

(1995) 10 P.A.D. 267
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 (Cite as: (1995) 10 P.A.D. 267)

*267 City of Bradford Metropolitan Council v Feather

Inquiry: September 14, 15, 1994 *Decision letter:* December 6, 1994 *Inspector:* R. P. Brooks, BA(Hons), MRTPI *Ref.:* : T/APP/W/4705/A/94/236582/P7 *Appln. No.:* 93/6/03819

Acts: TCPA 1990, s.78, Sched. 6 [Local Government Act 1972](#), [s.250\(5\)](#) *Circulars:* 8/93, 10/73 *PPGs:* 2, 22, 24 *British Standards:* BS4142 *British Research Establishment Information Papers:* 1P/21/93

Renewable energy resource proposal—thought to make worthwhile contribution to national target for reduction of greenhouse gases emissions from burning of fossil fuels—adverse impact on landscape and local residents amenities' from 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 the erection of three wind turbine generators on tubular steel towers together with an electrical sub-station and cables at Cuckoo Park Quarry, off Black Moor Road, Haworth, West Yorkshire.

1.2 The proposed development was subsequently amended by the deletion of the westernmost turbine, no. 3. The Council had considered the proposal as revised and the appeal proceeded likewise. 2.0

Appeal site and its surroundings

2.1

“4. The appeal site is an area of rough pasture, about 200 m. by 500 m. at a height of just under 300 m. AOD, some 2 km. south-east of the historic core of Haworth village, and above the valley of the Bridgehouse Beck. The land falls steadily north and north-eastwards from the southern

boundary, though natural levels in the eastern half of the site have been disturbed by past quarrying activities which have left deep rock faces and spoil heaps, the latter now largely overgrown. Vegetation includes rough moorland grass, rushes and sedges, and heather.

5. The proposed turbines would be about 150 m. apart, close to the eastern boundary of the site. 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. Beyond encircling drystone walls, the site is bounded to the west by a minor road, Black Moor Road; to the north and south by fields of permanent pasture; and to the east by Black Moor, an extensive area of open, heather and bracken-clad moorland which falls eastwards to Halifax Road (A629). *268 Two rough tracks, Cuckoo Park Lane and Crumack Lane, link Black Moor Road to Black Moor, giving access to a number of rights of way over the latter. On Halifax Road, some 500 m. east of the site, is an extensive area of former quarries and spoil heaps, now largely overgrown but used for motorcycle scrambling.

7. The nearest dwellings to the proposed turbines are Cuckoo Park Farm, about 250 m. away, Newlands Farm (400 m.), Bleak House Farm (450 m.) and Mount Pleasant Farm (520 m.), all north of Cuckoo Park Lane; and Upwood Farm (540 m.) to the south-west. South of Upwood Farm is a caravan site including 36 mobile homes, 15 static caravans and an extensive area available for touring vans. Immediately beyond the caravan site is a private airstrip with a small hanger and two grass runways. West and north of the site are further scattered dwellings and farmsteads, all at distances in excess of 600 m. from the proposed turbines; those west of Black Moor Road are well down the valley side.” 3.0

Local planning policy context

3.1

“8. 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 (SLA) 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.

9. In the draft Upper Airedale Local Plan, published in 1983/84, the appeal site lies within both the green belt and a SLA, the latter being a detailed definition of that indicated diagrammatically in the Structure Plan. Such Areas are described as 'the most attractive countryside in the County ...', and Upper Airedale is said to contain 'some of the most unspoilt moorland and valley landscapes in the County'. Policy UA/EN9 states that development will normally only be accepted if it will not adversely affect the visual character of a SLA. 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).

10. The UDP has completed its deposit stage and a public inquiry into objections is to commence in Spring 1995. Policy NR8 states that wind 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 SLAs, 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 SLA 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 *269 subsequently refined in detail at local level; so far as the appeal site is concerned, the SLA corresponds to the protected areas in previous plans.

11. 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.

12. Turning to the weight to be accorded to these various policies, those on green belt and landscape protection are of long standing and have been consistently applied to the appeal site through successive plans. At the inquiry your client's architect accepted the broad validity of the landscape protection policies and agreed that the proposed inclusion of the site in the SLA in the emerging UDP had not been challenged. Nor do I see any reason to question that proposal. Whilst the land is of limited intrinsic landscape interest, and has been affected by quarrying, in the wider landscape it is seen essentially as an extension of the moorland to the east and, from nearby rights of way, the excavations appear little different from natural rock outcrops or crags. I regard it as an important element in the open landscape setting of Haworth and nearby settlements, and of the sheltered valleys in which they lie. Accordingly I give weight to the various landscape protection policies in this case.

13. 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 that there were three principal 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;

(ii) the effects of the proposal 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

“15. Whilst it was common ground between your client and the Council that the proposed turbines would inevitably have an impact on the *270 landscape, it was not surprising that opinions differed significantly on the scale and nature of such impact. Landscape appraisal inevitably involves a substantial subjective element, though 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 photo-montages and assessments of zones of visual impact.

16. I do not disagree with the view expressed for the Council that wind turbines 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 .

17. Whilst wind turbines of the type proposed often appear as striking or even startling features in the landscape, they are in themselves 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. However, they have a number of distinctive features, notably their large size, prominence, strong vertical emphasis and characteristics of movement, which require careful assessment against local landscape character.

18. Although there were significant differences between your client's zone of visual influence appraisal and that of the Council, both indicated that the proposed turbines would be seen from high ground west of the Bridgehouse Beck up to about 2.5 km. away, and from a broad arc of countryside to the east, extending over Halifax Road to Cullingworth and beyond. From my own inspection I consider that they would be most prominent seen from the east side of Penistone Hill Country Park; from the upper parts of Haworth village and from Marsh Lane to the south; and in westward views from Halifax Road (A629) and Haworth Road (B6144). 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.

19. In a good number of these views, particularly from the west, the existing turbine at Naylor Hill would be clearly seen. Also, your client's proposal would be less prominent than that for two further turbines at Naylor Hill, being further back from the edge of the valley. These are material considerations, as is the general extent of human influence on the landscape, including settlement, agricultural enclosure and quarrying.

20. However, despite this extensive human influence, development locally is generally confined to valleys, such as that of the Bridgehouse Beck, and is domestic in scale. The skylines remain open and undeveloped and provide a strong and attractive sense of enclosure to outward views from those valleys. With the exception of the existing single wind turbine at Naylor Hill, and distant views of electricity pylons and of the turbines on Ovenden Moor to the south, there are few strong vertical features to break the horizontal line *271 of the horizon, whether it be marked by open moorland or, as in the vicinity of the appeal site, by more enclosed terrain. The electricity transmission lines around Black Moor Road do not do so, being small in scale and having little impact on either short-range or distant views. Whilst the existing turbine attracts attention over a wide area, it appears very much as a single and isolated landmark, quite closely re-

lated visually to the active Naylor Hill Quarry.

21. In the context I have described I consider that your client's proposal would appear unacceptably intrusive, out of scale with other landscape features, and in conflict with the strong horizontal emphasis of the skyline, particularly in short-range views from the west. These effects would be exacerbated where the turbines would be silhouetted against the sky or seen in combination with the existing machine at Naylor Hill. Their intrusiveness would also be emphasised 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. I have taken account of the views of your client's architect on how the movement of the rotors would be perceived, including the likelihood that a good many people would find it attractive, or become used to it, but this does not outweigh the visual harm which I consider would be caused.

22. Very much the same issues would arise in the case of short-range views from the east. From Halifax Road, Haworth Road and the surrounding area the turbines would be prominent on the skyline behind Black Moor. Despite the despoliation caused by quarrying, the Moor as a whole provides an attractive sense of space when seen from the main road, and solitude and tranquillity for those using the paths which cross it, albeit at no great distance from settlements. I consider that these qualities would be unacceptably diminished by the scale and intrusion of the proposed turbines.

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 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 reducing the openness of the en-

circling 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 concealed 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 been made by a large number of 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 client's 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 here also evidence was limited and generally inconclusive. Haworth has clearly changed substantially since the Brontës' time and it was reasonably argued for your client, and by 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. The appeal site is not within the extensive moors west of the village most closely associated with the Brontës, and nor is it as prominent in views from Haworth as the Naylor Hill Quarry site where the same arguments have been advanced. However, its skyline setting appears to me an important element in the local 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 client's 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 today.

28. To the harm which would be caused to the landscape directly must be added that to the aims of local planning policies. Such policies 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. I conclude on the first determining issue that the proposal would have an unacceptably ***273** harmful impact on the character and appearance of the surrounding landscape, having regard to local planning policies." 6.0

Noise

6.1

"29.PPG 24, *Planning and Noise* has 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, Building Research Establishment (BRE) Information Paper IP21/93, and the then extant Circular 10/73, *Planning and Noise*. I have therefore relied upon the latter documents, together with the noise assessment provided by both main parties.

30.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. Your client submitted 24 L A90 background readings, taken at 11 locations over an eight-week period; all were made between 03.00 and 06.00 hrs and wind speeds were generally low. Results of more recent measurements at Cuckoo Park Farm, correlated against wind speed data from Wilsden, were also tabled. The Council had carried out no noise measurements, the evidence of their principal acoustics witness being primarily a critique of your client's case.

31. Background levels recorded ranged from 21 to 40 dB L A90. The predictions for your client's original proposal for three turbines were effectively superseded by those of the Council for the modified scheme. These were as follows for the nearest properties:

All figures dB(A) for two turbines at reference conditions of 8 m. per second wind speed, 10 m. above ground level. Predictions for all more distant properties were below these figures.

32. For your client it was argued that, in rural areas with very low background levels, it was unreasonable to assess noise impact by reference to increase over background, as set out in BS4142. To do so might effectively preclude any commercial activity although new levels were still very low in absolute terms; this had been accepted by the Council's acoustics witness. It was preferable to have regard to an absolute maximum, and the nighttime level of 42 dB(A) L_{eq} in the Council's SPG was a suitable standard. The properties around the appeal site were likely to be less sheltered from wind, and associated noise, than those in the Devon appeal case which had been referred to, and the maximum acceptable facade level which the Inspector had taken in that case, 40 dB(A) L_{eq} , might well not be applicable here. However, it could be met at all properties except Cuckoo Park Farm. Even there the new level would be within 10 dB(A) of background, and internal levels would meet the World Health Organisation (WHO) standard of 35 dB LA L_{eq} to avoid sleep disturbance, a figure also recognised in Circular 10/73 as a good standard. Turbine noise there would generally be masked by *274 background noise. Also, a recent BRE paper had quoted 45 dB(A) L_{eq} as a desirable external level to avoid sleep disturbance; this was equivalent to a facade level of 48 dB(A). It was unrealistic to conclude that nighttime levels of over 40 dB(A) L_{eq} would necessarily disturb sleep.

33. The Council regarded your client's measurements as too limited to form a reliable basis for predictions. Without a full survey of background levels, correlated against local wind speeds, no firm conclusion could be drawn on the degree to which background noise would increase with rising wind speed, or to which the shelter effect, referred to in paragraph 42 of PPG 22, would prevail. However, the predictions did indicate likely increases of 5–10 dB(A) at several properties, with significantly higher figures at Newlands Farm and Cuckoo Park Farm; even if the background level

was constrained to 30 dB(A), the increase at the latter could be 12 dB(A). Levels of 36–42 dB(A) were high enough to cause concern, measured against background levels of 30 dB(A) or less.

34. Given the limited data on background levels, any predictions must inevitably be highly sensitive to the assumptions made but, on the basis of the range of the submitted figures, and my own appraisal of the area, I regard it as reasonable to discount the very lowest level recorded as atypical, and to constrain the background level to 30 dB(A). In doing so I have borne in mind the general exposure of the area to prevailing winds, the relative lack of shelter around the nearest dwellings, the contribution to background noise of traffic on the main Halifax Road to the east, and the proximity of a substantial belt of trees on the skyline north of Cuckoo Park Lane; I would expect those trees to cause considerable wind-induced noise at times when the main road was quiet. I shall not apply any penalty for tonal noise from the turbines, or for the effect of echoes from the former quarries, as the evidence on both matters was inconclusive.

35. On this basis predicted noise increase for most nearby properties would be in the range 4–6 dB(A), with higher figures of 6–12 dB(A) at Newlands Farm and 12 dB(A) at Cuckoo Park Farm. All figures would comply with the Council's SPG criteria, except at the two last-named dwellings, where the figure for maximum increase over background would be exceeded. I do not consider it necessary to make special allowance for the nearby Upwood Farm caravan site. It was agreed at the inquiry that mobile homes could be treated as conventional dwellings in acoustic terms, and I saw that the touring van site is exposed and also close to an active private airstrip which could be expected to significantly affect noise levels there.

36. Whilst accepting that BS4142 should be applied with caution, the advice which it gives on the significance of increase over background appears to me to be a sound and generally applicable yardstick. Increases of around 4–6 dB(A) could thus be regarded as marginal, though those of up to 12 dB(A) would exceed the level at which complaints would be likely in the circumstances covered by the Standard. So far as sleep disturbance is concerned, it was agreed that a free-field level of 42 dB(A) would equate to 35 dB(A) within a dwelling. Although this would accord with the WHO standard, it seems to me

preferable to follow the more cautious approach taken in the Devon appeal case referred to, bearing in mind the rural setting. Overall I conclude that only Cuckoo Park Farm would be likely to be seriously affected, but that its occupants would face a tangible risk of sleep disturbance and some loss of amenity in and around a dwelling in an area which is currently generally quiet and tranquil. However, this would not in itself constitute a reason to refuse planning permission, particularly if other factors weighed in favour of the proposal.” 7.0

Inspector's conclusions

7.1

“37. 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 outweigh 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 Mw. 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.

38. Neither main party submitted any substantive evidence on this issue at the inquiry, and it was acknowledged for your client that, if unacceptable harm were identified in respect of the first two issues, it would not be outweighed by the benefits of power generation from two turbines. Nevertheless, it was part of his 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 such power, as evidenced in responses to newspaper polls, but that supporters would not necessarily pursue their case as vocally as opponents.

39. I have carefully considered all these matters and it is self-evident that the electricity generated by your client's 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 there are cogent objections on landscape grounds. Seen from a range of viewpoints to east and west the two turbines would appear as intrusive and discordant elements in an open upland landscape which is attractive and important both in its own right and as part of the setting for Haworth and other nearby towns and villages. 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, in regard to local planning policies. Though it is not a compelling objection on its own, the harm which noise would cause to living conditions at Cuckoo Park Farm adds some further weight to my conclusion that your client's appeal should fail.” 8.0

Decision—appeal dismissed

8.1

“40. I have considered all the other matters raised at the inquiry and in written representations. These include the officers' original recommendations of approval for your client's 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.

41. 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 danger 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. Accordingly none of these other matters outweigh the considerations leading to my conclusions.” 9.0

Costs

Application by appellant

9.1

“2. In support of your client's application it was argued that the Council had acted unreasonably in failing to determine the planning application. Paragraph 7 of Annex 3 to Circular 8/93 stated that a planning authority should not prevent, inhibit or delay development which could reasonably be permitted. On the basis of the information before them on February 28, 1994 the Council's Sub-Committee should have approved the application; they acted unreasonably in declining to determine it. The full costs of bringing the matter to the inquiry were sought.

3. The Council had also acted unreasonably in bringing forward new issues, notably noise impact, once the application was deemed refused, and at a late stage. Although the application had been submitted as long ago as November 1993, and the Council's Statement of Case had subsequently referred to noise as an issue, their witness' evidence on this matter had not been served until the end of August this year, after the latest date for exchange of proofs. At that late stage the appellant's original acoustics advisor had not been available, and it was necessary to instruct a new expert, Mr Kenyon, to deal with the detailed

and complex matters put forward by *277 the Council. If the application for full costs was not sustained, the Council should pay the costs incurred in Mr Kenyon's preparation for, and attendance at, the inquiry.”

Council's response

9.2

“4. In response, the Council considered the application to be bold but misguided. It was a pre-condition for an award of costs that the party against which they were sought had acted unreasonably but there had been no such behaviour in this case. None of the circumstances for an award against a planning authority, set out in Annex 3 to Circular 8/93, applied in this case, and it had not been claimed that members had taken an unreasonable decision to refuse permission, contrary to officers' advice. They had not wilfully refused to determine the application but had deferred consideration to allow further consultations with interested parties. The applicant had a statutory right to appeal against non-determination.

5.The Council's Statement of Case refuted the claim for a partial award. Both parties were aware of the issues that would be considered at the inquiry. Noise impact also featured in the reasons given for refusal of the appellant's duplicate application in July this year. The Council had produced substantial and compelling evidence on all matters included in their Statement of Case, and had amply supported them with competent, professional evidence.”

Inspector's determination

9.3Application for costs refused

“6. The application for costs falls to be determined in accordance with the advice contained in Circular 8/93 and all the relevant circumstances of the appeal, irrespective of its outcome, and costs may only be awarded against a party who has behaved unreasonably.

7.Paragraph 26 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. The appeal application, received by the Council on November 29, 1993, came before members on February 28, 1994 with a recommendation of approval from the officers, and accompanied by several other proposals for wind turbines in the District. It was resolved to defer considerations of all the applications to allow further consultations, notably with parish councils and neighbourhood forums. Your client was accordingly asked on March 8 to agree an extension of time for consideration but he decided to appeal against non-determination.

9. Whilst your client might well have felt frustrated by the delay, I do not regard the Council's decision to defer consideration as inherently unreasonable given that wind turbine proposals were still fairly novel in the District and could be expected to create considerable public interest. Whilst representations had already been received from local residents and others, members might reasonably seek to take into account the views of as wide a ***278** section of public opinion as possible, both for and against the proposal, so far as this was relevant to its planning merits. 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. I therefore consider that a full award of costs is not justified.

10. Turning to the application for a partial award, it was evidently appreciated by both parties from the outset that noise impact was a relevant issue. The environmental assessment report submitted with the application included a detailed section on this matter, which was also the subject of discussions with Council officers leading to the decision to omit one of the proposed turbines. Noise was therefore not a new issue raised once the application had been deemed refused. Whilst the Council's delay in forwarding the proof of evidence of their acoustics witness was arguably unreasonable, it is not clear that this posed any particular problems in preparation of your client's case. Both Statements of Case had referred to noise as an issue for consideration, and your client could therefore have reasonably expected to address it at the inquiry. No ap-

plication was made for an adjournment 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 client. I therefore conclude that the application for a partial award of costs is not justified."9.0

Comment

9.1 In this case the Council's officers' original recommendation was for approval of the proposed development. However, the Inspector considered that there were cogent objections on landscape grounds and that the proposal would cause serious harm to the character and appearance of the surrounding landscape taking into account local planning policies.

9.2 See also *Bradford Metropolitan Council and Woodhead and Sons Ltd* (above, p. 243) and *Bradford Metropolitan Council and Gillson and Sons* (above, p. 255).***279**
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