
Penderfyniad ar yr Apêl

Ymweliad safle a wnaed ar 24/06/19

gan Hywel Wyn Jones BA(Hons) BTP
MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 17.07.2019

Appeal Decision

Site visit made on 24/06/19

by Hywel Wyn Jones BA(Hons) BTP
MRTPI

an Inspector appointed by the Welsh Ministers

Date: 17.07.2019

Appeal Ref: APP/K6920/A/19/3224280

Site address: Durisol UK, Unit 4, Parkway, Pen-y-Fan Industrial Estate, Newport, NP11 3EF

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- 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 Sirius Renewable Energy against the decision of Caerphilly County Borough Council.
 - The application (ref: 17/0864/FULL), dated 9 October 2017, was refused by notice dated 13 September 2018.
 - The development proposed is the erection, 25 year operation and subsequent decommissioning of a wind turbine with a maximum overall tip height of up to 93m, 10m micro-siting, associated infrastructure including a transformer, hardstanding areas, a control building and cabling.
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Decision

1. For the reasons set out below I dismiss the appeal.

Procedural Matter

2. The description of the proposed development set out in the above banner heading reflects the change to the scheme agreed by the appellant during the course of the Council's consideration of the planning application. It amends the maximum overall tip height of the turbine from 113m to up to 93m. I have determined the appeal on the basis of this amendment satisfied that doing so will not cause injustice to any party.
 3. The amended typical wind turbine drawing shows a hub height of 60m and a blade rotation diameter of 66m. The submitted plan identifies the proposed siting of the turbine with a 10m allowance for micro-siting. A crane pad, if required, a temporary construction compound and access track are also proposed.
 4. The appeal has been the subject of a screening direction issued on behalf of the Welsh Ministers dated 1 May 2019 which confirmed that the proposed development is not Environmental Impact Development within the meaning of the relevant regulations.
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Planning Policy Background

5. National planning policy on renewable energy developments is set out in Planning Policy Wales, Edition 10 (PPW) and the associated Technical Advice Note (TAN) 8: Planning for Renewable Energy. PPW emphasises the Government's commitment to sustainable development through the Well-being of Future Generations (Wales) Act 2015. It identifies Welsh Government targets for the generation of renewable energy including that Wales should generate 70% of its electricity consumption from renewable energy by 2030 and expects that significant weight should be given by decision makers to these targets. It emphasises the active role that the planning system should play in terms of new renewable energy generating capacity and identifies the need to take into account the cumulative impacts of such development.
6. In circumstances where protected landscape, biodiversity and historical designations and buildings are considered, PPW advises decision makers to consider only the direct irreversible impacts on statutorily protected sites and buildings and their settings (where appropriate). Developers are encouraged to, whenever possible, consider how to avoid or otherwise minimise, adverse impacts through careful consideration of location, scale and design and other measures.
7. TAN8 recognises that there may be opportunities for renewable energy schemes up to 25MW on industrial brownfield sites that should be encouraged. It recognises that there is a balance to be struck between the desirability of renewable energy generation and landscape protection. In relation to ecology, TAN8 refers to TAN5: Nature Conservation and Planning. I have also been mindful of the several other Welsh Government publications relevant to renewable energy which have been cited by the main parties and others.
8. Reflecting the thrust of national policy, the adopted Caerphilly Local Development Plan (LDP) is supportive of acceptable renewable energy schemes, but also identifies the need to balance such provision against the potential impact of development on the landscape and on sites of ecological interest.

Main Issues

9. The main issues are:
 - (i) the effect of the proposed development on: the landscape character and visual amenity of the area; local ecology, in particular bats; and the living conditions of local residents, in terms of noise or shadow flicker disturbance; and
 - (ii) whether the benefits of the scheme, having regard to local and national planning policy, outweigh any identified harm.

Reasons

Landscape and Visual Amenity

10. The application was supported by a Landscape and Visual Impact Assessment (LVIA) undertaken in accordance with the latest guidance on methodology¹. The work includes a series of photomontages, which were supplemented during the course of the application by photomontages from additional viewpoints. I have visited most of

¹ Guidelines for Landscape and Visual Impact Assessment, Third Edition (Landscape Institute and IEMA, 2013)

the identified viewpoints and several other vantage points. Some objectors have criticised the photomontages; I noted that the existing turbines because of their movement and the brightness of the weather conditions at the time of my visit meant that they appeared more prominent than depicted in the photographs. However, in other weather conditions the converse would be true. I have taken into account the photomontage depictions alongside the information I gleaned from my visit.

11. In response to concerns raised by the Council's Landscape Officer regarding the visual and landscape impact of the turbine, the scheme was amended to reduce its height which led to the officer offering no objection to the proposal as now amended.
12. The site does not lie within, nor would the proposal impact on, any local or national landscape designation although it would be seen from a vantage point within the local designation of Special Landscape Area which is some 5 km distant.
13. The appeal site lies in the corner of an industrial unit plot and is presently used for storage. It is bounded on 2 sides by hedgerows on land that slopes steeply down towards an industrial unit to the south and the estate road to the west. An industrial building abuts the eastern boundary with its access road to the north. The immediate vicinity is part of the Pen-y-Fan Industrial Estate which contains prominent landscaping along the public realm. The surrounding area comprises undulating countryside with the small settlements of Trinant and Pentwyn to the east/north-east and in the opposite direction lie Croespenmaen and Oakdale. There are also more sporadic buildings in the vicinity, including smaller groups of houses, and the Pen-y-Fan Country Park to the north-west. The wider area includes larger settlements including Blackwood and Newbridge within the lower lying valley floors separated by more open upland areas.
14. There are 3 turbines at Oakdale Business Park/Pen-y-Fan Industrial Estate which are somewhat taller than the proposal, the nearest of which is some 400m away. From most vantage points the proposed turbine would be seen as an addition to this existing group. From within various locations within the valley the turbines are readily visible. However, the presence of buildings, vegetation and topography combine to screen views to a significant extent. From more elevated positions views of the group tend to be interrupted less, however such vantage points are mostly some distance away.
15. In terms of the visual impact receptors the main concerns raised are in relation to recreational users of Pen-y-Fan Pond Country Park and nearby residents.
16. The Country Park is clearly a facility enjoyed by many local residents for its recreational value. During my visit there were a number of people using the footpaths and others enjoying views over the pond from outside the café and from the car park. From views overlooking the Pond the 3 existing nearby turbines are prominent features seen towards one side of the field of vision. The degree of separation between these structures and the proposed turbine means that it would be seen at the other periphery of that view and would be perceived as larger because of its proximity and elevated site. The visual impact of all turbines is mitigated by the presence of trees that screen their lower parts.
17. The proposed turbine would have an impact on receptors in the Park and nearby public rights of way. Such users are considered as highly sensitive receptors. Whilst perception of the visual impact of turbines by receptors will vary between individuals based on their subjective reaction, many will perceive the impact as harmful. Nevertheless, whilst readily noticeable it would not be a dominant feature - it would be

seen in a wide vista and its presence would not materially alter the generally natural appearance of the landscape, nor would it undermine the tranquillity of the Park environment. Although from certain points other more distant turbines may be seen, the scheme would certainly not result in a feeling that the Park is surrounded by turbines as has been claimed.

18. The impact that I have identified would not limit opportunities for the public to use these recreational facilities and thus would not conflict with LDP policy SP11 which deals with countryside recreation, or section 5.5 of PPW which is concerned with tourism.
19. Reflecting the concerns of residents, the Council considers that the turbine would have a visual impact on the nearest dwellings in Trinant which is greater than the LVIA's assessment of minor neutral. It considers the impact on some properties as major adverse². For those properties the turbine would be viewed in the context of an existing turbine at Pen-y-Fan. Given that it would be markedly closer than the existing it would appear larger, however its visual impact would not be unduly intrusive given the separation distance. Although a prominent feature it would be viewed in the context of another turbine and electricity pylons which are all partly screened by intervening vegetation. It would not unacceptably affect the living conditions of those residents. I have also considered the effect on other nearby residents, some of which are closer than those at Trinant, and, whilst again I accept that the scheme would have an appreciable effect on the outlook of certain residents, I reach the same findings that none would be unacceptably affected.
20. The Council refers to Heads of the Valleys Wind Turbine Development Landscape Sensitivity Capacity Study (2015) as supplementary planning guidance (SPG). It divides the study area into Landscape Units (LUs) and identifies turbines of the size proposed as 'large'. The appeal site falls within the edge of LU5 and is surrounded by LU8. In this area the SPG describes sensitivity to be 'reduced' partly in acknowledgement of the presence of 2 large turbines. I find no basis for the Council's assertion that the situation is changed by the addition of the last of the 3 nearby turbines after the SPG was prepared. It identifies capacity as being limited to areas 'where there is space to minimise impact on residential properties' - I have already found this caveat is met in this case.
21. Under the national LANDMAP classification the site lies within a Visual and Sensory Aspect Area assessed as low landscape value. The scheme would introduce a prominent feature into the landscape but in the context of other tall, man-made structures nearby I agree with the appellant's assessment that it would not necessarily be uncharacteristic. Any effect on landscape character would not be significant.
22. Several local objectors argue that 'enough is enough', explaining that the area has reached or exceeded visual saturation. I acknowledge the importance of taking into account the cumulative effect of the scheme alongside existing and consented turbines. The LVIA has carried out such an assessment. The turbine would be seen as part of a larger group that would be comfortably spaced and would not give rise to a visually cluttered appearance. I find that both in terms of visual impact and landscape character the cumulative effect of the proposed development alongside those existing structures would be acceptable. Whilst there are other turbines in the

² The appellant points out that this was the initial response of the Council's Landscape Officer, but that this was later changed following the 20m reduction in the height of the proposed turbine

wider surrounding area the separation distance means that the addition of the turbine to this group would not create any unacceptable wider cumulative impact.

23. On this main issue I find that, whilst the introduction of a tall moving structure would lead to some harmful visual, the degree of harm would not be unacceptable. Accordingly, the scheme does not conflict with Policy CW2.

Ecology

24. The appellant's Protected Species Report explains that, on identifying the extent of bat presence close to the original position of the proposed turbine, it was relocated from a nearby industrial unit to the appeal site. The survey recorded several bat species in the vicinity including at the appeal site and its boundaries in 2017. In response to the appeal Natural Resources Wales (NRW) repeated its concern expressed at application stage over the potential impact on local bat populations. By reference to Natural England's Technical Information Note 051: Bats and Onshore Wind Turbines 3rd Edition, dated 11 March 2014, it states that the turbine should provide a minimum 50 metres stand-off distance from blade tip to the nearest relevant habitat feature. This guideline is acknowledged in the appellant's report.
25. The Council's Ecologist suggests that a condition should be imposed to ensure a 50m buffer from blade tip to the boundary vegetation. Whilst the extent of the rotor sweep path of the blades over the ground is not shown on the submitted plans, given their 66m diameter it would appear that they would be extremely close if not overhanging the hedgerows that bound 2 sides of the site. Neither the appellant nor the Council have acknowledged that a 50m separation does not appear achievable.
26. NRW confirms that the appellant's survey effort to date has not been adequate notably in relation to the closest vegetation to the proposed turbine. I also note that the appellant's assessment was based on the higher position of the blades, as originally proposed when the application was submitted, which would have ensured a greater gap between the blades and the vegetation. Given the potential value of the vegetation as a foraging and commuting route, the absence of adequate survey analysis is significant.
27. The appellant considers that this is a matter that can be adequately dealt with by the imposition of a condition suggested by the Council that would require bat activity surveys for a minimum 2-year post-completion period in the event that the blade tips are within 50 metres of the nearest tree that contains bat habitat. Whilst the condition includes reference to mitigation measures there is insufficient information available to establish the extent of any harm that may arise during the initial period of operation, the effectiveness of the condition, or the implications of any mitigation such as the extent to which the turbine's operation may be curtailed.
28. I find that there is insufficient evidence available to establish the potential impact of the scheme on known local bat populations. Mindful of the relevant national policy advice on protected species in TAN5, this is a matter that requires to be understood before planning permission is granted, rather than being addressed by planning condition. The circumstances of this case justify a precautionary approach in order to avoid potentially harmful impact on protected species which would conflict with SP10 of the LDP which seeks to protect and conserve the County's natural heritage.

Living Conditions

29. The application was accompanied by technical assessments of noise and shadow flicker. I note the concerns of local residents in relation to the assessments but,

mindful that the Council's Head of Public Protection is satisfied with the submitted evidence, I consider the assessments reliable. The noise predictions, which adopt standard methodologies³, are provided on a conservative basis which means that the marginal exceedances are unlikely to occur in practise. Given the scope to impose conditions that could curtail its operation in particular conditions, I am satisfied that the turbine would operate within appropriate noise limits in relation to all receptors.

30. The submitted shadow flicker assessment concludes that there would be no significant effects. Moreover, the Council has suggested a condition that would require the turbine to be fitted with a control system which would automatically stop the turbine during times when there is the potential for shadow flicker to occur. I have no reason to reach a different view to the Council on the scheme's acceptability in this respect.
31. The technical evidence demonstrates that the effect on living conditions in relation to noise and shadow flicker can be adequately mitigated such that the scheme would not conflict with policy CW2 of the LDP.

Benefits of the Scheme

32. The wind turbine is expected to produce 2,567 MWh per annum, which the appellant explains would supply the nearby Thermo Fisher factory, which employs some 214 people, with 30% of their electricity requirements. The electricity that would be produced could power 1179 homes and would prevent the emission of up to 1,978 tonnes of CO₂ every year that would otherwise be emitted from the mix of fossil fuel generators connected to the national grid. The wind turbine would also reduce the emissions of other noxious gases such as sulphur dioxide and nitrogen oxides, which contribute to the production of acid rain. It is well placed to connect to the national grid as well as supplying local businesses.
33. The development of the wind turbine at this location would contribute significantly to the decarbonisation of business activities related to employers on the estate, supporting sustainable growth, safeguarding employment and meeting with aspirations and ambitious targets set by the Well-being of Future Generations (Wales) Act 2015 and Environment (Wales) Act 2016.
34. In light of national planning policies to support both renewable energy generation and the economy⁴ the aforementioned benefits are weighty considerations in favour of the scheme. The Council points to the 48.9mW contribution that the County makes to the nation's renewable energy output which demonstrates that it takes a responsible approach to balancing the benefits of such proposals against harms. However, this does not affect the weight I attach to the scheme's potential energy contribution given the pressing need and wider benefits of renewable energy.

Other Matters

35. Having regard to the appellant's Archaeological and Heritage Assessment, and the consultation response of the Glamorgan-Gwent Archaeological Trust, I am satisfied that the potential effects on local heritage assets have been properly assessed,

³ ETSU-R-97, Assessment and Rating of Noise from Wind Farms, which has been endorsed by Welsh Government as providing guidance on good practice in relation to the specific noise issues that arise in relation to wind turbine development

⁴ PPW and TAN23: Economic Development

including the Scheduled Monument of Pen-y-Fan Canal Reservoir and the Grade II listed Gelli Farmhouse and attached farm range. Accordingly, I find that the scheme would not cause any harm to the special interest of any of the identified historic assets, either directly or by affecting their setting.

36. A local objector points out that paragraph 2.25 (Annex C) of TAN8 states that it is advisable to set back all wind turbines a minimum distance, equivalent to the height of the blade tip, from the edge of any public highway. The scheme would not satisfy this guidance. Local residents have expressed concerns over the potential for blades to become detached or for ice throw. However, there is no evidence to suggest that the siting of the turbine would pose an appreciable risk to safety. A local riding school and a cat boarding business contend that the scheme would be harmful to their businesses. However, neither provide persuasive evidence to support their concerns.
37. Devaluation of property is a concern raised by several objectors. As this is a private interest concern it falls outside the scope of the planning system which is concerned with the public interest. Nonetheless, I have already considered various concerns raised that may indirectly affect property values. I have taken into account all other matters raised in objection to the scheme but, given the scope to mitigate certain impacts through planning conditions, none of these would justify withholding permission had I found the scheme acceptable in relation to all the main issues.

Planning Balance and Overall Conclusion

38. For reasons I have explained the identified benefits of the project carry considerable weight in light of national planning policy. Adopting the precautionary principle, I find that the available evidence fails to demonstrate that the blade's proximity to boundary hedgerows would not lead to a significant risk to local populations of bats, which are European Protected Species. This potential for serious harm outweighs the contribution to renewable energy generation and other identified benefits that would arise. Accordingly, I conclude that the appeal should be dismissed.
39. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' well-being objective to manage, use and enhance Wales' natural resources to support long-term wellbeing.


INSPECTOR