

**S78 Town and Country Planning Act 1990
The Town and Country Planning (Environmental Assessment) (England and Wales) 1999**

Appeal by Next Generation Limited against the refusal by Sedgemoor District Council to grant planning permission for wind energy development on land to the north of Inner Farm, Stoddens Lane, Edithmead, Nr Burnham On Sea, Somerset

Local Planning Authority reference 12/06/00007/CSM

Planning Inspectorate Reference APP/V3310/A/06/2031158

CLOSING SUBMISSIONS ON BEHALF OF APPELLANT

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1. Introduction

5.1. What I said in my opening statement about the 5 and 4 turbine options is equally applicable in closing, and I specifically incorporate what I said in opening about the options in these submissions. In closing I first give my views on the main issues in this inquiry as they appear to me to be following the evidence.

2. Main Issues

2.1. In my view the main issues that you defined at the start of the inquiry are indeed those which will receive your principal consideration, save that in relation to issue 2 (living conditions) I do not believe that noise and shadow flicker remain critical evidential issues having heard the various witnesses. As to the fourth issue (balancing benefits against perceived adverse impacts) I agree with your definition save that, as made clear by DS in evidence, the precise contribution that the scheme may make to emission savings and to the generation of clean energy are not matters which should influence your judgment on this appeal. The question of meeting regional targets, expressed in terms of installed capacity, is however vitally important, and I will deal with this topic, and indeed your issue 4 generally, under the heading of other material considerations.

3. Other matters

3.1. Apart from evidence on the main issues a substantial number of other concerns have been raised at the inquiry. These do not in my view amount to determining issues, and I will deal with them as follows: .

Noise

On this topic you have evidence from Dr AM, FB, and AM. We can deal with the evidence of AM most briefly. He ventured a series of observations on noise, unsupported by any evidence or expertise, and to be fair he did not fight his corner that hard in XX.

With regard to FB he acknowledged in XX that, on the basis of advice in PPS22 and its Companion Guide (CD20 and 21) the advice in "The Assessment and Rating of Noise from Wind Farms" (CD61 - known as ETSU) was overwhelmingly likely to be used by you when assessing acoustic issues. He did not seek to argue that noise emissions from the development would fail to meet the rating standards advised in ETSU and indeed he produced no environmental information of his own on the topic. However, FB did make a number of points of principle and detail and I will address them:

- FB agreed (2.8 Proof) that ETSU's advice on sleep disturbance was in doubt because of the sleep disturbance criterion within a World Health Organisation document of 1999 which post dated ETSU. However, Dr AM made clear, and FB accepted in XX, that the WHO recommended external noise level of 43dB(L)90 is precisely the external noise level recommended by ETSU. He also acknowledged that, PPS22 having been issued in 2004, there had been the opportunity to review ETSU prior to the issue of PPS22 which, together with the Companion Guide, specifically and firmly recommends the use of ETSU for the assessment and rating of night time noise from wind farms. It is clear that there is no further issue here to explore.
- With regard to amplitude modulation it is fair to note that FB's proof (paras 2.9 and following) was written prior to the publication of the Salford report on this topic by BERR in July 2007 (CD81). CD81 and the Government release

(CD82) makes it clear that no further research on amplitude modulation is currently appropriate on the basis of the research and conclusions in the report, and that ETSU is to continue to be used for the assessment of rating of noise from wind energy development. The issue of amplitude modulation should attract no further attention.

- FB asserted (para 2.15) that in the event of a complaint that the wind farm was giving rise to a statutory nuisance a Court considering an abatement notice would, on the basis of Gillingham Borough Council -v- Medway (Chatham) Dock Co. Limited [1992] 3 All ER 923, have regard to the fact that the planning permission for the wind farm had changed the character of the area, with the result that a nuisance claim might well fail. As put to FB in XX the case cited by him makes it perfectly clear that a planning permission cannot authorise a nuisance. If a nuisance claim was to be made then it would be determined by the Court on its merits, although Dr AM (in chief) made the perfectly valid point that if a wind farm was operating in accordance with the ETSU rating standards a reasonable degree of protection would be afforded to neighbouring residents.
- In para 3 of his proof FB made some assertions about the especial sensitivity of occupiers of the caravan site known as Home Farm Holiday Park. However, as explained by Dr AM the fears expressed by FB are unfounded. I refer to material in the SEI (CD8) on this topic and to figures 18-20 in the SEI. In particular figure 18 (addressing night time noise) makes it clear that ETSU rating standards would be met at the caravan site, and Dr AM further explained that the noise attenuation qualities of caravans meant that internal noise levels would be about 1 dB above those which might be expected in the room of a house, not an increase of relevance in terms of the Figure 18 SEI evidence that the ETSU night time rating standards would be handsomely met at the caravan site. It is also relevant to note that having regard to evidence from FB and AM about wind direction, Dr AM's propagation methodology assumes a constant downwind propagation of noise (obviously an unrealistic worse case). There is no further concern to explore in relation to the caravan site.

- With regard to Somerset Court, the home for autistic children on the other side of the M5 from the proposed wind farm, FB did not bring acoustic concerns to the attention of the inquiry, but rather alluded to other worries which were not within his expertise. He brought no evidence in relation to autistic children which could possibly concern you as a matter of evidence.
- While on the topic of autistic children I also refer to the evidence of Sue Boss. She briefly referred to concerns about autistic children visiting Ball Copse Hall, but acknowledged that she was not an expert in autism. In my view there is no possible evidence which could found a concern in this case about the impact of the development on autistic children.

In summary in relation to noise the evidence of Mr Ball (taking into account XX), discloses no possible issue which should give you concern, and with that I will leave this topic.

Shadow Flicker

Various witnesses address shadow flicker, as did DS (para 8.8.4 and following) I can deal with this point very briefly because of the condition which has been offered requiring a scheme to be submitted providing for the elimination of shadow flicker effects through shutting down of the wind turbines in relevant circumstances. Given this condition I need not address shadow flicker effect any further.

Tourism

Mr Manning and Mr Stewart gave the principal evidence in relation to tourism. It is not an issue which concerns the Council.

Mr Manning's evidence on tourism was based on surveys within his appendices. You will remember that I asked him if he had brought any evidence to the inquiry that any tourist enterprise anywhere had been damaged as a result of the presence and operation of wind turbines. He confirmed that he had brought no such evidence.

It is not the Appellant's evidence that there is proof that tourism is immune from any adverse effects of wind energy developments. Rather (DS Appendix 17) it is clear

that the factors which influence the prosperity of tourism enterprises from time to time are so numerous that it will always be impossible to identify any particular cause for a downturn in turnover or the number of visitors who come to a particular area. What is clear is that no appeal (see the various decisions in CD29) has ever been dismissed on the basis of fears of impacts on tourism. It is also clear from DS Appendix 17 that, in areas of England and Wales where tourism is a major industry and where there are also wind farms, there is (to put it at its lowest) not a shred of evidence that there is any adverse interaction between the arrival of wind farms and the fortunes of the tourist industry. Indeed the evidence is that tourism in such areas has prospered during the period when wind farms have been installed.

We can also note that Mr Manning brought no evidence that any of the tourist enterprises listed in his appendix 7 had objected to the proposed development. (To be fair I am not going to assert that there have been no such objections. You have third party representations and will look through these).

In my view there is no possible evidence before this inquiry which could justify an adverse view of the project on the basis of any impacts on tourism.

House Prices

Mr Manning gave the evidence on this topic. He fairly acknowledged that, of itself, the house price issue was not a material planning consideration. He also acknowledged that, as with tourism, there was numerous influences on house prices which would make it very difficult to isolate a particular cause for any stagnation or downturn in the housing market in a particular area.

Mr Manning also fairly acknowledged that other types of proposed developments might cause a concern about house prices.

In my view there is no evidence before you which would justify an adverse finding in respect of house prices, quite apart from the underlying truth that effects on house prices are indeed not a material planning consideration.

Safety

A number of witnesses expressed concerns about impacts on safety, including driver distraction. Leaving driver distraction to one side I think you can dismiss issues of safety very quickly from your considerations. Not one witness has brought any evidence that any wind turbines anywhere in the world have caused a danger to members of the public, whether in respect of proximity to roads and footpaths or otherwise. In this context I refer to paragraph 53 of the Companion Guide to PPS22 which notes that although a wind turbine should be a stable structure it may be advisable to achieve a set-back from roads and railways of at least fall over distance. That has been achieved in this case (plus 10% in the case of the railway). There is no advice in the Companion Guide with regard to footpaths.

As for driver distraction Dr Pascoe referred to a case in Alnwick District which involved the rejection of an application (and as acknowledged to her in XX an appeal) at least partly on the basis of driver distraction. DS drew to our attention the precise specific circumstances of that case which are not reflected in this appeal. In addition we must have regard to paragraph 54 of the Companion Guide to PPS22 which makes it clear that wind turbines should not be treated any differently from other distractions a driver must face, for reasons given in that paragraph.

In my view the issue of safety can be set to one side.

Impact on the life of Brent Knoll

Evidence was given here primarily by Anita Peach and Bob Vohra. Mr Vohra described the principal facilities and amenities within the village, while Anita Peach described village activities, its traditions and artistic life. Assertions were made by both witnesses that the presence of the wind turbines would blight village life and activities to a greater or lesser extent. The difficulty with this evidence is that it is simply assertion, unsupported by evidence from elsewhere of any similar blight. You must make the judgment about the weight to be given to this evidence, but in my view what we have from Mr Vohra and Ms Peach is a well respected but unexceptional fear of change, rather than any well reasoned evidence that the wind

turbines will be anything more than new feature visible from the village, whether liked or not.

In my view there is certainly no evidence on which you can find against the development upon the basis of a perceived blight on village activities. To equate personal dislike of what is proposed with the perceived reaction of visitors and residents (in relation to long term activities within the community) is just too much of a leap of imagination.

Photography

Wendy Gilpin expressed concerns about the accuracy of the images portrayed in the Appellant's photomontages.

You have before you the evidence of Wendy Gilpin and the rebuttal statement of Melvin McKeown. Information answering Mr McKeown's rebuttal statement was produced in oral evidence by Wendy Gilpin. No more material came into the inquiry from either party, and the position was discussed on 22 August in open inquiry. Though I must record that the appellants do not accept the observations of Wendy Gilpin, I am content that the differences between the parties are not of great moment to you. The visual material that you have (which the appellants say is accurate) is perfectly sufficient for the purposes of your site visit (which indeed you have already carried out by 22 August). No more need be said on this topic.

Ecology

Oral evidence was received from Mr Dalziel, and you have a written statement of Mr Bostock on behalf of the Appellant.

With regard to bats, the focus of Mr Dalziel's concerns, the Appellant's do not argue for one moment that there is no bat activity in the area of the appeal site. Where there are trees in lowland England then it is very likely that there will be bat activity. The difficulty with Mr Dalziel's evidence is that there is no translation, on the basis of expertise, of the observations made into likely impacts. Mr Dalziel has no ecological qualification, although this is not to disparage his observational evidence. The difficulty for him is that, acknowledging a paucity of information in the ES, Natural

England (then English Nature) as the statutory consultee for the purposes of this topic, nevertheless concluded that there could be no objection to the development upon the basis of the concerns explored by Mr Dalziel.

In summary therefore we have evidence about activity, but no evidence of any necessary adverse interaction between bats and the wind turbines. It must be acknowledged that the topic of bats and wind turbines is relatively new, and indeed the acknowledged brevity of information in the ES reflects the very recent emergence of the issue. Nevertheless if Natural England had felt that more information was required in order to provide an adequate basis for a decision they could and would no doubt have said so. After all, it is not as if the ES entirely failed to mention bat species. Paragraph 9.3.3 addressed the point. I refer you to the paragraph for its terms, but it acknowledges that bats are likely to forage over the site, and this factor would have been taken into account by Natural England when putting together its consultation response. It may also be noted that the new material produced by Mr Dalziel is itself environmental information before you as the decision maker for the purpose of the 1999 Regulations. I also commend the rebuttal evidence (both statements) of Mr Bostock, who is clearly an expert on bats, their foraging habits and their flight patterns.

In my view this is not a case where absence of detailed information should cause you to doubt the adequacy of environmental information before you. Rather, the fact that bats forage in the area is not to be translated into a concern about interactions between bats and wind turbines, evidence on which has not ultimately been brought by Mr Dalziel. I also note from questions by you to RD that the presence of woodlands and hedgerows signals likely bat activity, a conjunction ubiquitous in lowland England.

Site Selection and Alternatives

The Council, through CM and NT, have made great play at this Inquiry about the availability of alternatives, both in terms of technologies and sites. It has been claimed that the Appellant has failed to adequately examine the availability of alternatives within an area which has been variously claimed as suitably extending to Sedgemoor, to Somerset and even to the South West region.

As a matter of fact it is equally clear that the Council comes to the inquiry with no evidence whatsoever about the positive availability of alternative sites for onshore wind energy anywhere in the south West, and not even in Sedgemoor. Against this background I will briefly look at the requirement on any developer of an EIA project to address alternatives, and separately the duty of a developer to demonstrate the suitability of the site which he has selected.

It is common ground between the Appellants and the Council that there is no requirement under the EIA Regulations to examine the availability of alternative solutions or sites. The requirement is rather to explain the main reasons for the choice of a site or technology if alternatives have been examined.

In a planning context there can be a requirement to examine alternatives, and this is a topic which has been considered by the Courts on a number of occasions. It is well accepted that a requirement in planning terms to examine alternatives could only ever arise where there is a limit on the number of permissions that may be granted for the type of development being considered within a particular area. Any argument that the Appellants in this case should have demonstrated an absence of suitable alternatives falls at the first hurdle in this respect because there is no wind energy quota. Targets are minima and the Government clearly advises that wind energy development may take place on appropriate sites anywhere in England. If there are alternatives to Inner Farm they should rather be regarded as potential additional sites, subject to site specific acceptability and any cumulative effects that may arise as between that alternative site and Inner Farm or some other project.

In this context we should also have regard to paragraph 16 of PPS22(CD20) which makes it clear that Local Planning Authorities should not use sequential testing in the consideration of renewable energy projects. Although what the Local Authority have advocated is not strictly sequential testing (as perhaps in the PPS6 sense) the approach taken by NT is in fact just that, given his arguments that other options should have been examined before Inner Farm was selected. Mr Sinclair refers to two previous appeal cases where he asserts that Inspectors (and the Government) accepted that alternative sites should have been considered. He fails to refer to para

16.2 of the Llethercynon Inspector's report (CD29(t)), produced by KNOil, where his evidence to this effect was soundly rejected by the Inspector.

Moving from alternatives to site selection there is clearly a duty on an applicant and on the Appellants in this case to demonstrate that the site which is being selected is suitable. Whether or not it is suitable will be a decision for you, but in coming to your view see will doubtless have regard to chapter 4 of the ES (Site selection and design). My view is that the chapter is exemplary. It commences with a detailed look at alternative renewable energy technologies. It goes onto discuss the Appellant's site selection methodology in considerable detail. There follows a series of maps which further explain the approach to site selection. The chapter then goes onto look at alternative sites considered by the Appellant within Sedgemoor District. This section gives the reasons for the rejection of the alternatives, including landscape effects. In addition, a site selection chapter continues with a discussion of the layout iterations considered by the appellant, a demonstration that considerable attention was given through the design process to local environmental impacts. What more is an applicant expected to do? In my view he should be expected to do no more than has been done here. On this topic it may also be noted that, despite the evidence given by NT, it is transparently clear from material produced by DS that the Appellant did engaged in detailed discussions with SDC prior to the submission of the application, and the consultation extended to the production of draft site selection plans at a meeting held to enable the appellant to present its proposals. The Council's contentions with regard to consultation are soundly rejected.

Cumulative Impacts

Evidence was given through XX of RL and DC by GC and TD that the Appellants consideration of cumulative effects should have extended beyond other wind farm sites in the planning system (there are none of relevance to this appeal and this is common ground between all the parties) through an evaluation of the cumulative affects of different impacts of the project on the same receptors. The example given in XX was a combination of noise and visual effect.

The origin of the XX of RL and DC was CD60-a guide to good practice and procedures for EIA published by DCLG. The difficulty with this advice is that it is advice of

perfection. RL is not an expert in noise anymore than that Dr AM is an expert on landscape and visual effects. However, the difficulty in producing a single cumulative assessment of different impacts ultimately doesn't matter. You are the decision maker and you will make the EIA in this case. You have information from Doctor AM on noise levels and you have information from RL on visual effects on receptors using footpaths (for example). You will be able to make a judgement based on the overall environmental information which is available to you. There is no question of there being inadequate environmental information to inform your decision.

Energy Policy

A public inquiry into a proposed wind farm is not the forum for a critique or criticism of government energy policy, or indeed national planning policy in relation to renewables. Mr Kendall made a number of ingenious attempts in his evidence to second guess the way that the Government might be going in relation to renewables, and in particularly onshore wind energy. However, it was (ultimately and with some reluctance) acknowledged by him in XX that he takes Government policy at face value and does not seek to criticise it. Therefore we can regard his philosophical discussions about the way the Government policy may be going as reflections of interest, but not of planning weight. As to the policy in relation to renewable energy, and related planning policy, this is crystal clear and is rehearsed by Mr Stewart in his proof. It requires no interpretation or introspection. I will deal with energy policy at the end of these submissions, but invite you to treat Mr Kendall's observations on this topic as of no assistance to you in your determination of this appeal.

With regard to the contribution that this scheme will make in terms of providing a certain number of homes with renewable electricity, generating a particular number of hours of clean electricity in any one year, and in terms of emission savings I invite you to accept the observations of Mr Stewart in evidence in chief and XX. The renewable energy targets which you will address in this appeal in terms of Government and local policy are expressed in terms of installed capacity. You are not required to evaluate the quantitative contribution that this project will make in terms of the issues explored by Mr Spencer and Mr Sinclair. How many homes may be served by the development is irrelevant to your considerations. With regard to

emission savings Stewart makes it clear that from year to year it is not possible to provided accurate quantification, since the generation mix may change from year to year. As to the quantity of generation from the scheme in terms of GWhr per annum the Appellants are happy to rely on the figure set out in the Garrad Hassan letter within the SEI at Appendix V. That is to say, on the basis of a wind speed of 7m/s a capacity factor of 35% can be expected with the E82 machine proposed, and the generation of 33 million (or so) GWhr per annum.

I put to Mr Stewart that if the issues were not critical, it might be asked why the Appellants had devoted space in the ES and the SEI to the topic. Mr Stewart said quite clearly that he could not say that the issues were important and that he had advised clients to this effect. Therefore the Appellants do take some responsibility for raising a hare, but ultimately the figures debated so intensely by Mr Spencer and Mr Sinclair should not interest you. Rather you should have regard to Key Principle 1(vi) within PPS22 (every contribution counts in terms of Government policy). Of much more importance is the question of targets to which I turn under the heading of other material considerations.

4. Section 38 Starting Point – Identification of Policies

In this Section I will identify the policies which I regard as being of helpful relevance to you within the development plan.

4.1 RPG10

In my view the sole policy of helpful relevance in this part of the development plan is RE6 (advising on renewable energy). Other policies were canvassed by Mr Kendall, but these advise on the preparation of policies in other plans, and not directly on development control or are high level and remote from development centre. I don't intend rehearse them in closing.

