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# Appeal Decision

Site visit made on 17 March 2015

**by Victoria Lucas-Gosnold LLB MCD MRTPI**

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

**Decision date: 28 July 2015**

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**Appeal Ref: APP/L3245/W/14/3001167**

**Edge Renewables, B4371, Stretton Westwood, Much Wenlock, TF13 6DG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Mr S Lloyd-Jones (Edge Renewables) against Shropshire Council.
  - The application Ref 14/02390/FUL, is dated 29 May 2014.
  - The development proposed is erection of 2 no. low profile wind turbines.
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## Decision

1. The appeal is dismissed and planning permission for the 'erection of one low profile wind turbine' is refused.

## Procedural Matters

2. The application to which this appeal relates originally proposed two Evoco Energy Low Profile 10kw wind turbines. During the Council's consideration of the proposal, the appellant amended the application so that only one wind turbine was proposed. Revised plans were submitted on that basis. I have therefore assessed this appeal proposal on the basis of the amended application for a single wind turbine.
3. This appeal was submitted as a result of the Council failing to give notice within the prescribed period. However, in their submissions the Council have indicated that they would have granted permission for the amended scheme as they considered that their ecological concerns could be overcome via planning conditions.

## Main Issue

4. The main issue is the effect of the development proposed on biodiversity, specifically bats and birds.

## Reasons

### *Background*

5. The appeal site is situated in a large former quarry within the Shropshire Hills Area of Outstanding Natural Beauty (AONB). The site is also next to Wenlock Edge which is a Site of Special Scientific Interest (SSSI), designated primarily for its geological importance.

6. There are several large industrial buildings close to the site entrance located on the B4371 road. The appeal site itself is an area of land situated to the rear of these buildings and therefore on the edge of the developed part of the site closest to Wenlock Edge.
7. The appellant, Edge Renewables, is a renewable energy company specialising in supplying biofuel boilers and associated wood chip fuel. The appellant acquired land, including the appeal site, from the former quarry company in December 2012. The Council has since granted a number of planning permissions including that for the biofuel storage and preparation area and associated uses.
8. The proposed turbine would have a hub height of approximately 12m and a rotor diameter of approximately 9.7m. It would therefore have a total height to blade tip edge of approximately 16.85m.

#### *Policy Framework*

9. For policy purposes, the appeal site is within the open countryside. Policy CS5 of the Shropshire Core Strategy (Adopted March 2011) (the CS) sets out the Council's general approach to new development in the countryside stating that it will be strictly controlled in accordance with national planning policies protecting the countryside. Although the policy makes no specific reference to renewable energy proposals, the text of the policy does go on to state, among other things, that proposals on appropriate sites which maintain and enhance countryside vitality and character will be permitted where they improve the sustainability of rural communities, particularly where they relate to matters which include small-scale new economic development diversifying the rural economy.
10. Policy CS6 sets out the Council's general approach to sustainable design and development principles in so far as they are relevant to development proposals. It is stated that the general aims of the policy will be achieved by a number of measures which include, that resource and energy efficiency and renewable energy generation are adequately addressed and improved where possible. The policy also lists several principles which include ensuring that all development responds to the challenge of climate change; protects, restores, conserves and enhances the natural, built and historic environment.
11. Policy CS17 relates to environmental networks and seeks to ensure that all development protects and enhances the character of Shropshire's natural environment, and does not adversely affect the visual, ecological or recreational values of these assets; contributes to local distinctiveness, having regard to the quality of Shropshire's environment, including landscape, biodiversity, such as the Shropshire Hills AONB.
12. The Much Wenlock Neighbourhood Plan (Adopted July 2014) also forms part of the development plan for the area and objective 6 sets out the approach to good quality design. This includes policy GQD1 which states that the high quality natural landscape outside the development boundary of Much Wenlock will be protected from any development which adversely affects the town's character. Of those policies which are before me, there is no specific mention of the Plan's approach to renewable energy proposals.

13. Whilst the Shropshire Hills AONB management plan 2009-2014 does not form part of the development plan, it has been formally adopted by the Council. Policy 30 of that document states that renewable energy developments in the AONB should generally be of a small scale appropriate to local use. Policy 35 also states that proposals for wind turbines and associated infrastructure within the AONB should take account of factors including landscape character, visual amenity and biodiversity. The policy goes on to set out a number of guidelines which include that within 100m of buildings, one or two wind turbines up to 12m to blade tip are more likely to be acceptable within the AONB. Turbines up to 25m to blade tip, or groups of more than two turbines, are not likely to be acceptable within the AONB. It also states that wind turbine proposals should be linked to local energy needs and energy conservation measures.
14. One of the core planning principles of the National Planning Policy Framework (the Framework) states that planning should support the transition to a low carbon future in a changing climate by, among other things, encouraging the use of renewable resources (paragraph 17). Paragraph 97 of the Framework goes on to state that local planning authorities should have a positive strategy to promote energy from renewable and low carbon sources and should design their policies to maximise renewable and low carbon energy development while ensuring that adverse impacts are addressed satisfactorily, including cumulative landscape and visual impacts.
15. At the same time, paragraph 115 of the Framework states that great weight should be given to conserving landscape and scenic beauty in AONBs, which have the highest status of protection in relation to landscape and scenic beauty. The paragraph goes on to state that the conservation of wildlife is an important consideration in these areas. Paragraph 118 also states that in determining planning applications, the aim should be to conserve and enhance biodiversity by applying certain principles, including that if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.
16. Planning Practice Guidance (the 'PPG') confirms that planning has an important role in the delivery of new renewable and low carbon energy infrastructure in locations where the local environmental impact is acceptable<sup>1</sup>. The PPG goes on to state that evidence suggests that there is a risk of collision between moving turbine blades and birds and/or bats. Other risks including disturbance and displacement of birds and bats and the drop in air pressure close to the blades which can cause barotrauma (lung expansion) in bats, which can be fatal. Whilst these are generally a relatively low risk, in some situations, such as in close proximity to important habitats used by birds or bats, the PPG states that the risk is greater and the impacts on birds and bats should therefore be assessed<sup>2</sup>. The PPG then refers to Natural England's advice on assessing risks.
17. Natural England's Technical Information Note TIN051 'Bats and onshore wind turbines Interim guidance' (third edition 11 March 2014) (NE advice) states that to minimise risk to bat populations their advice is to maintain a 50 metre buffer around any feature (trees, hedges) into which no part of the turbine intrudes. This means the edge of the rotor-swept area needs to be at least 50 metres from the nearest part of the habitat feature. Therefore, Natural

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<sup>1</sup> Paragraph: 001Reference ID: 5-001-20140306

<sup>2</sup> Paragraph: 018Reference ID: 5-018-20140306

England's advice is that 50 metres should be the minimum stand-off distance from blade tip to the nearest feature.

18. Additionally, Circular 06/05<sup>3</sup> states that the presence of a protected species is a material consideration when considering a development proposal that, if carried out, would be likely to result in harm to the species or its habitat (paragraph 98). The Circular goes on to state, among other things, that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances (paragraph 99).
19. Drawing matters together, of those local policies which are before me, there is no specific policy which sets out the Council's or the local community's approach (as set out in the Much Wenlock Neighbourhood Plan) to renewable energy proposals. However, the general local policy approach in seeking to balance the need for certain types of sustainable development to take place in the countryside with considerations which include the effect of those proposals on landscape character, visual amenity and biodiversity is, when read as a whole, largely consistent with the Framework and the PPG.
20. In addition, the approach set out in the AONB management plan does set out some guidelines relevant to renewable energy proposals which include scale and siting. The effect of such proposals on landscape character, visual amenity and biodiversity is also referred to. Whilst this document does not form part of the development plan, as it has been formally adopted by the Council I have given it some weight in my determination of this appeal.

### *Biodiversity*

21. Although the proposed location of the turbine is on the edge of the developed part of the wider site and close to existing buildings, the site is otherwise surrounded by the open countryside. There are several notable habitat features within the site and in the local area. These include a bank of established trees close in proximity to the appeal site. The proposed location of the turbine is also close to the notable landscape feature of Wenlock Edge, which is a large limestone escarpment and is, for the most part, densely wooded. There are also several ponds on the wider site.
22. These habitat features, particularly when found within remote countryside locations, are typically used by bats (all of which are European protected species), birds and other types of wildlife. The likely presence of birds or bats on or close to the site does not seem to be an area of dispute between the parties.
23. On the basis of the information before me, I am therefore satisfied that there is a reasonable likelihood that bats are likely to be present in the area. There are also likely to be several species of bird present which include a particular species of raptor (which is a Schedule 1 species in the Wildlife and Countryside Act). I also understand that Great Crested Newts are known to be present on the wider site.

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<sup>3</sup> 'Biodiversity and Geological Conservation - Statutory Obligations and Their Impact Within The Planning System'

24. The application was accompanied by an ecological survey relating to Great Crested Newts (GCN). However, no bat or bird surveys were submitted with the application. The Council's ecologist objected to the application as originally submitted on that basis.
25. Following the amendment of the application to a single turbine, the Council indicated that this ecological objection could be overcome, subject to conditions, on the basis that the turbine was required primarily for training purposes. As such, it would be continually dismantled and re-built and would not be operational for the majority of the time. Although the Council failed to give notice within the prescribed time, the Council have indicated that they were minded to approve the application subject to conditions including that the turbine be used specifically for training use only.
26. The wording of the suggested condition included a specific requirement that there shall be no unattended running (of the turbine), no running for more than an hour per day and no running other than daylight hours. A condition was also suggested which would require the default position of the turbine to be horizontal on the ground and that the turbine shall remain in the default position except for the purposes of training.
27. A note was also added that any proposal to turn the turbine shall be the subject of a separate variation application accompanied by appropriate bird and bat reports. A condition was also suggested in the Officer's report allowing for some flexibility in micro-siting the turbine to allow it to be located 10m further north-east from the main part of an identified landscape area with potential benefits for birds.
28. The effect of the Council's suggested conditions would be to severely restrict the operational use of the proposed turbine, except for allowing it to turn for a maximum of one hour per day during daylight hours. This would be so unless and until bird and bat surveys are undertaken, the results of which would presumably need to show that the proposed turbine could operate without undue risk to either birds or bats occurring to the turbine.
29. Correspondence from the appellant was submitted with the appeal which does state that the single wind turbine proposed would be erected and dismantled continuously for training purposes. There is also an email from the appellant which states that they understand the requirement for bat and bird surveys and will ensure the turbine is not normally operating until these reports have been provided.
30. However, the appellant's final comments state that in addition to training purposes, they also require the proposed turbine to be used for electrical generation so that the performance of the turbine can be proven to customers. It is also not clear from the appellant's final comments whether they therefore intend for the blades of the proposed turbine to be turning overnight.
31. As the appellant has made clear that, in addition to training purposes, they do also require the proposed turbine to generate electricity there is some uncertainty as to the extent of time in any given week that the appellant intends for the proposed turbine to be operational. The appellant has also indicated that they object to being required to maintain the proposed turbine in a default horizontal position as this may lead to damage occurring.

32. There is therefore some uncertainty as to the extent to which the proposed turbine would be operational. What is certain, however, is that no bird or bat surveys have been submitted with the application. I have considered whether requiring a bird and bat survey is a matter which could be addressed via a condition. However as I cannot be certain as to the outcome of any additional survey findings and whether or not suitable mitigation (if required) could be put in place, I consider that a condition would not be appropriate in this particular instance.
33. Given the lack of detailed surveys considering the effect of the proposal on either birds or bats, I cannot be certain that significant harm resulting from the proposal can be avoided, adequately mitigated, or, as a last resort compensated for. In such circumstances, paragraph 117 of the Framework indicates that planning permission should be refused. The Framework (paragraph 115) also confirms that the conservation of wildlife is an important consideration in AONBs.
34. Additionally, the distance between the blade tip edge of the proposed turbine and the nearest trees would be approximately 30m. This would breach the minimum separation distance advised by Natural England as being necessary to minimise the potential risk of the turbine to bats which may be using the site. This adds to my concerns.
35. I note the reasoning of the Council's officer in their report that allowing flexibility as to micro siting of the proposed turbine may reduce the risk to birds in the area. However, in the absence of specific detailed information on how birds may be using the area and whether or not they would be affected by the proposal, I am not satisfied that this mitigation measure would be sufficient to overcome the harm that I have identified.
36. I note that the appellant has stated that studies show that the risk to birds is greater from cables and moving cars. However those studies are not before me and in any event, the PPG does state that evidence suggests that there is a risk of collision between moving turbine blades and birds and/or bats.
37. With regard to GCN, the appellant has agreed to extend a mitigation strategy previously agreed with the Council for other areas within the wider site to include the site for this appeal proposal. Subject to conditions, the proposal would therefore be acceptable in this particular respect.
38. Accordingly, in the absence of further detailed information as to whether or not the proposal is likely to have a harmful impact on bats and birds in the local area, it has not been shown that unacceptable harm would not result. The proposal would therefore conflict with policy CS17, paragraph 115 and 118 of the Framework, the PPG<sup>4</sup>, the Circular and the NE advice.

## **Other Matters**

### *Landscape character and visual amenity*

39. Several third parties and local residents have raised concerns regarding the effect of the proposal on landscape character and visual amenity. I shall now go on to consider this issue. No formal Landscape Character Assessment was submitted with the application. Nevertheless, several photos were submitted

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<sup>4</sup> Paragraph: 018Reference ID: 5-018-20140306

which show a visual representation of the proposed turbine as it would appear in situ. I have had regard to this information in my assessment of the proposal.

40. The appeal site is within an AONB and next to Wenlock Edge, a SSSI. Therefore whilst the proposed turbine would be on the edge of the developed area of the former quarry site, it is surrounded on all sides by high quality countryside which has been recognised as such at the national level.
41. The former quarry site is a long, roughly rectangular site. It is positioned between the main B4371 road and Wenlock Edge itself, with the longest sides of the site being orientated to face these linear features. The road is situated at a lower level than the wider site. There is a thick bank of mature trees and vegetation which screens the site from the majority of viewpoints in the highway. The location of the proposed turbine would also be at the rear of the site which would increase the separation distance between the road and the proposal. The proposal would also be screened from view by the cluster of large scale industrial buildings within the site itself.
42. In terms of viewpoints along Wenlock Edge, there are two footpaths. The closest being a permissive footpath which runs along Wenlock Edge close to the boundary of the wider site. This footpath also connects with the formally designated footpath which forms part of the Shropshire Way long distance footpath. Several local residents and third party organisations have expressed concerns regarding the effect of the proposal when seen from viewpoints along these routes.
43. The permissive footpath runs close to the boundary of the wider site and, due to the topography of the area, is situated at a much higher level than the former quarry. This allows users to look down into the site and parts of it, including the appeal site itself, are visible from viewpoints along the footpath. However, closer to the site the separation distance between the escarpment edge and the path increases and there is also extensive vegetation which would effectively screen the proposal from view. From the majority of viewpoints the proposal would be seen against the backdrop of existing industrial buildings, albeit slightly taller than them. Given these circumstances, users of the footpath would therefore be likely to experience few direct views of the proposal and these would only be of limited duration.
44. Therefore, although the proposal would be sited within a high quality landscape, it would be seen within the context of the quarry site and against the back drop of the existing large scale commercial buildings. The topography of the area and the dense vegetation would also screen the proposal from the majority of public viewpoints. I take the point that some third parties have raised regarding the additional screening effect when the vegetation is in full leaf. However at the time of the site visit, the trees had yet to come into bud and I was therefore able to observe views of the area as it would appear during the winter months.
45. Accordingly, whilst I attach great weight to conserving the landscape and scenic beauty of the AONB, given the particular circumstances that I have described, and the small scale of the turbine proposed, I am satisfied that the proposal could be accommodated within the appeal site without undue harm occurring to the landscape character or visual amenity of the area. The

proposal would therefore be consistent with policies CS5, CS6 of the CS and the Framework (paragraph 115) in this regard.

*Sustainable benefits and overall balance*

46. In my determination of this appeal, I have had regard to the Framework's presumption in favour of sustainable development which is defined by three dimensions: economic, social and environmental. One of the Core Planning Principles of the Framework states that planning should support the transition to a low carbon future in a changing climate, and, among other things, encourage the use of renewable resources (for example, by the development of renewable energy). The Framework also states that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions (paragraph 98). These are significant environmental benefits which weigh in favour of the proposal.
47. The appellant company is a local renewable energy business. The proposal is needed by the business so that their staff can become accredited installers of this type of wind turbine in order to supply them to customers. This would increase the business capacity of the enterprise and lead to the employment of at least four additional staff initially and the appellant intends to recruit from the local community. These are economic benefits which weigh in favour of the appeal proposal.
48. Some third parties have commented that were the proposal to be used for training purposes only, then the renewable energy generation benefits of the proposal should not be taken account of. However, as the appellant has confirmed that the proposal would be used for the generation of energy, I have taken account of this consideration in my decision and have attached weight to it. I note that some third parties dispute whether the energy generated would be linked to local energy needs (as set out in the AONB management plan). However as the appellant is a local company, there is nothing to suggest that the energy generated would not benefit the local area.
49. Drawing matters together, both local and national policies recognise the balance that must be struck between the benefits of renewable energy generation and the conservation of wildlife. I have found that there are environmental and economic benefits which weigh in favour of the proposal, and that the proposal would be acceptable in terms of its effect on landscape character and visual amenity.
50. However, in the absence of further detailed information as to whether or not the proposal is likely to have a harmful impact on bats and birds in the local area, it has not been shown that unacceptable harm would not result. This is a very significant disadvantage which cannot be mitigated or made acceptable. Therefore, even taking account of the sustainable benefits associated with the proposal, I consider that they do not outweigh the harm that I have identified. Overall, the proposal would therefore conflict with policies CS5 and CS17 of the CS and paragraphs 115 and 118 of the Framework, the PPG, the Circular and the NE advice.
51. I have also had regard to the changes to policy arising from the Written Ministerial Statement (18 June 2015) which, in the light of the facts in this case, does not alter my conclusion.



**Conclusion**

52. For the reasons given above, having regard to all other matters raised, I conclude that the appeal should be dismissed.

*Victoria Lucas-Gosnold*

INSPECTOR