

***255 City of Bradford Metropolitan Council v
Gillson and Sons**

Inquiry: September 1, 2, 15, 1994 *Decision*
letter: December 1, 1994 *Inspector:* R.
P. Brooks, BA(Hons)
MRTPI *Ref:* T/APP/W4705/A/94/236581/P
7 *Appln. No.:* P93/6/00739

Acts: TCPA 1990, s.78, Sched. 6 [Local Government Act 1972](#), s.250(5) *Circulars:* 8/93, 10/73 *PPGs:* 2 and 22 *British Standards:* BS4142

Proposal for renewable energy development—Government policy to replace energy from burning of fossil fuels to reduce emission of greenhouse gases to 1990 levels by the year 2000 A.D.—wind energy one such source of renewable energy—consideration of adverse features—impact on landscape—national and local planning policies—noise—appeal dismissed

1.0

Facts

1.1 The appeal was against the failure of the Council to determine within the prescribed period an application for permission for the erection of three wind turbines on tubular steel towers at Naylor Hill Quarry, Black Moor Road, Haworth, West Yorkshire.

1.2 The original proposal was for the erection of the three turbines on a north/south alignment along the eastern boundary of the appeal site. That proposal was amended by transferring the central turbine to the northern boundary of the site and later by the omission of that turbine. There was no objection by the Council to the inquiry proceeding on the basis of the two turbines. 2.0

The appeal site and its surroundings

2.1

“4. Your client's land comprises an area of some 8.2 ha. (20.2 acres) on Brow Moor, about 1 km. south-east of the historic core of Haworth village, and above the valley of the Bridgehouse Beck. The east side of the valley rises steeply from Haworth to Brow Moor Edge, a pronounced shoulder above Black Moor Road, from which point the Moor, including the appeal site, slopes more gently upwards towards the east and south-east. The natural landform of the Edge has been disturbed by your clients' longestablished stone quarry east of the road, which has a working face some 17 m. high facing out over the valley, and a number of buildings on the quarry floor and nearby. There are current planning permissions for extension of the quarry into the Moor to the north and east; these expire at the end of 1997 and 2000 respectively and conditions require restoration within two years of those dates.

5. The two proposed turbines would be sited to the east of, and above, the quarry and a short distance beyond the extremity of the area proposed to be ***256** excavated. They would have three-bladed rotors, 39 m. in diameter, mounted on tubular towers 40.5 m. high to the hub; total height to the highest point of the swept area would be 60 m.

6. Immediately north of the quarry, and on high ground close to Black Moor Road, is an existing turbine owned by your clients which is similar in appearance to those now proposed, though smaller; it is 30.5 m. high to the hub, with a rotor of 27 m. diameter and a total height to the tip of the blades of 44 m. Planning permission was granted retrospectively for this machine in April this year.

7. An evidently well-used public footpath runs along the south-eastern edge of Brow Moor, which coincides with the boundary of your clients' land, and links Brow Moor Road to Haworth Road (B6144) to the north-east. A further right of way connects with this path a short way east of the appeal site, running north-west over the Moor and passing close to the site of the northernmost proposed turbine. An overhead electricity transmission line on wooden poles runs parallel to this latter path.

8. Brow Moor is bounded by a landscape of rectilinear fields, enclosed by drystone walls, with scattered farmsteads. The nearest dwellings to the proposed turbines are Upper Naylor Hill Farm (220 m.) to the south; Moor End Farm (310 m.) to the north-west; and Naylor Hill Farm (330 m.) and Hawkcliffe Farm (360 m.) to the south-west and west. Lower Brow Farm to the north; and Laveroc Hall Farm, Bleak House Farm and Mount Pleasant Farm to the east and south-east; are all 450 m. or more away. More extensive housing climbs the valley side from Haworth towards the north-west corner of the Moor, but the nearest such dwellings are some 400 m. from the proposed turbines and at a considerably lower level below Brow Moor Edge.”3.0

The local planning policy context

3.1

“9. The Development Plan comprises the Keighley (Haworth) Town Map of the West Riding of Yorkshire Development Plan, approved in 1963, and the West Yorkshire County Structure Plan of 1980. In the former the appeal site is included within an Area of Great Landscape Value covering an extensive tract of upland east of the Bridgehouse Beck. In the Structure Plan it lies within one of a number of broadly-defined Special Landscape Areas where development will normally be accepted only if it would not adversely affect the visual character of those Areas. It is also in the West Yorkshire Green Belt, approved on an interim basis in 1972 and subsequently endorsed in the Structure Plan.

10. In the draft Upper Airedale Local Plan, published in 1983/4, the appeal site lies within both the Green Belt and an Area of Local Landscape Significance covering Brow Moor. Such Areas were defined as providing an attractive landscape setting for towns and villages where, because of their prominence, special care was to be taken over the siting and design of development; policy UA/EN10 states a general presumption against development which would have an adverse visual impact. The draft Plan was the subject of a public inquiry in 1988, and subsequent inspector's report, but further progress towards statutory adoption was arrested by commencement of work on the Bradford Unitary Development Plan (UDP).

11. The UDP has completed its deposit stage and a public inquiry into objections is to commence in Spring 1995. Policy NR8 states that wind *257 turbine proposals will normally be permitted subject to a number of criteria, namely that they will not adversely affect the character of the landscape, particularly in Special Landscape Areas, or undeveloped upland or moorland; that special attention is paid to their relationship to other such developments locally; that there are no unacceptable noise problems to local residents; that the visual impact of the turbines is minimised; and that they are removed if they cease operation. The UDP carries forward the green belt notation of earlier plans and also includes the appeal site in a Special Landscape Area where, under policy EN14, development will not be permitted if it would adversely affect the visual character. Definition of such areas draws on landscape appraisal work originally carried out for the West Yorkshire County Structure Plan and subsequently refined in detail at local level; on Brow Moor the boundaries of protected areas in previous plans have been revised to more accurately reflect the extent of the heather moorland and the presence of Naylor Hill Quarry.

12. To amplify UDP policy NR8 the Council has published draft Supplementary Planning Guidance (SPG) on Wind Turbine Developments. This advises, inter alia, that turbines may be more appropriately sited in enclosed upland or degraded landscapes rather than on open moorland or in historic landscapes such as the unspoilt moors west of Haworth, with their associations with the Bronte family. Detailed criteria to be applied to siting include visibility from key viewpoints; relationship to landform; size, number and finish of turbines; and cumulative impact. Criteria on noise impact set limits to increases in background noise levels at existing dwellings, together with ceiling levels for noise during both day and night.

13. Turning to the weight to be accorded to these various policies, those on green belt and landscape protection are of long standing, and the former have been consistently applied through successive plans. Although detailed changes have been made to the boundaries of protected landscapes, and to associated policies, the broad purpose of such protection has remained constant and I see no reason to question inclusion of the appeal site within a Special Landscape Area in the draft UDP. It forms a significant and

prominent part of the heather moorland of Brow Moor, which is an important element in the landscape setting of Haworth. Nor was the general relevance of the protection policies convincingly challenged at the inquiry. Accordingly I give weight to these policies in this case.

14. Less weight can be accorded to the current UDP policy on wind turbines (NR8), and to the supporting SPG, in view of their draft status. A number of objections have been lodged to the former, and aspects of the latter, notably the noise criteria, are likely to be amended in the light of recently completed public consultations. However, with the proviso that both require further testing in detail, I consider that they are broadly successful in applying national advice in PPG 22, *Renewable Energy*, at local level and that they are relevant to this appeal.” 4.0

Planning issues

4.1 The inspector considered there were three principal planning issues as follows:

“(i) the impact which the proposal would have on the character and appearance of the surrounding landscape, having regard to local planning policies; *258

(ii) the effects of the proposals on the living conditions of nearby residents in terms of possible noise and disturbance;

(iii) whether, if serious harm would be caused in either of these respects, it would be outweighed by the contribution which the proposal could make to satisfying the demand for electricity in the light of national policy on developing renewable energy sources.”5.0

Landscape impact

5.1

“16.It was acknowledged by both main parties at the inquiry that judgment on landscape impact must to a large extent be subjective. However, I have sought to make it as broad-based as possible, firstly, by viewing the appeal site from a wide range of vantage points

under different light and weather conditions; and secondly, by informing my own observations with the detailed appraisals submitted to the inquiry, notably the photomontages and assessments of zones of visual impact.

17. I do not disagree with the view expressed for the Council that wind turbines of the type proposed are an acceptable use in principle in the green belt. They are slender structures which need to be fairly widely spaced, in open and exposed locations, for operational reasons. They are thus unlikely to prejudice the main purposes of the green belt as set out in PPG 2. However, that Note also states that the visual amenities of the green belt should not be injured by development proposals which, though they would not prejudice its main purpose, might be inappropriate by reason of their siting, materials or design. This is reiterated in PPG 22, with the further advice that the desirability of exploiting renewable energy resources must always be weighed against the visual impact of turbines on the landscape, and that such assessment should be made on a site-specific basis.

18.Differing opinions were expressed at the inquiry on the scale and design of wind turbines and their acceptability in English landscapes. I regard those proposed as strong, simple and well-designed engineering forms which follow in the tradition of many early industrial structures which were first regarded as revolutionary but which are now accepted and widely cherished as features in the landscape. In landscapes which are largely man-made such evolution appears to me to be both inevitable and desirable.

19. However, there are distinctive features of wind turbines, notably their large size, prominence, strong vertical emphasis and characteristics of movement, which require careful assessment against local landscape character. The broad valley in which Haworth lies, together with other similar valleys nearby, is deeply incised into the plateau of the Pennine moors. Those moors are both an intrinsic part of the landscape character in their own right, and an important element in the setting of local towns and villages. Seen from below, their well-defined skylines, emphasised in places by strong scarps such as Brow Moor Edge, provide a strong sense of enclosure to the valleys. Viewed from above, they provide an expan-

sive setting for the more enclosed and developed landscapes of the valleys, and a feeling of space. With the exception of the existing single turbine at Naylor Hill, and distant views of electricity pylons and of the wind turbines on Ovenden Moor to the south, there are few strong vertical features to break the horizontal line of the moorland horizon. The electricity transmission line across Brow Moor does not do so, being small in scale and having little impact on either short-range or distant views. *259

20. Within about 2 km. radius of Naylor Hill Quarry the principal points from which the proposed turbines would be seen are to the west of the Bridgehouse Beck valley, including parts of Haworth, Marsh Lane to the south, and Penistone Hill Country Park; and, to the north and east, from on and around the A629 and B6144 roads, as well as from Black Moor Road itself. They would not be seen from Main Street, Haworth, except towards its southern end, but would be visible from immediately south of the Parsonage and, in the winter, from the Parsonage itself, through the trees around the churchyard. The existing turbine is prominent in all views which would embrace the proposed structures, and the quarry is also clearly seen in most of them. These features must therefore be material considerations; Council officers have acknowledged this, as well as drawing attention to the extent of human influence on the surrounding landscape.

21. However, whilst the existing turbine attracts attention over a wide area, it appears very much as a single and isolated landmark, quite closely related visually to the quarry. Erecting two further turbines close by, which would be both significantly taller and higher up on the Moor, would create a major complex of machinery which would be particularly intrusive in short-range views, especially from the west. From a number of such viewpoints the turbines would be seen on the skyline in a way which would emphasize their massive size, compared with other landscape features, and directly conflict with the strong horizon of Brow Moor. The intrusiveness of the three turbines together would be further emphasized by the insistent motion of the rotors, which I noted as a particularly eye-catching feature of the Ovenden Moor turbines. Even allowing for the fact that this is a much larger scheme, it is also a considerable distance away, whereas the current proposals would be seen at fairly close quarters from areas which are both well-populated and frequented by many visitors.

22. So far as the Naylor Hill Quarry is concerned, although this is clearly seen in short-range views from the west, I did not see it as unduly prominent or intrusive and I do not share the view, advanced for your clients, that it degrades the landscape. With increasing distance the prominence of the associated buildings and structures reduces significantly, giving the quarry face more of the appearance of a natural rock outcrop on the Moor edge. I do not regard its presence as justifying the appeal proposal; rather, to construct two more turbines is likely to draw further attention to the quarry. I have also borne in mind that quarrying is essentially a transient feature and that, although a formal restoration scheme has not yet been submitted, your clients and the Council have evidently discussed the broad form it could take.

23. The prominence of the appeal proposal in middle distance views, from 2–5 km. away, would depend largely on the height of the observer, relative to that of the site. For example, seen from Oxenhope Moor to the south-west, the turbines would be relatively inconspicuous against the background of high ground to the north, but descending the Hebden Bridge road (A6033) into Oxenhope, they would become increasingly visible, ultimately being clearly outlined against the sky. With increasing distance their apparent scale would progressively reduce, though from some viewpoints, notably in and around Oakworth, they would be seen in conjunction with the Ovenden Moor windfarm on the horizon to the south. In my view this cumulative impact would tend to give an impression of wind turbine development impinging on the Haworth area from different directions, significantly *260 reducing the openness of the encircling upland landscape. Over 5 km. I do not consider that the appeal proposal would have any significant landscape impact, because it would either be dwarfed by distance or concealment by intervening high ground.

24. The Council and some objectors have argued that special weight should be given to protecting the character of the landscape around Haworth because of its importance to both the local tourist trade, and to the literary works of the Brontës. These two issues are clearly inter-related; ample evidence was given of how associations with the Brontës have attracted visitors to the area for well over a century, and of the special affinity which they felt for the moorland

landscape and reflected in their writing.

25. The considerable scale of the tourist industry in and around the Worth Valley, and its contribution to the local economy, have been well documented and were not challenged at the inquiry. It was estimated that 1 m. visitors come to Haworth each year, of whom 60 per cent are from abroad; in 1993 a total of over 550,000 visitors were recorded at five local attractions, including the Parsonage and the Keighley and Worth Valley Railway. Tourism was reckoned to account for about a third of employment in the Worth Valley, holding unemployment rates there well below those of Bradford as a whole.

26. Within these global figures it is difficult to determine with any certainty the effect which approving your clients' proposal would have on the tourist trade, or to isolate the particular significance to that trade of Brontë associations. The arguments of the Council and others that potential visitors would be directly deterred were not supported by any tangible evidence. Any losses in this respect might well be balanced by those attracted by the striking and novel aspects of the turbines themselves, though there also evidence was limited and generally inconclusive. Haworth has clearly changed substantially since the Brontës' time and it was reasonably argued for your clients, and by their supporters, that it was a living community where desirable change should not be stymied. Also, whilst the Brontë associations are clearly a strong tourist attraction, they are by no means the only one; the Council produced figures showing that the Keighley and Worth Valley Railway received significantly more visitors than the Parsonage.

27. However, it seems to me that, given the literary status of the Brontës, the particularly close association between their writings and the local landscape is an issue which extends somewhat wider than its direct implications for tourism, and which can properly be taken into account in this case. It cannot preclude change, but does justify scrutinising it with special care. Although not within the extensive moors west of the village most closely associated with the Brontës, Brow Moor is a characteristic element in the local moorland landscape, prominently situated and visible from parts of Haworth and its surroundings which are well frequented by visitors. In my view the substantial extension of development onto open land which your clients' proposal would represent would

significantly harm the quality of many visitors' experience of the local scene. It would detract from their enjoyment of an area which, despite significant change, still retains many of the qualities of space, solitude and open vistas reflected in the Brontës' work, and which remain powerful attractions to-day." *261 6.0

Noise

6.1

"28.PPG 24, *Planning and Noise* had been published since the inquiry but does not appear to me to contain any issues relevant to this appeal over and above those considered at the inquiry with reference to PPG 22, British Standard (BS) 4142, and the then extant Circular 10/73, *Planning and Noise*. I have therefore relied upon the latter documents, together with the noise assessments provided by both main parties.

29.PPG 22 does not contain a methodology for assessing turbine noise, but recommends that planning applications should be accompanied by a range of acoustic information, including predicted noise levels at nearby properties over the most critical range of wind speeds, together with measured background noise levels at those properties. Although my assessment has been assisted by the agreed predicted levels submitted during the inquiry, it has been hampered by the limited data on measured background levels. Your clients submitted only 11 single L A90 readings taken at six locations, together with a plot of background levels against hourly mean wind speed at one property; the Council had carried out no noise measurements, the evidence of their principal acoustics witness being primarily a critique of your clients' case.

30. The Council's initial position was that the predicted noise from the two proposed turbines should be assessed against background levels without the noise from the existing turbine. I understand the justification for this approach, namely that the existing turbine is a single noise source which has caused some complaints, and that it is important to guard against a creeping increase in ambient noise levels, as advised in Circular 10/73. Nevertheless

less, the single turbine exists and is likely to be operational at the same times as the proposed machines; it appears illogical to ignore it. Also, I have seen no clear evidence to support the very low background noise levels, possibly down to 20–25 dB(A) L_{A90} over a 24-hour period, which the Council suggested might apply in the absence of the existing turbine. My own appraisal of the character of the surrounding area, admittedly empirical, is that such levels are unrealistically low. The best basis for assessment therefore appears to me to be the calculated but agreed background levels produced at the Inquiry, which take account of the existing turbine.

31. Taking the closest properties, the agreed figures predict that the appeal proposal would cause an increase in noise levels of some 5 dB(A), to 37–39 dB(A) L_{A90}, at both Upper Naylor Hill Farm and Naylor Hill Farm. The Council considered this a large increase, bearing in mind existing levels. At Moor End Farm and Lower Brow Farm there would be increases of around 2 dB(A), to 41 dB(A) L_{A90}; both sides agreed that this would be perceptible, but your clients' witness did not consider that it would be intrusive. No significant increase was foreseen at Hawkcliffe Farm. Absolute increases at properties further from the turbines would be high, but the new levels would still be modest, in the range of 30–32 dB(A) L_{A90}.

32. It is difficult to judge how the predicted increases at the nearest dwellings would be perceived, particularly bearing in mind that attitudes to noise vary between individuals and contain a large subjective element. Attempts at the inquiry to establish whether or not the turbines would emit perceptible mechanical noise, of a tonal nature, were inconclusive. My own view, having heard both your clients' existing machine and those at Chelker Reservoir, is *262 that the noise is principally aerodynamic in origin, consisting of a rhythmic “threshing” sound from the turning of the rotor.

33. The owner of Hawkcliffe Farm accepted that such noise from the present turbine was not loud, and varied according to wind conditions, but he considered it to be annoying and intrusive. I can understand this, and also that comparisons with noise

from nearby roads are of limited validity; such noise would tend to reduce significantly at night whilst that from wind turbines could continue as long as wind speed exceeded cut-in level. However, even allowing for the possibility that the predicted increases of 2–5 dB(A) are on the low side of what could be experienced at full operation, and for the fact that the site is in a generally quiet rural area, I do not regard increases of this magnitude as unacceptable. BS4142 advised that increases of 5 dB(A) are likely to be of marginal significance and, whilst accepting the limited applicability of the Standard to wind turbines, this particular advice appears to me to be a sound and generally applicable yardstick. It is also noteworthy that the agreed predicted levels would comply with the Council's SPG standard of 42 dB(A) L_{Aeq} for night-time levels, though I was told that this particular criterion could be omitted from the Guidance in its final form. If a penalty for tonal noise was not applied, the standard for relative increase would also be met.

34. I have taken account of the possibility that, because of shelter from wind and its associated noise, background levels at nearby properties could remain low even when the wind speed at hub height on the turbines was well above cut-in. This effect, referred to in paragraph 42 of the Annex to PPG 22, would tend to exacerbate the effects of noise on residents. There is insufficient data to support a clear conclusion one way or the other, but few of the properties concerned seem so sheltered that this factor would be influential. In most cases the effect of any localised sheltering due to landform could well be outweighed by the noise of wind through vegetation in and around gardens, and of turbulence around buildings. Overall, on the evidence before me, I am not convinced that the noise from the proposed turbines would be so loud or disturbing as to constitute, in itself, a reason to refuse planning permission.” 7.0

Inspector's conclusions

7.1

“35. Having reached the above conclusion on the issue of noise, I turn to whether the contribution which the proposal would make to satisfying the demand for electricity, in the light of national policy on developing renewable energy resources, would out-

weigh what I have identified earlier as its harmful impact on the landscape. PPG 22 states that it is Government policy to stimulate the exploitation and development of renewable energy sources wherever they have prospects of being economically and environmentally acceptable. To do so will contribute to limiting emissions of greenhouse gases from burning fossil fuels; the Government is committed to take measures aimed at returning such emissions to their 1990 levels by A.D. 2000. Its aim is to work towards a figure of 1,000 Megawatts of new electricity generating capacity from renewable energy sources by the latter date. Wind energy has emerged as one of the more promising sources of renewable energy in Britain and there is no doubt about the technical feasibility of harnessing it. *263

36. Although neither main party submitted any substantive evidence on this issue at the inquiry, it was part of your clients' case that the proposal would be an efficient, clean and safe source of electricity, which would go some way to satisfying national policy and to limiting expansion of generation by nuclear power. Supporters drew attention to public concern about atmospheric pollution locally, which caused respiratory problems and acid rain. Wind power was seen as a way of countering such problems, both now and for the benefit of future generations. Friends of the Earth sought a more positive attitude to development of wind power, which could help achieve the target of a 30 per cent reduction in carbon dioxide emissions by A.D. 2005, set out in their Climate Resolution. It was argued that there was widespread local support for development of wind power, as evidenced in responses to newspaper polls, but that supporters would not necessarily pursue their case as vocally as opponents.

37. I have carefully considered all these matters and it is self-evident that the electricity generated by your clients' proposal would contribute to the total supply from renewable sources and, to that extent, would further Government policy. It is also clear that wind power can only be exploited where the wind is of sufficient speed, duration and reliability; sites which meet such requirements should not be lightly discounted. However, in this case I consider that there are cogent objections on landscape grounds. Seen from a range of viewpoints, particularly to the west and north-west, the two proposed turbines would be seen

in combination with the existing machine in a way which would create an intrusive and incongruous feature on Brow Moor. That Moor, though of limited extent, is important to the setting of Haworth and to the wider landscape of the Pennine uplands. Though acknowledging that such landscape has evolved over the years, and will continue to do so, such radical change requires particular scrutiny because of the proximity of the site to Haworth, the close associations of the Moors with the works of the Brontës, and the importance of the latter in the national cultural history.

38. To the harm which would be caused to the landscape directly must be added that which would arise to the aims of local planning policies. Such policies for protecting landscape character have been carried forward through successive plans and appear to me to be generally well-founded and in line with national advice on safeguarding the countryside for its own sake. To approve the appeal proposal would be likely to call into question the consistency and validity of this approach and could encourage submission of further proposals for harmful change which would be progressively more difficult for the Council to resist. The contribution which 2,500 kw. turbines would make to national energy supply, and to achievement of national policies on renewable energy, is tangible but limited. I consider it to be insufficient to outweigh the serious harm which the proposal would cause to the character and appearance of the surrounding landscape, having regard to local planning policies.

39. I have considered all the other matters raised at the inquiry and in written representations. These include the officers' original recommendation of approval for your clients' proposal; possible implications for the local ecology, water supply, television reception and public safety; and the suggested conditions. On the first matter, it was evident that views of officers differed, particularly on landscape impact, but this is not surprising given the element of subjectivity in such appraisal." *264 8.0

Decision: Appeal dismissed

8.1

"40. I have seen no compelling evidence that the proposal would cause undue problems on the detailed matters I have referred to. The site is not

within an area protected for its natural history importance and English Nature have not objected; neither the relatively small foundations for the turbines, nor the proposed access arrangements, would be likely to seriously harm the peat layer or water table, and I have seen nothing to contradict advice in PPG 22 that dangers to birds would be minimal. Possible risks to television reception or public safety do not appear to be sustainable planning objections in this case, especially in the light of guidance in the same Note. However, that these factors do not weigh against the proposal does not affect my conclusion on landscape impact. I have considered whether conditions could be applied which would reduce such impact to an acceptable level, but attention to colour and finish, however careful, could not ameliorate the effects of scale and siting which I regard as particularly harmful in this case.” 9.0

Costs

Application by appellant

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2. “In support of your clients' application it was argued that the Council had acted unreasonably in failing to determine the planning application. Such failure constituted a deemed refusal of permission and was analogous to the unreasonable refusal of planning permission referred to in paragraph 7 of Annex 3 to Circular 8/93 . The full costs of bringing the matter to the inquiry were sought.

3. If the application for full costs was not sustained, the Council should pay the appellants' costs involved in refuting the evidence of the Council's acoustics witness, Dr Bullmore. The latest date for exchange of proofs of evidence was August 10, but Dr Bullmore's proof was dated August 22 and it was not sent to the appellants until August 25 or 26. No explanation had been given for this late submission, which had involved the appellants' expert witness, Mr Kenyon, in considerable extra work; it was unreasonable conduct by the Council in the terms set out in paragraph 6 of Annex 1 to Circular 8/93 . Costs were not sought in a punitive spirit but as compensation for being treated in an unreasonable and flippant way. The partial award

should cover the cost of Mr Kenyon's services following receipt of Dr Bullmore's proof, together with any associated costs.”

Council's response

9.2

“4.In response to the application for a full award of costs, the Council argued that failure to determine the application was not inherently unreasonable; it simply robbed them of jurisdiction over it. Clear and substantive evidence had been produced in support of the Council's case.

5. On the application for partial costs, it was acknowledged that Dr Bullmore's proof had been submitted late, but it was not clear that this had necessitated any additional work on behalf of the appellants; the same issues would have had to be addressed had it been on time. Costs could only be properly awarded if unreasonable conduct had led to additional expenditure. Had an adjournment been sought and granted, award of some costs might have been justified, but the appellants did not seek such an *265 adjournment, evidently considering that they could adequately deal with the matter in the time available.”

Inspector's decision: application for costs refused.

9.3

“7.Paragraph 2 to Circular 8/93 sets out the circumstances under which a Council's failure to determine a planning application may result in an award of costs against them. The applicant should receive a proper explanation of the reason for any delay, and in an appeal the Council will be expected to show that they had specific and adequate reasons for not reaching a decision within the time limit; failure to do so could result in an award of costs, as could failure to produce evidence to substantiate each of their stated reasons why they would have refused planning permission.

8.Consideration of the appeal application, submitted in February 1993, was evidently delayed by the Council's subsequent request for an environmental assessment. This was completed in September 1993

and the application finally came before members on February 28, 1994, together with several other proposals for wind turbines in the District. At that meeting it was resolved to defer consideration of all the applications to allow further consultations, notably with parish councils and neighbourhood forums. Your clients were accordingly asked on March 8 to agree an extension of time for consideration but they decided to appeal against nondetermination.

9. Whilst your clients could justifiably feel frustrated that their application remained undetermined a year after submission, I do not regard the Council's requests for additional information and consultation as inherently unreasonable given that wind turbine proposals were still fairly novel in the District and could be expected to create considerable public interest. Also, because of the number of such proposals received, it was logical for members to consider them together so far as practicable. In my view the Council had specific and adequate reasons for not reaching a decision within the time limit. At the inquiry they supported their case with detailed evidence on landscape, policy and noise and were able to substantiate why they would have refused planning permission. Although there appear to have been considerable delays in processing the application, notably between September 1993 and February 1994, the Council's overall behaviour was not unreasonable and a full award of costs is therefore not justified.

10. Turning to the application for a partial award, it was clear to the Council from an early stage in the progress of the application that your clients had considered the issue of noise in some detail. Accordingly, and in view of the amount of time available to them for preparation, it was unreasonable for the Council not to forward the proof of evidence of their acoustics witness until a week before the inquiry. However, it is not clear that this posed any particular problems in preparation of your clients' case. No application was made for adjournment of the inquiry and no evidence has been submitted of expenditure attributable to the late submission, over and above that which would have been incurred in any case in responding to the Council's acoustics evidence and presenting that of your clients. I therefore conclude that the application for a partial award of costs is not justified."10.0

Comment

10.1 In the Inspector's opinion the significant adverse impact on landscape was paramount. *266

10.2 See also *Bradford Metropolitan Council and Woodhead and Sons Ltd* (above, p. 243) and *Bradford Metropolitan Council and Feather* (below, p. 267). *267
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