2 November 2023.
 - The development proposed is described as '*The erection of 1no wind turbine.*'
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Lawrence against West Lindsey District Council. An application for costs was made by West Lindsey District Council against Mr Lawrence. An application for costs was made by Mr Dunwell (a local resident) against Mr Lawrence.¹
3. These three applications will be the subject of separate Decisions.

Main Issues

4. The Council indicated three reasons for refusal of permission on their decision notice. These, together with the evidence before me from the main and other parties, have informed the main issues in this case.
5. The main issues are:
 - The effect of the proposal on local aviation systems; and,
 - The effect of the proposal on the Area of Outstanding Natural Beauty; and,
 - The effect of the proposed development on the living conditions of nearby residential occupiers.

Reasons

Aviation systems

6. The appeal scheme seeks the erection of a wind turbine measuring approximately 14.3 metres to the centre of the hub and a blade span of

¹ Costs Applications A, B and C respectively, provided under separate cover.

approximately 8.56 metres as shown on drawing LDC4091-PL-02A. The Council's Statement of Case indicate that the overall height to tip of blade would be about 17.6 metres. With no evidence to the contrary I have based my decision on the basis of the submitted drawings, which appear to broadly reflect these measurements.

7. The turbine would be situated on the eastern edge of an existing small enterprise centre, housing local small businesses adjacent to the A46 highway. It is anticipated that the turbine would provide an annual yield of around 12'895kwh (with an average domestic house cited by the Appellant as using around 2'800kwh per annum).
8. Amongst others, Policy S14 of the *Central Lincolnshire Plan – Adopted 2023* (the LP) sets out the local policy position on renewable energy. In particular, it states that:

Proposals for renewable energy schemes, including ancillary development, will be supported where the direct, indirect, individual and cumulative impacts on the following considerations are, or will be made, acceptable. To determine whether it is acceptable, the following tests will have to be met:...

 - ii. *The impacts are acceptable on aviation and defence navigation system/communications...*
9. The *National Air Traffic Service* (NATS) were consulted as the Claxby Radar is located within the vicinity of the appeal site. There is no dispute by the Appellant on the fact that the wind turbine could have an unacceptable impact on operation of the Claxby Radar or other nearby aviation facilities. The issue lies around as to the solution.
10. I note the Appellant's point about commercial wind turbine operations and that similar schemes for residential buildings would not necessarily require an assessment of the impacts on NATS radar areas. That may be so, however the proposal here is clearly for a scheme not associated with a residential building, and therefore I give extremely limited weight to this factor.
11. The Appellant contacted NATS and identified that there is another wind turbine around 3 miles to the south at North Wold Farm. I have not been provided with the full details of that scheme, but the main facets are explained by the main parties. It is understood that that site was deemed acceptable and some form of solution has been put in place to 'modify' the radar.
12. It is not known, however, what the financial contribution would be required to mitigate this potential impact. The Appellant explains their case that it would be for NATS to address this unknown cost. Moreover, there is no planning policy that requires the Appellant to bear the costs of the adjustments to the radar and it is not justified to use either a planning condition or a legal agreement under such circumstances as this would not meet the requirements of national guidance.
13. On the basis of the evidence before me, it appears as though the likely solution will involve some form of financial cost in order to update or alter existing systems. As such, like the Appellant indicates, I am not convinced that the imposition of a planning condition which would ultimately seek to secure some form of financial contribution towards re-programming or altering the radar

system is reasonable in this instance. This is not only because the amount of financial contribution in order to mitigate the impacts of the proposal have not been fully justified, but the use of planning conditions to secure monies does not appear to be the appropriate mechanism to use.

14. Indeed, the problem here is that neither myself nor the Appellant have been directed to any detailed evidence which demonstrates what monies are sought to mitigate this potential impact arising from the proposal. I note that the Council indicate that the Appellant has not submitted any s106 planning obligation, but this is not surprising given that neither NATS nor the Local Planning Authority have appeared to inform the Appellant of the amounts that any such planning obligation would seek to achieve. At the very least, as set out in the national *Planning Practice Guidance* (the Guidance), Paragraph 57 of the *National Planning Policy Framework* (the Framework) and the CIL Regulations, the lack of information on this point means that the obligation sought would not be fairly and reasonably related in scale and kind to the development as it is not publicly known.
15. At the same time, the evidence before me suggests that the proposal is likely to have an adverse impact on aviation systems. There are alterations to the radar system that need to take place directly because of the proposed development, and the potential impacts for which no suitable method has been put forward to make acceptable in this case. In the absence of such solutions, I can only logically conclude that the impacts would not be acceptable on aviation and/or defence navigation system/communications.
16. Accordingly, I find that the proposal would have an adverse effect on local aviation systems. As such, it would not accord with Policy S14 of the LP, which seeks the aforesaid aims.

Area of Outstanding Natural Beauty

17. The appeal site is within the Lincolnshire Wolds Area of Outstanding Beauty (AONB). The Framework sets out that great weight should be given to conserving and enhancing landscape and scenic beauty in Areas of Outstanding Natural Beauty².
18. Paragraph 163 of the Framework, in relation to renewable and low carbon developments, sets out that local planning authorities should approve the application if its impacts can be made acceptable. However, Footnotes 57 and 58 which relate to that Paragraph, are clear in that;

Except for applications for the repowering and life-extension of existing wind turbines, a planning application for wind energy development involving one or more turbines should not be considered acceptable unless it is in an area identified as suitable for wind energy development in the development plan or a supplementary planning document; and, following consultation, it can be demonstrated that the planning impacts identified by the affected local community have been appropriately addressed and the proposal has community support.

19. Policy s62 of the LP relates to the Lincolnshire Wolds Area of Outstanding Natural beauty (AONB). This policy sets out that all development proposals within the AONB shall, among others, have regard to conserving and enhancing

² Framework Paragraph 182

the special quality and scenic beauty of the landscape, respect the landscape character, topography, and context in relation to the siting, design, scale and extent of development and protect and enhance important views into, out of and within the AONB. It goes on to state that:

Proposals which will result in an adverse impact on the AONB or which fail to demonstrate that they will not have an adverse impact taking into account any mitigation proposed, will not be supported.

20. The Appellant has also drawn my attention to Policy S14, which sets out that proposals for small to medium single wind turbines, which is defined as a turbine up to 40m, are, in principle, supported throughout Central Lincolnshire, subject to meeting certain criteria, including that above in relation to aviation, and the requirements of national planning policy. I have found that the proposal would not meet one of the criteria set out in Policy S14 in relation to aviation and/or defence navigation system/communications. Accordingly, I do not find that this Policy provides support in favour of the proposal in this instance.
21. The Appellant does not consider that a Landscape and Visual Impact Assessment is necessary in this case as there was no need for an LVIA for a nearby solar scheme and photomontages have been provided (after being requested by the Council). I do not have the full details of the solar scheme and in any case the proposal in this case is for a wind turbine.
22. Furthermore, the photomontages submitted in this case are limited to five viewpoints and it is not possible to see whether they have been created to scale. Moreover, there is very little detailed analysis as to why the proposal would not harm the landscape and scenic beauty of the AONB. Indeed, much of the argument put forward by the Appellant revolves around the sites location at the Northern end of the AONB, the fact that it is near to the relatively busy A46 road and a small enterprise park, and that there are some communication towers to the south. The result of this context is that 'the effects would be a conspicuous change that will not affect the overall quality of the area'.
23. Respectfully, I disagree. It is clear that both local and national policy identifies an AONB as having an importance within the decision-making process as designated areas. The appeal site is within such an area. The Council indicated early on that an LVIA would be required in order for it to assess the impact of the proposal on the designated landscape. The absence of this information led to the Local Planning Authority refusing permission.
24. In assessing the potential impact of the proposal on the AONB, on the basis of the limited evidence before me, it is clear that the proposed wind turbine would be visible from within the AONB and its wider setting. It has not been demonstrated by the Appellant as to how the proposal would conserve or enhance the landscape or its scenic beauty within the AONB.
25. This requirement is even more pressing now given that the *Levelling-up and Regeneration Act 2023* amended section 85 of the *Countryside Rights of Way Act 2000* to create a duty on relevant authorities – that is for example the Local Planning Authority and the Secretary of State – to seek to further the purpose of conserving and enhancing the natural beauty of the area. On the basis of the evidence in this case, it has not been demonstrated how a wind turbine of over 17 metres in total height, with its moving parts and stark visual

- appearance with a vertical emphasis within the AONB would accord with this duty.
26. Therefore, when taken in the round, I find that the proposal would have an adverse impact on the AONB. This has not been mitigated in accordance with the footnotes of the Framework and therefore the proposal cannot be deemed to have addressed the planning impacts identified. It would also fail to conserve and enhance the landscape and scenic beauty of the Lincolnshire Wolds AONB.
27. Accordingly, the proposal would be contrary to Policies S14 and S62 of the LP which seek the aforesaid aims. It would also conflict with the Policies of the Framework as supported by the Footnotes, including those set out in Paragraph 163.
28. The decision notice also refers to Policy S53 of the LP relating to design and amenity and Policy 3 of the Caistor Neighbourhood Plan, which refers to proposals for new development being of a high quality. However, given the subject matter of these policies and the fact that there is little dispute over the proposed design of what is essentially a wind turbine I do not find that the proposal conflicts with these policies in relation to AONB matters.

Living conditions

29. To the south of the appeal site is a residential dwelling. The Appellant indicates that this is located about 60 metres from the proposed wind turbine. They have also provided details that the manufacturer indicates a noise level of 40 to 45db which the Appellant considers is appropriate for a residential setting. Furthermore, this is considered to be the worst case scenario as it does not take into account the noise from the enterprise park and the A46, nor does it take into account the landscape and buildings between the turbine and the residential dwelling.
30. The omission of this information is central in this case. For example, the 111 pages contained in Appendix C – Noise Information of the Appellants Statement of Case provides lots of data on the acoustic performance test of a SD6 Wind Turbine undertaken in February 2019, but it provides very little detail in terms of the specifics of the appeal site and the immediate surrounds of the proposed wind turbines location.
31. Indeed, on the last page of this appendix, a birds eye photo is given of the location in the wind survey yet this does not show the building located on the southern side of the appeal site, adjacent to what appears to be the garden area of the nearby residential property. This calls into question as to whether the suggested 'worst case scenario' of 40 to 45 db is the case in reality when I am uncertain as to what impact this building, not shown in the aerial view may or may not have on the sound envelope around the proposed wind turbine. The provision of a site specific noise survey would have set out clearly the ambient noise environment and the impact(s) of introducing the proposed wind turbine into this.
32. In the absence of such information, I can only conclude that the proposed would have an adverse effect on the living conditions of the nearby occupiers of the residential dwelling. Accordingly, the proposal would conflict with Policies S14 and S53 of the LP which, amongst other aims, seek to ensure that

renewable energy proposal must have an acceptable impact on the amenity of sensitive neighbouring uses (including local residents) by virtue of such matters such as noise.

Conclusion

33. I acknowledge the broadly supportive approach to renewable and low carbon energy creation given by national and local planning policy. The proposed scheme would contribute towards the overall targets of moving to low carbon and net zero. However, the proposal would also result in harm to aviation, the designated landscape of the Lincolnshire Wold AONB, and to the living conditions of nearby occupiers in relation to noise, which have either not been adequately mitigated or insufficient detail has been provided. I do not find that the benefits of renewable energy creation in this case outweigh this identified harm.
34. The proposed development would conflict with the adopted development plan when considered as a whole, and there are no material considerations which indicate a decision otherwise than in accordance with it.
35. For the reasons given above, I conclude that the appeal should be dismissed.

C Parker

INSPECTOR