



Appeal Decision

Hearing held on 10 June 2008
Site visit made on 17 June 2008

by **Chris Hoult** BA BPhil MRTPI MIQ

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

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Decision date:
15 July 2008

Appeal Ref: APP/V2635/A/07/2060273

Land between Bagthorpe, Barmer and Syderstone known as Chiplow, King's Lynn, Norfolk

- 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 EON UK plc against the decision of King's Lynn and West Norfolk Borough Council.
- The application Ref 07/01269/F, dated 18 June 2007, was refused by notice dated 18 September 2007.
- The development proposed is the erection of a 50m temporary anemometer mast for a period of 24 months.

Decision

1. I allow the appeal, and grant planning permission for the erection of a 50m temporary anemometer mast for a period of 24 months on land between Bagthorpe, Barmer and Syderstone known as Chiplow, King's Lynn, Norfolk, in accordance with the terms of the application, Ref 07/01269/F, dated 18 June 2007, and the plans submitted with it, subject to the comments in paragraph 2 below and to following conditions:
 - 1) The development hereby permitted shall commence not later than three years from the date of this decision.
 - 2) No development hereby permitted shall commence until details of bird deflectors have been submitted to and approved in writing by the local planning authority, to include the means by which the deflectors are to be attached to the guy wires and arrangements for monitoring and the replacement of deflectors where necessary, and of a scheme for monitoring bird mortality during the period that the mast is in place. Deflectors shall be fixed to the guy wires upon erection of the mast and shall be retained at all times thereafter, in accordance with the approved details. Monitoring of the site for bird mortality shall be carried out in accordance with the approved details.
 - 3) The mast shall be in place for a period of not more than 24 months from the date of commencement of its erection following approval of details, and the appellant shall give notice of this date to the local planning authority prior to such commencement. After the expiry of this period, the mast shall be removed from the site, the use of the land discontinued and the site shall be reinstated to its condition prior to its erection.

Procedural matters

2. I can find no postcode for the site address in any of the appeal documents. The appellants' statement identifies it as having the grid ref. 5808397, 3321018. I note that there are various spellings of the appellant company's name. I adopt the one on the application form. With regard to the appeal plans, the plan entitled "Anemometry Mast Elevation Plan" has been mislabelled Figure 1.5 and should be Figure 1.4. Figure 1.6 and the photographs of viewpoints (figures 1.7-1.10) to which it refers were not among the submitted application plans. I deal with the appeal on this basis.
3. A third party representation queried the validity of the appeal in the light of an error on the appeal form as to the name of the appellants' organisation and the form not having been signed. I consider that the letter from the Planning Inspectorate dated 5 June 2008, in response, adequately deals with these queries and that the appeal is validly made.
4. The same representation queries the screening direction made on behalf of the Secretary of State under regulation 9(1) of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. In the light of the objector's continuing concerns, I have considered the terms of the letter from The Planning Inspectorate of 31 January 2008 setting out the reasons for its view that the proposal is not EIA development as defined in the regulations, and of the evidence at the hearing. I have had regard to the guidance set out in schedules 2 and 3 to the regulations and in paragraphs 32-44 of Circular 02/99 and I am mindful that the basic question to be asked is whether the proposal would have significant effects on the environment (my emphasis).
5. While it may be seen over a wide area, the proposal is not of more than local importance. While it is within an identified Area of Important Landscape Quality, that is a local, as opposed to a national, landscape designation. The site of the mast would be around 1.6km from the nearest boundary of Syderstone Common Site of Special Scientific Interest (SSSI). I consider that any effects from the mast on the SSSI would be unlikely to be significant. Any effects on wildlife are unlikely to be significant. In coming to this view, I bear in mind the temporary nature of the development. I therefore concur with the screening direction and I am satisfied that the proposal would not amount to EIA development.

Main issues

6. I consider the main issues to be as follows:
 - (a) the visual and landscape impact of the proposal; and
 - (b) the impact of the proposal upon wildlife species noted for their conservation interest.

Reasons

Background/need for the proposal

7. The purpose of erecting the mast is to provide data on wind conditions to assess the viability, design and layout of a proposed wind turbine development

on the site, which has been the subject of pre-application consultations and publicity. A number of the objections are to that proposal, rather than to the mast itself. At the hearing, objectors argued that, since the purpose of this mast would be to facilitate the proposed wind turbines, this proposal should be considered with them. However, the proposed wind turbines would constitute separate development, capable of being dealt with on its own merits and my consideration of this proposal would not pre-judge the merits of any forthcoming application for wind turbine development on the site. That is the approach I adopt.

8. Planning Policy Statement 22 (PPS22): *Renewable Energy* encourages the development of renewable energy as a vital contribution to the national aim of cutting carbon dioxide emissions substantially by 2050. The appellants explained at the hearing that the use of anemometer masts to assess whether a particular site can harness wind power satisfactorily is encouraged in "Planning for Renewable Energy: A Companion Guide to PPS22". Paragraph 32 of Chapter 8 of the Technical Annex explains that the mast should be approximately as tall as the hub height of the planned turbine. Turbines of 60m hub height are proposed for the site and, in the light of this, I agree that a mast of a height of 50m would be necessary and that its erection would be in accordance with nationally-accepted good practice.
9. My attention was drawn in third party representations to historical information on weather conditions kept at a nearby airfield and to alternative means of collecting the necessary data, in the form of a low-level laser anemometer. With regard to the former, the appellants explained that these records are subject to a considerable margin for error. As to the latter, the appellants explained that this new technology has been used in a limited capacity for initial broad-based assessments of wind conditions at sites. It would not act as a direct replacement for an anemometer mast. At the hearing, objectors were unable to say, having referred to its use on sites elsewhere in Norfolk, in what capacity it was used. In the light of this, I am satisfied that there is unlikely to be any alternative means of collecting the required data.

Visual and landscape impact

10. The mast would be a very slender structure for its height. Though surrounded at a distance by roads and footpaths, the site for the mast is relatively remote open countryside. The nearest footpath encroaches to around 400m from it, the nearest road is around 700m distant, and the settlements of Bagthorpe, Barmer and Syderstone are all over 1km away. Dwellings fronting the B1454 road to the south of Barmer, and at Frizzleton Farm, are a little over 1km away. The distance to these dwellings, which are the nearest having a clear view of the mast, in a southerly and northerly direction respectively, is such that it would not appear as an overbearing feature. Though it would be theoretically visible from a wide range of locations up to 5km away, it would, in my view, be barely noticeable in more distant views, in spite of its height.
11. The proposal's impact would be felt primarily in relation to its effect on the landscape character of the area, and the capacity of the landscape to accommodate a tall structure of this kind. A number of objectors draw my attention to the local landscape designation covering the area. However, PPS22 points out that these designations should not be used in themselves to

- refuse planning permission for renewable energy developments. This advice is relevant even though the proposal would not, of itself, generate power.
12. In any event, saved Policy 4/6 of the adopted King's Lynn and West Norfolk Local Plan requires that, within the designated area, proposals address the distinctive character or appearance of the landscape. This is in line with Policy ENV2 of the recently-adopted Regional Spatial Strategy (RSS), the East of England Plan, which supersedes Policy ENV.3 of the Norfolk Structure Plan. Planning Policy Statement 7 (PPS7): *Sustainable Development in Rural Areas* advocates that protection of the landscape should be through the use of criteria-based policies underpinned by landscape character assessment. PPS7 encourages the sensitive exploitation of renewable energy sources, in accordance with policies in PPS22, as development in the countryside for which provision should be made.
 13. The appellants refer to the Council's published landscape character assessment covering the area and, at the hearing, argued that its ability to absorb tall structures such as telecoms masts is not ruled out under this assessment. I agree with the Council that the local landscape can be broadly referred to as an enclosed landscape in which views are punctuated by hedgerows, trees and plantations. I attach weight, therefore, to glimpsed, local views in assessing the landscape impact of the proposal. What these views tend to reveal is that the site comprises an open, rolling, albeit managed, landscape in which the sky is highlighted. There is little intrusion from built development and skylines are devoid of man-made structures, notwithstanding distant views from some quarters of the tall cranes at the construction training complex.
 14. In this context, the proposal has the potential to be an intrusive presence, though the Council's view that it would start a process of industrialisation of the landscape overstates its impact. It would be at its most prominent from the public realm as a middle-distance feature from a section of the footpath that leads south from Berlin Plantation, which runs closest to the site. The anecdotal evidence on how frequently this is used was inconclusive. The most reliable indication seemed to me to come from an objector who regularly walks it, that it is only occasionally used in summer and used infrequently in winter.
 15. The proposal would be a long-distance feature from Frizzleton Farm and the footpath to the north-east, where it would be visible both openly and as a feature which would rise above the tree line. I accept that allowance should be made for views in the winter, when the trees shed their leaves. However, at these distances, trees within plantations would in any event appear largely as a single block of woodland. Similar views would be obtained from the footpath to the west of Coxford Wood and the dwellings south of Bamber, in both cases across fields with intervening hedgerows with hedgerow trees. It would be glimpsed occasionally from surrounding roads, including the busy B1454, through gaps in trees and hedgerows, notably in the winter.
 16. Notwithstanding this, I take into account its slender form, neutral colouring and temporary nature. As a component of views of the countryside from around 1km away, which is where its impact would be of greatest significance in relation to the likely numbers and sensitivity of receptors, it would be only an intermittently noticeable background feature. While it might occasionally appear as a silhouette in views to the south, it would, equally, have a tendency

to blend into neutrally-coloured skies in views from all directions. I do not consider that bird deflectors hung from the guy wires would make a noticeable difference to its impact, in relation to these views, or that it or they would reflect light to any great extent. It would, I consider, be barely noticeable as glimpsed intermittently by drivers on local roads, including the B1454.

17. I do not accept the argument that, because no specification for the deflectors has been submitted, a precautionary view should be taken in relation to their possible visual impact. From what was described of them at the hearing, I see no reason to conclude that the deflectors, whose purpose would be to give a visual warning to birds flying close to the mast, would necessarily be visually prominent in any wider sense. At the distances from which they would be viewed, I consider that it is likely that they would be barely visible, even allowing for a possible need for bright colouring. I therefore attach little weight to drawings of the mast as it might appear when hung with bird deflectors, submitted by objectors at the hearing. The drawings seem to me in any event to markedly overstate the width of the column and the size of the deflectors.
18. I do not rule out that the proposal might be seen through the trees from dwellings in Bagthorpe and as a more distant feature from other isolated dwellings in the wider area. However, in the light of the foregoing, and accepting its prominence in views from the nearest footpath, I conclude that, overall, it would not result in an intrusive form of development in the countryside. No harm would arise in respect of its visual and landscape impact. No conflict would occur with the requirements of Policy 4/6 of the local plan or with those of Policy ENV2 of the RSS, or with the approach to protection of the landscape advocated in PPS7 and PPS22.

Impact on wildlife

19. With regard to the Council's concerns regarding the adequacy of evidence from the appellant on this issue, I sought, at the hearing, to focus on what particular harm, and to what species, it had in mind. In the light of its response, and from the other representations before me, I consider that the main concerns are with regard to the risk of collision with the mast from over-wintering geese, notably pink-footed geese, a species of some conservation interest. There are concerns regarding the risk of collision by other bird species of conservation interest and by bats. At the hearing, the Council also expressed concern regarding any impact of nesting birds within or close to the site.
20. From the evidence before me, I am in no doubt that the wider locality is regularly used for feeding and foraging by over-wintering geese, whose populations are focused on The Wash and the north Norfolk coast. I accept that the numbers of geese, as witnessed in recorded sightings submitted as evidence by objectors, are likely to run into thousands over an extended period. As viewed by local residents, tourists and birdwatchers alike, they are a notable and, arguably, evocative feature of the winter scene in this area.
21. The appellants' report on wildlife impacts deals primarily with pink-footed geese. It relies on surveys carried out in accordance with Scottish Natural Heritage guidelines and whose methodology was agreed in advance with the Royal Society for the Protection of Birds and the Norfolk Wildlife Trust. The

Council was satisfied, following consultations with Natural England, that the surveys follow accepted good practice.

22. They show that, while numbers of pink-footed geese were observed to fly over the site at a height above that of the mast, relatively few did so at below mast height. That is, I consider, broadly reflected in the observations of geese from the DVD which was played at the hearing, despite objectors' arguments to the contrary. When taken together with the available research on avoidance rates for pink-footed geese from Scotland, where large populations of geese and operational wind farms co-exist, the likelihood is that mortality rates from collision with a structure of this kind would be so low as to be negligible. They could easily be compensated for by natural increases in breeding rates, and thus it is unlikely that a decline in local populations, or in the species' conservation status, would occur.
23. I accept that no research into mortality rates in relation specifically to tall masts with attached guy wires has been carried out. However, it seems plain to me that a single mast with attached bird deflectors would pose less of a risk than a series of turbines occupying a wider area, with large rotating blades. I note objectors' comments that the surveys might under-estimate geese likely to fly low over the site, and regarding instances of low cloud and fog reducing the visibility of the mast. However, I attach little weight to the suggestion, based on a "rule of thumb" counting method for geese, that the numbers of all birds recorded in the surveys should be substantially upwardly adjusted. I saw no evidence to indicate that the land around the site is any more important than other agricultural land in the wider area as a feeding ground for geese.
24. Moving on to other bird species of conservation concern, the surveys indicate a relatively low passage rate across the site, including for nocturnal species such as owls, and a correspondingly low likelihood that significant numbers of these species would encounter the mast and guy wires. The surveys report sightings of hen harriers, highlighted in representations, but at very low passage rates across the site. Similar conclusions regarding likely mortality rates can be reached, the more so since harriers and other species listed are likely to be more agile in flight than geese, and even allowing for possible flight displays by harriers over the site at the start of the breeding season.
25. With regard to bats, and notwithstanding comments from objectors regarding local sightings, the site is on open land, some way away from the nearest possible roost, and there are no field boundaries nearby. I consider it unlikely that, given this and their general ability to avoid obstacles in much more confined spaces, the proposal would pose a significant risk to bats.
26. Turning to the Council's concerns regarding ground nesting birds, Table 2 attached to the report shows species of breeding birds witnessed on the site. At the hearing, the Council expressed particular concerns regarding possible impacts on stone-curlews but, though these are visitors to Norfolk, there is no evidence of them on or close to the site. I note the Council's concerns regarding the possible displacement of nesting sites from activities associated with the mast. However, I agree with the appellants that, given the short construction period, with little ground disturbance, and the present arable use of the site, it is unlikely that the proposal would lead to any greater disturbance than will already most likely be occurring from farming activities.

27. Overall, I saw nothing from the Council, or in the representations and evidence from objectors, to challenge the conclusions of the appellants' report that there would be a very low risk of collision leading to mortality on the part of bird and other wildlife species of conservation interest likely to encounter the mast. In my view, the report and the additional evidence at the hearing fulfils the requirements of paragraph 99 of Circular 06/05 that any effect on protected species should be established before permission is granted. Accordingly, I conclude that no material harm would arise to wildlife species noted for their conservation interest. The requirement set out in Planning Policy Statement 9 (PPS9): *Biodiversity and Geological Conservation*, that planning decisions should aim to prevent harm to biodiversity, would be met.

Other issues

28. With regard to any impact on the Syderstone Common SSSI, its north-western boundary is Rudham Road, as shown on Figure 1.6. It is not, therefore, adjacent to the appeal site, as suggested by objectors. In any event, the site for the proposed mast would be some way away from the nearest boundary. The SSSI supports rare natterjack toads, which is a protected species. The suggestion was made at the hearing that ground vibrations from construction works could disturb the underground burrows of this species. However, given that any works would be minimal, and the distance involved, disturbance would be unlikely. There were no suggestions from objectors as to other impacts on the SSSI except to the extent to which it might support species likely to fly close to the mast, which I have already considered.
29. I heard evidence from objectors regarding the numbers of second homes, holiday lets and tourism accommodation in the locality, in connection with fears regarding effects on tourism. I accept that residents and tourists may stay locally. However, I do not view the footpaths and countryside around the site as providing a particular focus for tourism, even allowing for the occasional use of local footpaths by walkers and birdwatchers. I was referred to Houghton Hall and the Hawk and Owl Trust as examples of two inland local attractions but these are nevertheless a considerable distance from the site. A mast would not intrude into the peace and quiet said to be valued by visitors and, given its temporary duration and in the light of my conclusions regarding its landscape impact, it would not, in my view, give rise to harm on that account.
30. Regarding any risk from the proposal to low-flying aircraft, I note that neither the Ministry of Defence nor the National Air Traffic Service raises safeguarding objections to the proposal. The site is outside an Area of Search for mineral extraction identified in the locality in the Norfolk Minerals Local Plan, so no potential for conflict with the policies of that plan would arise. I note references in objections to a Parish Poll which indicated opposition to proposals for wind power development, which could extend to the proposal before me. However, the fact that there may be objections to a proposal is not of itself sufficient reason to demonstrate harm. I have taken into account all other matters raised in representations from objectors but they do not persuade me to alter my conclusions on the main issues I have identified.

Conditions

31. The Council and the appellants are in agreement regarding the two suggested conditions put forward. I follow these conditions with modified wording in the interests of precision and with the necessary addition of the standard time condition for commencement. I modify the condition giving effect to the temporary period to allow time for the approval of any required details prior to the erection of the mast. Having heard concerns expressed by objectors at the hearing, I consider that the use of bird deflectors is necessary. I also consider it necessary and reasonable that the opportunity be taken to carry out some monitoring of bird mortality for the period over which the mast is in place. The parties agreed to the imposition of an additional requirement to that effect.

Conclusions

32. For the reasons given above I conclude that the appeal should be allowed.

C M Hoult

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

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Mr O Buck BA(Hons), DipTP, MRTPI	Entec (UK) Ltd, 17 Angel Gate, London, EC1V 2SH

FOR THE LOCAL PLANNING AUTHORITY:

Mr D Parkin	Principal Planning Officer (Development Control)
Mr O Shields	Consultant Landscape Architect

INTERESTED PERSONS:

Mr R Thompson	4 Rectory Gardens, Syderstone, King's Lynn, Norfolk, PE31 8SD
Mr A Conway	The Old Rectory, Bagthorpe, King's Lynn, Norfolk, PE31 6RA
Mr B Poulson	2 Beechwood Court, Syderstone, King's Lynn, Norfolk, PE31 8TR
Mrs D Morton	Bagthorpe Hall, Bagthorpe, Bircham, King's Lynn, Norfolk, PE31 6QY
Mr Chinnery	Local Borough Councillor

DOCUMENTS

- 1 Extract from East of England Plan – Section 8: Environment
- 2 Statement on behalf of Syderstone Parish Council
- 3 Statement by Mr Conway on behalf of "Against Turbines At Chiplow" (ATAC)
- 4 Bundle of documents submitted by Mr Thompson

PLANS

- A Figure 1.1: Site Location – Wider Area
- B Figure 1.2: Site Boundary
- C Figure 1.3: Site Location and Layout
- D Figure 1.4: Anemometry Mast Elevations Plan
- E Figure 1.5: Zone of Theoretical Visibility Within 5km