



# Appeal Decision

Site visit made on 17 August 2010

by **Paul Griffiths BSc(Hons) BArch IHBC**

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

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**Decision date:**  
**6 September 2010**

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## Appeal Ref: APP/Z4718/A/10/2128426

### Mars Complementary Petcare, Oakwell Way, Birstall, Batley WF17 9LU

- 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 Mars Complementary Petcare against the decision of Kirklees Metropolitan Borough Council.
- The application Ref.2009/62/93375/E1, dated 1 December 2009, was refused by notice dated 1 April 2010.
- The development proposed is a single wind turbine with ancillary infrastructure to include access tracks, compound, kiosk and temporary revised access.

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### Preliminary Matter

1. I inspected the site itself in the company of representatives of the main parties. As agreed, I visited areas in and around Birstall on an unaccompanied basis, taking in views of the site from a number of locations identified in the evidence and by third parties. As requested, I also observed the site from areas to the north of the M62 motorway.

### Decision

2. I allow the appeal, and grant planning permission for a single wind turbine with ancillary infrastructure to include access tracks, compound, kiosk and temporary revised access at Mars Complementary Petcare, Oakwell Way, Birstall, Batley WF17 9LU in accordance with the terms of the application, Ref.2009/62/93375/E1, dated 1 December 2009, subject to the conditions set out in Annex A to this decision:

### Main Issues

3. These are the effect of the proposal on (1) the character and appearance of the surrounding area and (2) the living conditions of local residents as a result of visual impact and any noise and disturbance, amongst other things.

### Reasons

4. The site of the proposal lies in an industrial premises set within a complex of similar premises, adjacent to a retail park. The M62 motorway passes to the north. At a height of around 126.5 metres, the wind turbine would be much taller than anything in its immediate context. Given the elevated nature of the site, it would be prominent and change the way the site and its surroundings are perceived from close-up and more distant locations, including Oakwell Hall and the surrounding Country Park, and points to the north of the motorway where the wind turbine would be seen in a wider landscape context. Nevertheless, I do not regard change as necessarily harmful.
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5. In my view, the wind turbine would appear as a functional piece of infrastructure and this would resonate with the nature and size of the buildings and the uses surrounding it, the motorway, and the nearby electricity pylons. As I have set out, it would be much taller than anything around it but it would be relatively slender and if properly proportioned (a matter that can be addressed through a condition) it could attain a degree of elegance. A careful choice of coloured finish could also allow it to blend in against the background.
6. On this basis, I take the view that the wind turbine would not appear incongruous in immediate or wider views, including those from Oakwell Hall and the surrounding Country Park and points to the north of the motorway. It would cause no harm, therefore, to the character or appearance of the surrounding area and, as a result, comply with Policies D2, BE1 and BE2 of the Kirklees Unitary Development Plan (UDP) that, in simple terms, require development proposals to respect their context and Policy EP8 that refers similarly to wind turbines.
7. As set out, because of its height and the elevated nature of the site, the wind turbine would be prominent in views from surrounding settlements and Birstall in particular. That it would have some visual impact is inescapable. However, I do not consider that its visual impact would be dominant or overbearing. I reach that conclusion because there would be a relatively significant degree of separation from residential areas and the foreground of views from those areas would also take in other elements such as buildings and electricity pylons.
8. Issues have also been raised by local residents about the potential effects of noise from the wind turbine. Paragraph 22 of Planning Policy Statement 22: *Renewable Energy* (PPS22) confirms the Government position that ETSU-R-97: *The Assessment and Rating of Noise from Wind Farms* should be used to deal with noise from wind energy development. The evidence of the appellant, which the Council does not dispute, shows that the wind turbine would operate well within the levels that ETSU-R-97 would tolerate.
9. The evidence shows that shadow flicker might be an issue but it seems to me that as the Council suggests, this can be dealt with through a condition. Any interference with televisions can be addressed in a similar fashion.
10. On this overall basis, I consider that the proposal would have no significant impact on the living conditions of local residents by dint of its visual impact, noise and disturbance, or other matters. On this basis, the proposal complies with UDP Policy D2 that seeks to protect residential amenity generally and Policy EP8 that does likewise in relation to wind turbines. It would also comply with UDP Policies EP4 and EP6 that refer in specific terms to noise.

### **Other Matters**

11. Concerns have been raised about traffic generation but once operational, the wind turbine would have no significant impact in these terms. Clearly, the delivery of the wind turbine and the equipment necessary to facilitate its erection would have the potential to create difficulties but the details submitted show that this would be possible without undue disruption to the highway network. A condition can be applied, as suggested, to address this matter.

12. I note also the concerns raised about driver distraction given the proximity of the site to the motorway. Given its height and moving blades, the wind turbine would attract views. However, it would be visible from some distance away on either approach so it would not come as a surprise to drivers. Moreover, wind turbines have become recognisable features of the landscape in various parts of the country so I do not consider that its manifestation would be a significant novelty.
13. As a consequence, I do not believe that the proposal would cause any difficulties in highway safety terms and I note that the Highways Agency makes no objection either. On this overall basis, I am content that the proposal complies with UDP Policy T10 that addresses safety and the highway network.
14. In terms of blade throw and the possibility of collapse, the Companion Guide to PPS22 sets out that a wind turbine erected in accordance with best engineering practice should be a stable structure. I have no reason to suspect that the wind turbine would not be erected in this manner and the site would be sufficiently distant from residential areas to offset any great difficulty in this regard. The Highways Agency raises no concern in terms of the motorway.
15. Points have been made about the effect on house prices in the area but the planning system does not exist to protect the private interests of one landowner against those of another. Similarly, existing activities on the site may cause some difficulties for local residents but these activities are not engaged by the appeal before me except in so far that the wind turbine might provide power for those activities from a renewable source.
16. In that context, the renewable energy targets set out in the Yorkshire and Humber Regional Spatial Strategy (RSS) attract no weight because it has been abolished. Nevertheless, key principle (iv) of PPS22 states that the wider environmental and economic benefits of all renewable energy projects, whatever their scale, are material considerations that should be given significant weight in determining whether proposals should be granted planning permission. Key principle (i) of PPS22 sets out that renewable energy development should be capable of being accommodated throughout England in locations where the technology is viable and environmental, economic and social impacts can be addressed satisfactorily. Given my findings on the main issues, the scheme accords with key principle (i). On that basis, the benefits that would flow from it attract significant weight, as set out in key principle (iv).

### **Conditions**

17. I have considered the conditions suggested by the Council in the context of advice in Circular 11/95: *The Use of Conditions in Planning Permissions*, amongst other things. I have made a number of amendments to those conditions suggested in the interests of precision.
18. Planning permission has been sought for a period of 25 years. A condition is necessary to deal with that and subsequent decommissioning. Similarly, a condition is required to deal with the possibility that the turbine might cease to operate for a continuous period of 12 months, other than for reasons of repair or replacement.

19. It is necessary to apply conditions to deal with notifications to the Civil Aviation Authority and the Ministry of Defence, illumination of the turbine and the nature of cabling. Similarly, conditions are required to secure details of the wind turbine, and the electrical enclosure and the building within it, for approval.
20. As set out, it is reasonable to apply conditions to set up protocols to deal with any difficulties that may arise from the development in terms of television interference and shadow flicker. While some details were submitted with the originating application, it seems to me necessary to apply a condition to deal with the management of construction and delivery traffic. Finally, a condition is required to specify the approved plans. I have limited this to plans and figures and omitted reference to the photomontages that are but representations.
21. The Council has also suggested a condition to deal with any noise from the turbine. However, on the basis of the appellant's uncontested evidence, predicted noise from the wind turbine would be well below the maximum levels acceptable under ETSU-R-97. In that context, the suggested condition can only be precautionary. It has not therefore been shown to be necessary, as is required by Circular 11/95. For that reason, I see no reason to apply it.

### **Conclusion**

22. The proposal would cause no harm to the character or appearance of the surrounding area, the living conditions of local residents, or in terms of any other matters identified. The benefits that would flow from the production of renewable energy attract significant weight.
23. For these reasons, I conclude that the appeal should be allowed.

*Paul Griffiths*

**INSPECTOR**

## **Annex A: Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The permission hereby granted shall endure for a period of 25 years from the date when electricity is first generated by the wind turbine (the 'First Export Date'). Written confirmation of the First Export Date shall be provided to the local planning authority no later than 1 calendar month after the event.
- 3) Not later than 12 months before the end of this permission, a decommissioning scheme shall be submitted for the written approval of the local planning authority. The decommissioning scheme shall include details of the operations, the equipment to be employed, traffic management and an implementation programme. The approved scheme shall be completed within 24 months of the expiry of this permission.
- 4) If the turbine hereby permitted ceases to operate for a continuous period of 12 months (unless this is due to the turbine being under repair or replacement) it shall be removed from the site in accordance with a decommissioning scheme which shall be submitted to and approved in writing by the local planning authority within 3 months of the end of that 12 month period. The approved scheme shall be implemented within 12 months of the date of its approval by the local planning authority.
- 5) Before development commences, the operator shall provide written confirmation to the Ministry of Defence and the Civil Aviation Authority of the expected date of erection of the turbine, its height above ground level and its latitude and longitude.
- 6) The wind turbine shall not be illuminated.
- 7) All cabling between the turbine and the electrical enclosure shall be laid underground.
- 8) Notwithstanding condition 13, the wind turbine shall not be erected until details of its design, finish and colour have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details. No name, sign, symbol or logo shall be displayed on any external surfaces of the turbine other than those required to meet statutory health and safety requirements.
- 9) Notwithstanding condition 13, the electrical enclosure and the building within it shall not be erected until details of their design, finish and colour have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 10) Prior to the First Export Date, a scheme setting out a protocol for the assessment of any interference to television reception as a result of the development approved herein, in the event of any complaint being received, including the remedial measures to be taken, shall be submitted to and approved in writing by the local planning authority. Operation of the wind turbine shall take place in accordance with the approved protocol.

- 11) Prior to the First Export Date, a scheme setting out a protocol for the assessment of shadow flicker in the event of any complaint being received, including the remedial measures to be taken, shall be submitted to and approved in writing by the local planning authority. Operation of the wind turbine shall take place in accordance with the approved protocol.
- 12) Notwithstanding condition 13, no development shall take place until a traffic management scheme has been submitted to and approved in writing by the local planning authority. The scheme shall include details of the routing of construction and delivery vehicles, a programme, details of works required within the highway and of any temporary traffic management and/or safety measures that may be necessary. The development shall be carried out in accordance with the approved details.
- 13) The development hereby permitted shall be carried out in accordance with the following approved plans: Figure 1: Site Layout; Figure 1.1: Site Layout Boundary; Figure 1.2: Location Plan; Figure 2: Proposed Turbine; Figure 3: Typical Hardstanding Details; Figure 4: Typical Road Construction; Figure 5: Typical Piled Turbine Foundation; Figure 6: Typical Turbine Foundation; Figure 7: Typical Component Vehicles; Figure 8: Typical Component Vehicles; Figure 9: Typical Component Vehicle; Figure 10: Typical Electrical Enclosure; Figure 11: HGV Access Route; WPENGd741A: Swept Path Analysis MM92 Blade Gelderd Rd & Oakwell Way; WPENGd743A: Site Entrance Land Take; WPENGd743A: Site Entrance Land Take; WPENGd744A: Gelderd Road Roundabout with Holden Ing Way; WPENGd768A: Swept Path Analysis (MM92 Blade) M62 West Bound; and WPENGd769A: Swept Path Analysis (MM92 Blade) M62 East Bound.