



Appeal Decision

Site visit made on 26 November 2009

by **David M H Rose BA (Hons) MRTPI**

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

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**Decision date:
15 February 2010**

Appeal Ref: APP/V2635/A/09/2108291

Land known as Fring, Docking, King's Lynn, Norfolk PE31 6SQ

- 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 Fring Wind Energy Ltd against the decision of King's Lynn and West Norfolk Borough Council.
- The application Reference 09/00708/F, dated 24 April 2009, was refused by notice dated 24 June 2009.
- The development proposed is the erection of an anemometer mast up to 80m in height for a temporary period of up to three years from date of erection.

Decision

1. I allow the appeal, and grant planning permission for the erection of an anemometer mast up to 80m in height for a temporary period of up to three years from date of erection at land known as Fring, Docking, King's Lynn, Norfolk PE31 6SQ in accordance with the terms of the application, Reference 09/00708/F, dated 24 April 2009 subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans:- Figures 1 - 3.
 - 3) No development shall commence until details of bird deflectors, including their means of attachment to the guy wires and arrangements for monitoring their continuing presence and replacement where necessary, have been submitted to and approved in writing by the local planning authority. The deflectors shall be fitted in accordance with the approved scheme on erection of the mast and they shall be retained, or replaced as necessary, in accordance with the approved measures.
 - 4) The mast hereby permitted shall be dismantled and removed from the site within a period not exceeding 3 years from the date on which its erection commences. At the end of this period the site shall be reinstated in accordance with a scheme of work which has previously been submitted to and approved in writing by the local planning authority.
 - 5) No development shall commence until the local planning authority has been notified in writing of the date on which the erection of the mast is to commence.

Main issue

2. The main issue for me to decide is whether the proposal would damage the distinctive character and appearance of the landscape.

Reasons

Character and appearance of the landscape

3. The appeal site is located within an Area of Important Landscape Quality where, according to saved Policy 4/6 of the King's Lynn & West Norfolk Local Plan, development which damages the distinctive character or appearance of the landscape will not be permitted.
4. The site and the wider locality are characterised, generally, by an extensive and gently undulating landscape of large fields marked by low hedgerows. Blocks of woodland and lines of trees are also apparent. The general lack of buildings and dispersed minor roads contribute to a strong sense of isolation and tranquillity. Although there are extensive and long distant views from certain locations, topography and planting restrict views elsewhere.
5. In this regard the principal immediate views of the proposed anemometer mast would be from the Docking to Bircham Road above the roadside hedgerow, and through gaps where they exist, and from the public footpath to the east of Honey Hills. From these vantages it would stand as a singular structure within a wide open landscape against a predominant backdrop of sky. In my opinion, despite its overall height, and the radiating spread of its guy wires, it would not appear unduly conspicuous or intrusive as a result of its general slender tapering form and the open characteristics of the landscape would not be harmed.
6. From the public footpath to the south of the site the presence of hedgerows and intermittent trees restrict the openness of the landscape and views towards the mast would be less apparent. Moreover, for the walker heading towards Honey Hills, the water tower on the edge of Docking and the tall cranes at the Construction Industry's Skills Centre, some 3 kilometres to the east, would be part of the overall view. In this context I am satisfied that the proposed mast would not damage the characteristics of the landscape.
7. Moving round to the minor road between Great Bircham and Fring, and the adjoining public footpaths and bridleway, hedges, trees, and land contours frequently restrict views in the direction of the proposed mast. Where open views exist, the landscape has a wide horizon and inherent features of interest arising from its undulations, hedgerows and lines or blocks of trees. It is also notable that the water tower at Docking and the more distant cranes are often visible. To my mind, within this overall setting, the presence of a slim anemometer mast would not be an obvious or damaging addition to the landscape.
8. With regard to views from the direction of Peddars Way, the effects of greater distance would come into play and to the extent that the mast might be apparent I am content that it would be a very minor element which would not impair the views from, or the enjoyment of, this national route to a material degree.

9. From Fring, and from along the road to Docking, woodland and high hedges would often restrict views and to my mind any resulting occasional glimpses of the proposed mast would not belittle the fundamental characteristics of the landscape. Similarly, the opportunity for outward views from the village of Docking is likely to be minimal, given the arrangement of buildings and its wooded south-western edge, and the proposed mast would not be generally perceptible.
10. Having taken account of the 2003 Landscape Assessment, Evaluation and Guidance Report, commissioned by King's Lynn and West Norfolk Borough Council and Breckland District Council, I consider that the proposed mast would not undermine its intentions of seeking to ensure the sensitive siting of tall structures and in conserving the intrinsic qualities of the countryside. Similarly, I find no conflict with the Landscape Character Assessment of 2007 and its aim to ensure that tall structures, in particular, are sensitively located so as to preserve the largely undisturbed and tranquil nature of the area.
11. Against this background, I conclude that the proposed anemometer mast would not damage the distinctive character and appearance of the landscape. As such it would be in accordance with saved Policy 4/6 of the King's Lynn & West Norfolk Local Plan.

Other Material Considerations

Norfolk Coast Area of Outstanding Natural Beauty

12. The appeal site is located some 5 kilometres from the nearest point of the Norfolk Coast Area of Outstanding Natural Beauty. To my mind, at this distance, the proposed mast would be a very minor and generally indistinguishable element in the broad outward vistas and a minor component in expansive views towards the designated area. In this regard it would not damage the outstanding natural beauty of the designated area or its setting.
13. Accordingly there would be no conflict with Policy ENV2 of the East of England Plan, which requires the highest level of protection to be afforded to the East of England's nationally designated landscapes. Reference to Policy 4/5 of the King's Lynn & West Norfolk Local Plan is no longer relevant as that policy has not been saved by direction of the Secretary of State.

Conservation Areas

14. The Fring Conservation Area is dominated by the landscaped setting of Fring Hall and the well-treed aspect of Docking Road. Outward views in the direction of the appeal site are extremely limited and, given the effects of tree cover and distance, the proposed mast would not impinge on its setting. Additionally, the proposed mast would not form part of any significant view into the designated area. The affect of the proposal would be neutral and the character and appearance of the Fring Conservation Area as a whole would therefore be preserved.
15. The south-western edge of the Docking Conservation Area also contains significant tree cover associated with the parkland landscape of Docking Hall. Although the extensive farmland landscape to the west has a close association with the Conservation Area, I consider that its inherent characteristics would not be compromised by the proposed mast.

16. In turn, the woodland and parkland within the vicinity of Docking Hall would severely constrain views of the proposal from the remainder of the Conservation Area. Again, the proposed mast would not be seen in the foreground of public views into the designated area. I therefore conclude that the proposal would have a neutral effect and the character and appearance of the Docking Conservation Area as a whole would also be preserved.
17. The duty required by section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 would therefore be fulfilled; and there would be no conflict with saved Policy 4/14 of the King's Lynn & West Norfolk Local Plan.

Bird populations

18. Natural England, in response to the appellant's consultation about a possible wind farm at Fring, identifies the site as being approximately 8 kilometres from the North Norfolk Coast Site of Special Scientific Interest and Special Protection Area. The North Norfolk Coast is designated under the Ramsar Convention on Wetlands of International Importance for breeding, migratory and wintering waterfowl and waders; and it is a constituent part of The Wash and North Norfolk Coast Special Area of Conservation. Large migratory populations of pink-footed geese, a species within the amber category of conservation importance, winter on the coast and fly inland to forage on a daily basis. The site and the surrounding area form part of their feeding grounds.
19. Pink-footed geese are listed within Schedule 2 – Part 1 of the Wildlife and Countryside Act 1981 (as amended) and they do not have special protection; and the appeal site is not designated for its nature conservation interest. Nonetheless, Planning Policy Statement 9: Biodiversity and Geological Conservation advises that the aim of planning decisions should be to prevent harm to biodiversity interests.
20. It cannot be denied that the proposed structure, and more particularly its comparatively fine, and widely radiating, guy wires, would present a potential hazard to pink-footed geese feeding in the locality. This is likely to be the more so given their characteristic mass flock patterns and the manner in which pink-footed geese are easily startled.
21. However, there is no evidence to suggest that the proposal would result in significant losses and the local planning authority takes the view that potential bird strike could be mitigated to a satisfactory degree by attaching deflectors to the guy wires to make their presence more apparent to flying birds. This is a practice often adopted for overhead power lines where birds might be at particular risk. In my opinion, it is likely that the fitting of suitable deflectors would provide an effective form of mitigation so as to minimise the risk of collisions. This could be secured by imposing a condition requiring a scheme to be agreed with the local planning authority.
22. There are no details of the deflectors before me and it is suggested that such attachments would unacceptably increase the impact of the development. Although their very presence is to make the wires more apparent, I consider, from my experience of those types that are widely used, that there would be no material impact on views from the nearest public vantages and from more distant viewpoints. Thus, my assessment of landscape impacts, including the effects on the Area of Outstanding Natural Beauty and on the Fring and Docking Conservation Areas, would remain unchanged.

23. It is also suggested that a condition should be imposed to secure a monitoring programme of bird mortality to be consistent with an appeal decision at Chipflow, especially as that permission has not been implemented and the potential benefits of monitoring have not been realised. The fundamental test is whether such a condition would be necessary and reasonable, having regard to the guidance in Circular 11/95: The use of conditions in planning permissions.
24. In this regard the proposed mast, with deflectors fitted to the guy wires, would be an acceptable form of development and there is no reason to withhold permission. In turn the monitoring of bird strikes would not mitigate any potential impacts or render the possibility of bird strike any less likely at the appeal site.
25. Moreover, a scheme of monitoring would require an exclusion zone around the mast and it would involve frequent visits to record any incidents. Whilst I am in no doubt that monitoring of bird strikes would be of interest, it would not result in any direct tangible benefits and it would place a considerable burden on the developer. To my mind the condition does not have special and precise justification and it would be both unnecessary and unreasonable.
26. It is also considered likely that the site supports populations of Biodiversity Action Plan Species such as lapwing, skylark and grey partridge as well as Red Listed species of high conservation concern. In addition, marsh and Montagu's harriers (both Annex 1 bird species under the 1979 EC Birds Directive) have been observed locally. There is no evidence to suggest that such species would be at particular risk; and the provision of deflectors would provide a recognisable form of mitigation.
27. Representations have been made about the potential impacts on bats. However, the site is of an open nature, any roosts are likely to be some distance away, the mast would be separated from field boundaries and characteristic flight lines, and the species is well known for its ability to avoid obstacles. I am satisfied that there is no justifiable concern on this point.
28. Against this background I conclude that the aim to prevent harm to biodiversity interests, set out in Planning Policy Statement 9: Biodiversity and Geological Conservation, would be met through appropriate mitigation.

Precursor to a future wind farm

29. It is claimed that the proposed anemometer mast is complementary to and therefore linked to a future proposal for a wind farm on the site and the concerns about that possibility, and the consequential effects, are material to the determination of this appeal.
30. However, the purpose of the proposed mast is to gather information about wind speeds in the locality. That may or may not lead to a future application for a proposed wind farm but the presence of the anemometer mast would not provide any presumption in favour of a wind farm development as any application would fall to be determined on merit in the light of the development plan and all other material considerations. Hence, the concerns about the possible impacts of a potential wind farm, including those of noise, are not material to my consideration.

Environmental Impact Assessment

31. In terms of the claimed need for the proposal to be the subject of an Environmental Impact Assessment, the local planning authority issued a formal Screening Opinion on 16 June 2009 which confirmed that no further information was required under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. I am satisfied that there is nothing to undermine that conclusion.
32. In particular, it is suggested that the anemometer mast forms part of a larger project, for which Environmental Impact Assessment would be required, and the project as a whole should be the subject of assessment. In my opinion, whilst the mast is intended to establish whether a wind farm project would have a viable wind resource, it would not constitute an integral part of an inevitably more substantial development. I am therefore satisfied that this proposal, and any future wind farm application, could proceed independently without frustrating the aims of the Regulations or the relevant European Council Directive.

Planning Policy Statements 1 and 7

33. Objectors suggest that the proposal would be contrary to the sustainable development objectives of Planning Policy Statement 1: Delivering Sustainable Development. However, a full reading of the document confirms the government's commitment to the development of renewable energy resources through Key Principle (ii) which requires regional planning bodies and local planning authorities to ensure that development plans contribute to global sustainability.
34. Similarly, paragraph 16(iv) of Planning Policy Statement 7: Sustainable Development in Rural Areas indicates that provision should be made for the sensitive exploitation of renewable energy sources in accordance with the policies set out in Planning Policy Statement 22: Renewable Energy. In my opinion, the proposed mast would not be at odds with the aim of securing the delivery of sustainable development.

Planning Policy Statement 22

35. Planning Policy Statement 22: Renewable Energy sets out the government's target of producing 10% of the United Kingdom's electricity from renewable energy sources by 2010 with an aspiration to double this by 2020. In turn, the East of England Plan provides strong support for renewable energy development in the region.
36. It is also recognised that wind data needs to be monitored, generally for a period of at least 12 months with a longer period likely to increase accuracy, to assess the suitability of a site for possible wind energy development. Moreover, there is nothing in either policy or statute to suggest that the appellant is required to demonstrate any exceptional or overriding need for the proposal or to investigate the possibility of alternative sites. This context is a strong material consideration in favour of the proposal.

Norfolk Structure Plan; King's Lynn & West Norfolk Local Plan; and the King's Lynn & West Norfolk Core Strategy

37. The Norfolk Structure Plan no longer contains any saved policies which are material to the appeal following the publication of the final version of the East of England Plan. Similarly a number of policies in the King's Lynn & West Norfolk Local Plan have not been saved, including Policies SS1 – SS7 relating to Strategic Objectives.
38. As to the Core Strategy, and the related 'Transforming West Norfolk' document, Docking is designated as a Key Rural Service Centre. However, the Core Strategy is a 'proposed submission document' and at an early stage in the statutory process. As such it carries limited weight. Nevertheless, I consider that the proposed mast would not have any material impact on the attractiveness of Docking and there is nothing to support the claim that it would be likely to deter tourists or the provision of key services.
39. I have also been referred to the guiding principles of the Local Development Framework to conserve habitats, natural resources, environmental quality and to promote sustainable development. My earlier conclusions confirm that there would be no material conflict with these objectives.

Other matters

40. I have considered all other matters raised, including concerns about road and aviation safety and the absence of a formal risk assessment. However, no objections have been raised by the relevant authorities and there is nothing to suggest that these represent material constraints. The alleged effect on property prices is unsupported; and generalised fears of precedent for other similar forms of development are of little consequence as each proposal has to be considered on its own merits in the light of the development plan and all other material considerations. I have also considered the observations made about the initial publicity and consultation arrangements but find nothing to suggest material prejudice given the opportunity to make representations as part of this appeal.

The planning balance

41. Government and regional policy supports the development of renewable energy projects; and the erection of one or more anemometer masts is seen to be an essential starting point for determining the wind resource of an area. This provides an underlying support for the principle of the proposed development. Added to this I find no material harm on landscape grounds; there would be no material impact on the nearby Area of Outstanding Natural Beauty; and the character and appearance of two adjacent Conservation Areas would be preserved.
42. As such there would be no conflict with the related policies set out in the King's Lynn & West Norfolk Local Plan or the East of England Plan. I also find that concerns about impacts on bird populations, which could be minimised by defined mitigation measures, are not a compelling reason to withhold permission.

Conditions

43. I shall impose the standard condition relating to the period within which development is to commence; and I shall specify the approved drawings for the avoidance of doubt and in the interests of proper planning. I have already indicated the need for a condition requiring the fitting of bird deflectors in accordance with a scheme to be agreed in writing with the local planning authority.
44. I have worded the condition limiting the permission to a period of three years to reflect the model condition in Circular 11/95: The use of conditions in planning permissions. I have retained 'three years' as opposed to the suggested '36 months' as there is no apparent basis to change the terms of the application. I have also split the suggested condition to make the notification of the date on which works are intended to commence a separate requirement.

Conclusion

45. I have considered all other matters raised but find nothing of sufficient weight to change the balance of my overall conclusion.

David MH Rose

Inspector