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## Appeal Decision

Site visit made on 12 January 2016

**by Mrs Zoë Hill BA(Hons) DipBldgCons(RICS) MRTPI IHBC**

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

**Decision date: 06 June 2016**

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**Appeal Ref: APP/Q1153/W/15/3039116**

**Land at Ramsdown, Milton Abbot, Devon**

- 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 Murex Energy Limited against the decision of West Devon Borough Council.
  - The application Ref: 01013/2014 - FULL, dated 7 July 2014, was refused by notice dated 27 November 2014.
  - The development proposed is erection of a single wind turbine with maximum blade tip height of 77m, formation of new vehicular access track and associated infrastructure.
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### Preliminary Matters

1. The application to which this appeal relates was accompanied by an Environmental Statement (ES). The ES is considered to meet the requirements of the Environmental Impact Assessment (EIA) Regulations.
2. The appeal was submitted before the Written Ministerial Statement (WMS) of 18 June 2015<sup>1</sup> which has implications for the determination for renewable energy schemes and resulted in changes to the National Planning Practice Guide (the planning guidance). As such, the parties were given the opportunity to comment upon the WMS. I will deal with that matter below.

### Decision

3. The appeal is dismissed.

### Main Issues

4. The main issues in this case are the effect of the proposed development on:
  - (a) the setting of heritage assets, in particular the Church of St Constantine, the Church of St Michael de la Rupe, the Scheduled Ancient Monument at Brent Tor, the Milton Abbot Conservation Area and, the Cornwall and West Devon Mining Landscape World Heritage Site;
  - (b) the character and appearance of the surrounding landscape having particular regard to Dartmoor National Park (NP), the Tamar Valley Area of Outstanding Natural Beauty (AONB) and, the Bodmin Moor AONB;
  - (c) trees;

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<sup>1</sup> HCWS42

- (d) the living conditions of the occupier(s) of the mobile home at Ramsdown Dairy with particular regard to noise; and,
- (e) private water supplies from water sources/springs rising on Ramsdown.

Having assessed the above and any other matters raised it is necessary to consider the benefits of the scheme in order to then come to a planning balance.

## **Reasons**

### ***Heritage Assets***

#### *Introductory Note*

5. A significant number of heritage assets have been identified by the ES, the Council and local residents. I have confined the assessment of heritage assets largely to those upon which the Council has based its heritage reason for refusal. However, I visited many of the other listed buildings which attracted written comment from interested parties, viewing as far as possible from public vantage points unless invited onto the land as part of the accompanied site visit. Some of those other listed buildings are mentioned below depending upon their relationship to the appeal proposal.
6. In addition to those assets raised in the reason for refusal, three heritage assets, all listed buildings, namely Sydenham House, Bradstone Manor and Kelly House are addressed in the appellant's final comments as a response to interested parties concerns. Here it is indicated that the ES conclusions in terms of harm were negative/minor, negative/minor and neutral respectively. Whilst, on that basis, those assets would not be substantially harmed it nonetheless indicates for the first two of these properties that some harm would arise and this should form part of the planning balance. This similarly applies to other heritage assets where similar assessment outcomes arise.

#### *Church of St Constantine and Milton Abbot Conservation Area*

7. The Church of St Constantine is situated in Milton Abbot. It is a grade I listed building with work dating from C14<sup>th</sup>, but mostly C15<sup>th</sup> with substantial C19<sup>th</sup> restoration. It is constructed of dressed Hurdwick stone, with granite dressings and a slate roof. It is of ornate detail both inside and out and this is detailed in the lengthy list description. The high quality materials and architectural features, its great age and its form, including its tower, contribute to the special architectural and historic interest of this building.
8. The setting of this church is multi-layered. There is the close relationship of the church to its churchyard which has a highway encircling its boundary. Historic vernacular houses face the church from the main road situated on the higher land at the northern side. The highway that links to this, in a u shape (with a spur off at the bottom), is faced by other listed buildings with particular architectural interest. These are grade II houses designed by Sir Edwin Lutyens. Other Lutyens dwellings extend beyond this area. This group has a very special and clear architectural style reflecting that of a distinguished architect and early C20<sup>th</sup> design (these houses are dated 1909). Beyond those properties there are more historic properties, including the grade II Vicarage dated 1837 situated off the spur, and many dwellings of West Country vernacular. The whole provides an attractive and distinguished Conservation

Area of a distinct character and appearance that contributes to the setting of the church which is situated at its heart. Beyond the settlement there are agricultural fields.

9. When seen from the village cricket ground, which is situated on the opposite side of the valley to the settlement, the village is seen with its church in the midst of the Conservation Area close to other listed buildings. The church overlooks the homes of its parish and the agricultural land with which those dwellings were associated. There are footpaths linking the settlement to, for instance, its recreational facility of the cricket ground. Thus, the setting for the church is extensive. Whilst the church tower is not a ridgeline feature, there is no doubt that it was designed to tower over the village so that the presence of the building at the heart of the village is clear and significant. This can be seen in viewpoint 6 (Tamar Village Discovery Trail to the North of Milton Abbot Cricket Ground).
10. This setting contributes to the special architectural and historic interest of the church because the building clearly still physically dominates the parish it was built to serve. The church remains as the focus of the village when seen in public views from the highway and footpaths including that at Viewpoint 6.
11. The proposed wind turbine would represent a very different architectural object, being of modern prefabricated form, with a sleek, slender, elegance. Thus, it would be strikingly different to the church and so easily distinguished from it. Nonetheless, I have no doubt that it would, particularly given its rotational movement, draw the eye away from the church thus compete with it for attention. This visual competition would detract from the setting of the church, harming the established visual hierarchy between the church, the houses of the settlement and the wider parish beyond. The appellant assesses the level of harm as being negative/moderate. However, I am of the opinion that this amounts to a considerable harm to the setting of the church and thus harms the architectural and historic interest of the church, but this does not amount to substantial harm.
12. In terms of the Conservation Area the harm would be limited because of its own hierarchy and generally inward looking nature. The Conservation Area itself would be preserved. However, the visual distraction referred to above would have some harm to views of the Conservation Area from the Cricket Ground.
13. In accordance with the Framework, it is necessary to balance the benefits of the proposed development against the harm identified to heritage assets. I shall do so later in this decision.

*The Church of St Michael de la Rupe and Brent Tor Scheduled Ancient Monument (SAM)*

14. St Michael de la Rupe is situated on Brent Tor. It is a grade I listed building which is probably largely C13<sup>th</sup> with C15<sup>th</sup> alterations and a C15<sup>th</sup> tower with bellringers' stage. It has been restored. Constructed of local volcanic stone it was formerly rendered and has stone dressings. It has a fortified appearance with few windows. The porch contains shallow stone benches. The list description sets out further detail and notes the surrounding, probably iron-age, earthworks. It also notes that the church is a landmark for miles around.

15. The setting of this asset extends significantly beyond the small churchyard and immediate rocky outcrop of the tor, with the associated earthworks. The location of the church is prominent and it sits above the surrounding landscape at the western side of the moor. In this location it is a solitary building which towers above the agricultural landscape that extends out from the moor. It is clearly located where it would be seen by those living in this area. The church remains in use. It will have been seen as both a comforting place of refuge and a dominating place of religious character for many centuries. The link between the church and the surrounding parish is significant to the setting of the church, as is the dominance of the church when seen from surrounding land. Equally the extensive setting is important as it offers a way marker, a place of worship and shelter for travellers. In this context, I have no doubt that the setting of this listed building is both significant and extensive.
16. The proposed wind turbine would introduce an incongruous modern moving structure into the historic setting of the church. The harm to that setting is very considerable, verging, because of its visual competition, on a substantial harm to the setting. However, this does not amount to substantial harm to the asset as a whole. Nevertheless, I consider the harm to be significantly greater than negative/minor attributed to it by the appellant in the Heritage Assessment. As such, it is necessary to balance the harm to this asset with the benefits of the scheme.
17. In addition, Brent Tor is a SAM. The Heritage Assessment identifies the fortifications and earthworks noting a good state of preservation. From the air the earthworks have been identified as being some 49m north south by some 40m east west, in the form of a 5.1m wide bank of up to 2m high with what appears as an entrance on the southern side. The likelihood is that it is a prehistoric hillfort. This adds to the historic significance of the site. The setting, as with the church, of separation from significant modern day intrusion is important in being able to appreciate the asset.
18. The harm to the SAM would not be direct and, because it is less visually prominent itself there would not be visual competition in the same way as for the church. However, the visual disruption to views out would have an adverse impact upon how this asset is appreciated and this would attract a small degree of harm that should be placed in the planning balance. I note the appellant's Heritage Assessment concludes that a negative minor impact would arise.

#### *Other Listed Buildings*

19. As noted above, I shall not consider other listed buildings in great detail. However, the appellant acknowledges some of the other listed buildings will suffer from harm to their setting albeit none is identified as suffering greater harm than moderate.
20. The primary school at Milton Abbot, listed grade II, is some distance from the settlement. Whilst the building does not have designed views out towards the proposed wind turbine site, and has had numerous modern extensions to the rear, the open rural backdrop and separation from the village is important to its setting. As such, the siting of a modern structure within that backdrop would have a detrimental impact upon this heritage asset. In that respect I do not concur with the Heritage Assessment provided by the appellant and find that harm would be more than neutral, however it would not amount to much more than minor harm.

21. At the site visit I viewed from the Holland Farm complex which includes several listed buildings (Farmhouse, Dairy and Granary all grade II). From this location the wind turbine would be sited on much higher ground where it would appear as an imposing structure when seen with or from the Holland Farm buildings. Although those buildings form a distinct group, their relationship to the rolling pastureland around is important because of the functional link. This land appears largely devoid of modern industrial intrusion such that I have no doubt that the wind turbine structure would harm the setting of these listed buildings. This is acknowledged in the Heritage Assessment identifies negative/moderate harm. As with the other listed buildings this would not amount to substantial harm and so is a matter for the planning balance.
22. The appellant's Heritage Assessment also identifies negative/moderate harm to Greystones Farmhouse a grade II\* listed building, to the churches of St Nonna, Bradstone, St Mary, Marystow and St Mary, Sydenham Damerel, all grade I listed buildings, an assessment with which I have no reason to disagree.

*The Cornwall and West Devon Mining Landscape World Heritage Site*

23. The Cornwall and West Devon Mining Landscape World Heritage Site (WHS) is based around the remains of mining buildings and activities. The mainly functional buildings do not focus on outward views, although views between engine houses/mine complexes are significant. The appellant's Heritage Assessment indicates that the northern part of the nearest WHS is some 6-7km from the appeal site and that, as such, the proposed turbine would be too far away to directly impact on any building remains. I viewed the proposed site from Kit Hill within the WHS, albeit not in the best visibility, and found that existing wind developments have relatively limited visual impact. However, the Kit Hill photomontage indicates that the appeal proposal might well be more prominent than the other wind turbines I could see. Even so, taking a balanced view of the scheme, and noting the other wind turbines I could see in this panorama, I find no reason to disagree with the appellant's opinion that there would be a negligible to very low magnitude of effect of negligible/slight significance albeit I consider the impact to fall in the upper part of those ranges.
24. The appellant also notes in the Heritage Assessment that there are numerous wind turbines within the WHS and that this appears to reflect a continuing industrialisation of the landscape. Whether or not that is intentional there is nothing before me to suggest that wind turbines should necessarily be prohibited on the appeal site outside the designated area. Moreover, the proposed wind turbine would have negligible impact upon above ground industrial archaeology in this location and on the basis of the evidence before me I do not consider that impact on the WHS is a significant matter in this case; rather it seems a low weight is appropriate.

**Conclusion on Heritage Assets**

25. I have concluded that there would be clear and considerable harm to the setting of the church of St Michael de la Rupe and harm to the associated SAM. There would also be harm to the setting of the Church of St Constantine. The appellant's Heritage Assessment also acknowledges harm to the setting of Sydenham House and Bradstone Manor. Moreover, I concur with objectors that there would be harm to the setting of the other buildings as listed and

acknowledged by the Heritage Assessment as well as Milton Abbot primary school.

26. In terms of local policies the proposed development would conflict with policy BE3 of the saved West Devon Borough Council Local Plan Review policies (March 2005) (the Local Plan) which sets out that statutory duty in respect of having special regard to the setting of listed buildings but does not set out a balancing exercise as in the Framework. In addition there would be conflict with the West Devon Borough Council Local Development Framework Core Strategy Development Plan Document (2006-2026) (adopted April 2011) (the Core Strategy). In particular, there would be conflict with Policy SP1 which seeks that in order to ensure development is undertaken in a sustainable manner it, amongst other things, protects historic and cultural features in the Borough, Policy SP3 which supports renewable technologies provided they satisfactorily address features of cultural and historic importance, Policy SP18 which seeks to protect historic features including the setting of listed buildings and Policy SP20 which supports development provided it takes account of the historic environment.
27. There would also be conflict with the Framework in that it places emphasis on the great weight that should be given to an asset's conservation. However as noted above, the Framework makes it clear that where harm to a heritage asset would be less than substantial it should be weighed in the planning balance with public benefits. In this case the harm to a number of assets, as identified above, requires consideration. I am also mindful of the Statutory duty set out in section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 that special regard should be paid to the desirability of preserving listed buildings or their settings and any special architectural or historic features which they possess.

## **Landscape**

### *Landscape Introductory Note*

28. The appeal site is situated between Dartmoor NP and Bodmin Moor AONB on an east/west line. Milton Abbot is on a south facing slope and the opposite side of the valley is within the Tamar Valley AONB. The appeal site is therefore outwith each of these designations but because of its height and location, close to a ridge, can be seen from or against the backdrop of those designated assets.

### *Landscape Impact*

29. The appellant has produced a Landscape and Visual Impact Assessment (LVIA) which is accompanied by photomontage illustrations and wireframe drawings. At the site visit I visited a significant and varied number of viewpoints including those identified in the LVIA.
30. Wind turbines are striking and large structures which in many circumstances will be seen as a notable change to the local area. However, I concur with the appellant that this need not mean that a wind turbine would be unacceptably harmful in terms of its impact upon the landscape. Rather, it is necessary to consider the landscape and its ability to absorb a proposed development.
31. The appeal site is located within the Moorland Edge Slopes Landscape Character Type. The key characteristics include a gently rolling, sloping upland

moorland edge, mix of unenclosed moorland, pastoral farmland and rough grass, variable field size which is often small, conifer and mixed woodland, beech hedgerows and some artificial landform from mining. It is described as mainly unsettled but with some houses, farms and small parklands. Management guidelines seek to reinforce this character.

32. In the appeal location the land is relatively open with long views and, thus, the scale of the proposed development would not be particularly discordant. Whilst the appellant points to the LVIA conclusion that the proposed wind turbine would be appropriately sited because it would be on a highpoint towards the summit of Ramsdown Hill I do not agree. Simply because the landform is rolling I am not convinced that a summit location is necessarily appropriate. Indeed there are very few built structures on summits in the immediate area (that at Brent Tor being unusual as a significant development on a high point). Rather most development is in lower, more sheltered, areas; indeed the LVIA notes that even church towers tend not to occupy prominent positions in the wider landscape.
33. Although I appreciate the need for the elevation to achieve exposure to winds, a number of the other wind turbines I saw when travelling through the vicinity did not appear so exposed in terms of their relationship to surrounding land. Viewpoint 3 (Milton Abbot School), Viewpoint 7 (B3362 Eastacott), Viewpoint 10 (Ashleigh), Viewpoint 11 (Sydenham Damerel) all demonstrate that in this elevated location the proposed wind turbine would have a significant impact extending over a much greater distance than 1km. Indeed, even further away viewpoints indicate that the proposed turbine would be a notable feature that would have some impact on landscape character.
34. In terms of landscape pattern, much as with scale, the turbine size would not necessarily appear unacceptable. Whilst the ridgeline trees would offer some lower level screening of the turbine tower, the comparison between the height of the ridgeline trees would make the proposed turbine appear dominating (as can be seen in Viewpoint 2 (Bridleway near Ramsdown) and Viewpoint 6 (Tamar Valley Discovery Trail). Turning to skyline impact the LVIA acknowledges that the turbine would stand on the skyline in views from lower lying areas near Milton Abbot to the south and hillsides to the north and south. As explained above, I am not satisfied that this renders the scheme acceptable in the landscape; rather, I agree with the Council that the proposal would appear at odds with the landscape and built development in this location.
35. Whilst the Moorland Edge Slopes Landscape Character Type is not identified as particularly fine or nationally designated as important it is necessary to consider the change that would arise. Indeed, the appellant acknowledges that in the 0.5km to 1km zone from the turbine a Moorland Edge Slopes with Wind Turbine landscape sub-type would be created. Whilst such an area would be relatively modest I am not satisfied that the impact would be contained within a 1km zone because of the elevation of the appeal site for reasons already explained. In addition, I saw that the most significant cumulative impact based on existing turbines would be that with the two turbines to the west where sequential views would arise. In terms of landscape impact I consider that there would be a moderate harm which would diminish with distance in many but not all views. However, it seems to me that there would be greater visual impacts to which I shall turn next and it is these that appear to have most impact upon the surrounding area protected by special land designations.

### *Dartmoor National Park*

36. Dartmoor NP is a distinct land mass to the east of the appeal site; it is sparsely populated and includes vast expanses of open moor with peat bogs and distinctive rocky outcrops. Dartmoor NP provides for walkers and those on horseback and I saw well marked routes during the site visit. Users of these routes would be sensitive receptors. One such route from within the NP climbs Gibbet Hill from which there is an onward path to the south-west. It was apparent from the roadside that views were extensive and that Gibbet Hill, Brent Tor (which I have referred to above in terms of heritage assets) and the appeal site at Ramsdown are almost aligned such that the appeal proposal would be seen in views towards and from Gibbet Hill that include Brent Tor, and, in reasonable visibility, would also be seen from other areas of higher land within the NP. Amongst other things, the impact upon views out from the NP towards Brent Hill, which the NP considers as 'an iconic feature of the National Park' which many people visit to take in views of the NP, is a matter which leads the NP Authority to object to the proposal.
37. I note that Viewpoint 13 (Brent Tor) is orientated to put the proposed wind turbine in the centre of the view. Although the appellant indicates this is standard practice, this reflects a point outside the church where a bench is situated to take in the panoramic view which puts the wind turbine site, as the next highpoint of land, in the central area of the view. I also note that the photomontage does not provide for the more striking effect that wind turbines tend to have because of their movement.
38. At the site visit, as requested, I took in the view from Pork Hill on an unaccompanied basis. From this location I could see that the importance of Brent Tor would be intruded upon by the proposed wind turbine. This is because of the inter-relationship between the edge of the moorland, Brent Tor Church and the open land to its west in which the proposed wind turbine would become a competing feature also situated on higher land.
39. Whilst the harm identified only relates to one edge of this NP, and relates to setting rather than the NP itself, I concur that the proposed development would adversely impact upon the tranquillity of the particular views which take in Gibbet Hill, Brent Tor and the appeal site as well as the views of Brent Tor and Ramsdown from Pork Hill. This harm is a matter to which I attach considerable weight in the planning balance<sup>2</sup> noting that it relates to well known views that attract visitors who are likely to be sensitive receptors.

### *Tamar Valley AONB*

40. The views out from that part of the Tamar Valley AONB nearest the appeal site would include views of the proposed wind turbine (for instance as described from the village cricket ground). Again there would be no harm within the designated landscape; rather the harm identified is a general landscape harm with some potential to impact on the setting of the AONB. The LVIA acknowledges that there would be effects on views for footpath users including moderate/major to major significance. This can be seen in Viewpoint 6 within the AONB and Viewpoint 5 both of which relate to the Tamar Valley Discovery

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<sup>2</sup> I note reference is made to Devon Policy Group Advice Note 2 in respect of accommodating wind turbines with which it would appear to conflict. However, the appellant takes a contrary view. I do not have the full details of that document before me.



Trail which is a long distance walk of some 35 miles. The LVIA recognises that this would represent a medium to high magnitude of change.

41. Although the appellant takes the view that the absence of other vertical structures is a positive attribute supporting the siting of the proposed wind turbine I do not agree. Whilst other such structures might make juxtaposition an issue, the absence of similar structures means a new addition to an otherwise open ridgeline which would inevitably have a significant visual impact. As such, and given the sensitivity of walkers to change, I conclude that the visual impact for views out of the Tamar AONB as a matter which attracts some weight in the planning balance, even though I agree that there would be no direct impact to this designated landscape area itself<sup>3</sup>.

#### *Bodmin AONB*

42. At the site visit it was possible to see from Brent Tor and the higher land on the edge of Dartmoor westwards towards Bodmin Moor and its AONB. However, in terms of the impact of the appeal proposal on this AONB the distance involved is such that there would be negligible impact even upon the setting of that AONB. There is no substantiated evidence to indicate that any particular views out from the Bodmin AONB would be harmed. I therefore conclude that direct and indirect impacts upon the Bodmin AONB are not matters which are of weight in determining this appeal.

#### **Conclusion on Landscape**

43. In terms of landscape matters I conclude that there would be moderate landscape harm and that there would be varied landscape visual impacts that would range from none to major. However, there are some particularly significant views which would be harmed. I consider that significant weight should be given in the planning balance to the landscape impacts arising from the relationship to Brent Tor and moderate weight to the adverse impacts upon the Tamar Valley Discovery Trail.
44. I therefore find that there would be conflict with Local Plan policy NE10 which seeks to resist development in the countryside unless it is in accordance with other policies and does not cause unacceptable harm to the distinctive landscape character of the area. There would also be conflict with Core Strategy Policy SP1 which sets out considerations for sustainable development that include the protection of natural and man-made landscapes in and surrounding the Borough. There would also be conflict with Policy SP3 which supports provision of renewable technologies provided they, amongst other things, protect/preserve landscape character. Furthermore there would be conflict with Strategic Policy 17 which, outside the AONB and Dartmoor NP, resists development which would damage the natural beauty, character and special qualities or prejudice the achievement of their designated purposes and which seeks to conserve and enhance the quality, character, diversity and local distinctiveness of the natural environment and Landscape Character Types.

#### **Trees**

45. The reason for refusal suggests that there is insufficient information to adequately demonstrate that the proposal would not harm important landscape

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<sup>3</sup> I also note that in their objection the Tamar Valley AONB refer to policies within its management plan, however, that document is not before me.

- trees. The Officer Report, reflecting views of the Landscape Officer, sets out concern about the impact on trees from gateway widening shown on plan no 1117/2827 as well as the access track and access splay shown on plan no 1117/2830. Concern particularly relates to proximity to the root protection areas (RPA) for nearby trees.
46. There is a boundary hedge with some stretches of trees along the access. There are also larger trees beyond the northern hedge in the field which it is proposed to site the turbine. However, neither of the plans identified provide details of those existing trees. The topographic plan 1117/2881 includes a green dotted line annotated 'overhead foliage line'.
47. The Ecological Impact Assessment of Land (2014) notes that some 8m of hedgerow would be lost to provide access alongside the highway and where a gateway needs widening along the access track route. Although the assessment acknowledges that the hedgebanks and hedgerows would qualify as Local Biodiversity Action Plan Priority Habitat (The Nature of Devon, 2005) and as Habitat of Principal Importance (JNCC & DEFRA, 2012) and is of local value, it concludes that it is very unlikely that any hedge would qualify as Ecologically Important for the purposes of the Hedgerow Regulations 1997. The hedgebanks to be removed could be relocated to fill another field gateway nearby so maintaining the extent of hedge and keeping local vegetation on site. The assessment also indicates the need for physical protection of hedgebanks during the construction phase.
48. It seems to me that, in addition to the removal works to provide access, the access track as identified by the topographic survey would, at some points and along some long stretches, come close to the hedgebank and be situated well within the overhead foliage line for the associated trees. The trees are an important feature in local views and the hedgerow is of ecological value. I am mindful that the detail of the access track is of 350mm recycled aggregate topped with 50mm gravel and that during construction works large vehicles would use the track. As such, there is potential for tree damage.
49. The appellant suggests that a RPA could be protected by condition. I am not satisfied, from the evidence before me, that that would not result in the need to relocate the access track so that it would be outside of the red-line application site. I appreciate that a track as close to the hedgeline as practicable would be least visually intrusive and that once the construction phase has ended very little use of the track would be likely to arise. Nonetheless, the potential harm to the trees is a significant concern and I am not satisfied, on the evidence before me, that the scheme would not result in unacceptable levels of harm to this notable landscape feature. As such, I cannot conclude that the proposal accords with Core Strategy Policy SP3, which supports renewable technologies and their infrastructure provided they would not have unacceptable adverse effects, or Strategic Policy 17, which states that specific landscape, wildlife and historic features which contribute to local character will be preserved. This matter therefore counts against the scheme in the planning balance.

### **Living Conditions – noise at Ramsdown Dairy Mobile Home**

50. ETSU-R-97, The Assessment and Rating of Noise from Wind Farms (ETSU), sets noise thresholds for acceptable levels of noise from turbines with different levels for dwellings unconnected with a proposal and those connected to them

- by reason of a financial interest. This is on the basis that those with a direct interest are likely to be prepared to tolerate slightly more disturbance.
51. The Council has treated the mobile home at Ramsdown Dairy, some 330m from the proposed wind turbine, as a residential property that is not connected to the appeal proposal. Hence the threshold for noise levels that has been used is the lower one of 35dB which would be breached (with predicted noise at 36-38dB) although the higher threshold of 45dB would not.
52. The mobile home is linked to the Ramsdown Dairy Unit. In letters submitted to the Council it is explained that the occupier of the mobile home, who also runs the dairy unit, is James Horton, the son of David and Christine Horton upon whom notice was served as landowners of the application site. Additionally, the appellant explains that, as part of the scheme, the Ramsdown Dairy Unit would receive a direct supply of electricity from the proposed wind turbine. Given the Ramsdown Dairy Unit currently has no electricity supply and is reliant on a diesel generator, this would provide a lower carbon source of energy and significantly reduce costs for that unit. It is also noted by the appellant that a Certificate B Notice was served on the landowner of the Dairy Unit (Mr and Mrs Horton) indicating financial involvement.
53. Although the occupier of the mobile home, i.e. James Horton, appears not to have been served notice he is clearly aware of the proposal having written to the Council regarding the matter. It is apparent from the Officer Report that the recommendations of the Environmental Health Section were made on the basis that the financial interest was paid employment rather than an investment with a prospect of a share of the profit or income. It remains unclear as to how the financial arrangements would be intended to work as these have been kept confidential. However, the explanatory letter of 3 November 2014 from Mr and Mrs Horton explains it is a new business partnership between *'the wife, myself and our youngest son, who is desperate to get a foot hold on the agricultural ladder'*. I note ETSU refers to the higher noise threshold being appropriate *'where the occupier of the property has some financial involvement with the wind farm'*. I have noted the comments of Milton Abbot, Bradstone, Kelly, Environmental Action Group (MABRAKE) and its reference to a high court judgement on a similar matter<sup>4</sup>. However, I find the circumstances different here because of the family relationship involved and the evidence before me regarding the family nature of the business and the intention to supply the Dairy Unit with electricity for the business there. On balance, from the evidence before me, it seems there is a financial link such that the higher noise threshold would be acceptable.
54. As such, I find that the scheme would not conflict with Policy SP3 of the Core Strategy insofar as it supports renewable technologies provided they do not cause harm to the amenity of occupiers of nearby properties or Policy BE18 of the Local Plan which seeks to resist noise generating development where it would increase unreasonably the noise experienced by the users of existing noise sensitive development nearby. Nor do I find conflict with the Framework in this regard.

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<sup>4</sup> Joicey, R (on the application of) v Northumberland County Council [2014] EWCH 3657 (Admin)

## **Private Water Supplies**

55. The appellant's undisputed Private Water Supply (PWS) Risk Assessment states that the site does not lie within a groundwater source protection zone. The nearest abstraction point is 140m north of the proposed wind turbine. It is used for farming, domestic and spray irrigation purposes. The nearest spring is 270m east from the foundations of the proposed turbine and north of the access tracks, but this does not appear to have any specific PWS use. The nearest spring used as a PWS is some 940m from the proposed turbine, although there may be a PWS 600m from the proposed turbine and 450m from the proposed access track.
56. The Risk Assessment considers the risk, identifies mitigation and evaluates the impact on water supplies. The key area of concern relates to the potential groundwater effect arising from the construction of the access tracks, the wind turbine foundation and crane pad, particularly from concrete leaching. To reduce risks a sulphate resistant concrete would be used and management/maintenance of vehicles would be controlled.
57. The appellant notes that the Scottish Environmental Protection Agency (SEPA) guidelines on wind farm developments (in the absence of guidelines from the Environment Agency) are such that only one PWS point falls within a proximity that would require further details and mitigation. That point is the abstraction site 140m to the north of the proposed wind turbine. There are no known pipelines crossing the wind turbine site associated with this abstraction point but it is acknowledged that a detailed survey would be required prior to development.
58. The Council's Environmental Health Officer does not appear to object to the proposal following receipt of the PWS Risk Assessment and supports the use of the SEPA guidance. The Environment Agency does not object but seeks a condition relating to a PWS protection plan. On the basis of the evidence before me I am satisfied that such an approach would be acceptable. Thus, I do not find conflict with Local Plan Policy PS4 which seeks to protect PWS from unacceptable risk or Core Strategy Policy SP3 in this respect which supports renewable energy schemes provided that they, amongst other things, mitigate their impacts. Thus, I conclude that this is not a matter to place in the planning balance: rather it is neutral.

## **Additional Matters**

### *Written Ministerial Statement*

59. Although the appellant suggests that the West Devon Renewable Energy Potential Study might count as a policy for an area identified as suitable for wind energy, I do not consider that this fulfils the WMS requirement of wind turbine development being in an area identified in a Local or Neighbourhood Plan as suitable for such use. However, the scheme was submitted such that transitional arrangements apply. These enable a local planning authority (or whomever is determining an appeal) to find a proposal acceptable if, following consultation, they are satisfied it has addressed the planning impacts identified by affected local communities and therefore has their backing.
60. The appellant points out that a number of objections are from one address and that others have been co-ordinated through a local action group MABRAKE.

That is not uncommon in appeal situations. What is significant, in my view, in terms of the WMS is the extent to which there is local objection and whether the concerns raised have been adequately addressed. In this case the appellant calculates the objections at the application stage represent 23% of the population of the combined local parishes. Whilst it is suggested that this is not significant, I do not share that view and note that at the same stage only 2 letters of support from local residents were received.

61. Moreover, in addition to objections from individuals and the action group, the Milton Abbot Grouped Parish Council objects as does Kelly Parish Meeting, the local Member of Parliament, Geoffrey Cox QC, and there have been objections from a significant number of other bodies including English Heritage<sup>5</sup>, Dartmoor National Park Authority and Tamar Valley AONB. It seems to me that the local objection is therefore significant. In terms of my assessment, I have found harm in respect of heritage assets and visual impacts on the landscape particularly relating to Brent Tor and Milton Abbot. Thus, these objections have not been satisfactorily been resolved.
62. The appellant also refers to the High Court judgement in *West Berkshire DC & Reading BC v DCLG* (relating to affordable housing and ministerial guidance) wherein the judgement explained that local plan policies which have been through the rigours of testing in the statutory process, upon adoption have priority in the determination of planning applications. As such, the appellant makes it clear that careful consideration should be made as to the weight to be attached to the WMS guidance.
63. I have no doubt given the legislative position that the development plan must be the starting point and have made it so in my consideration of this appeal. However, it is also necessary that material considerations form part of that assessment too and, as such, they have a place in the planning balance exercise. In this case there would be conflict with the advice set out in the WMS and so this is a material consideration which to which I accord some weight against the scheme.

#### *Turbine Design*

64. The proposed wind turbine appears to be a 900kW turbine which would be restricted to 500kW. While the appellant suggests that this enables more efficient running and output this is not clearly demonstrated. Moreover, such a significant restriction seems excessive. Thus, I share the objectors' view that this indicates that the wind turbine may not be the most appropriate turbine for the site in design terms as more modest alternatives might be more appropriate. The appellant also indicates that the local Distribution Network Operator's limits mean that only a 500kW connection can be made; again this results in doubt as to why a potentially significantly higher output turbine has been selected. Although there is insufficient evidence to make this a determinative matter it adds modest weight against the proposal.

#### *Tourism*

65. The appellant refers to research undertaken in respect of tourists' attitudes to wind turbines in Cornwall. Although that evidence is not substantiated, there is

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<sup>5</sup> The advice and guidance role of English Heritage has been subdivided from the historic properties stewardship role. As a result the advice and guidance section have been renamed Historic England. I shall, however, refer to English Heritage as that name appears on the correspondence in this appeal.

no reason before me to dispute the findings that 94% of the visitors surveyed said the presence of wind and solar farms would make no difference in their decision to visit Cornwall again. Thus, in terms of broader tourism to the area, I do not consider the potential impact on tourism, and hence the local economy, is a significant factor.

#### *Shadow Flicker*

66. The Shadow Flicker Analysis identifies two properties that could be subject of shadow flicker during early morning periods between about 5:00am and 6:00am in April, May, July and August. This is a worst case situation as the modelling does not take account of intervening effects of vegetation or buildings between the dwellings and turbine, or weather conditions that might mean shadow effects would not arise. Thus, impact is likely to be slight. However, even that risk can be mitigated as the turbine could be programmed to shut off should flicker circumstances arise. Subject to a condition to allow for this mitigation shadow flicker is not a matter which causes concern and so is neutral in the planning balance.

#### *Archaeology*

67. A Geophysical Survey Report has been undertaken. Whilst some anomalies were identified, their characteristics indicate they are not probable sources of archaeology but are possible ones and could simply be the result of modern agricultural activity. As such, archaeological matters could be dealt with by condition and would not be a reason to resist planning permission.

#### *Living Conditions*

68. I visited a number of properties as part of the accompanied site visit. Whilst I saw that the proposed wind turbine would be a striking feature of the landscape which would be seen from the main living rooms and patio of Meadwell Court, the expanse of view at, and distance of the wind turbine from, that property is such that it would not be rendered an unpleasant place to live. Nor do I consider that the proposed development would have an overbearing or oppressive impact upon the siting for the Yurts at Devon Yurts albeit there would be cumulative impact with the nearby scheme for Beckwell Farm. It was also apparent that Down House is enclosed by significant vegetation such that the proposed wind turbine would only impose on views from the car park and drive. Thus, in my view, the visual impact of the proposed wind turbine would not unacceptably impact upon the living conditions of the occupiers of that property. At Holland Farm I saw that the house was largely orientated away from the appeal site and so there would be no significant harm to living conditions for the occupiers of that property either. Thus, the effect on living conditions is not a matter to which I attach much weight in this case.

#### *Aviation*

69. There are no objections of grounds of impact on air safety. Whilst safety lighting would be required this would be infrared and so would not cause visual harm.

#### *Other Matters*

70. A number of other matters are raised including blight on property values and the need for wind energy. However, those are not matters to take into the

planning balance in this case. Concerns regarding health impacts are raised but nothing in the evidence leads me to conclude that harm to health would arise from this single wind turbine which is located in a relatively isolated and open location.

71. I am satisfied, from the evidence before me, that highways matters could be resolved and that there would be no significant adverse effects on fauna. Further concerns are raised about noise impacts including amplitude modulation and I have noted the objectors' suggestion that their concerns regarding possible risk might best be dealt with by condition.

### **Benefits of the Proposed Development**

72. The Framework reflects national energy policy and legislative commitments which make it clear that even small scale energy projects provide a valuable contribution to cutting greenhouse gas emissions. However, the Framework is also clear that such applications should be supported if its impacts are acceptable; I attach significant weight to this policy support and requirement.
73. The appellant has estimated that the proposed turbine would create energy in the range 1,007MWh to 2,269MWh energy per year. The appellant indicates this would result in carbon offsetting of some 314 to 708 tonnes of carbon dioxide per year.
74. It is not disputed that, as the appellant claims, the scheme could go ahead promptly and so could result in rapid benefits in renewable energy production.
75. The appellant notes that the scheme would be reversible. However, whilst that is the case, the length of time it would be in situ is such that harms perceived by people would last a generation. With this in mind I attach limited weight to the reversibility point.
76. It is clear from the supporting letter that energy would be used directly at the Dairy unit replacing fossil fuel energy generation. This would also assist in maintaining the farming enterprise which assists in the management of the countryside and provides local employment.
77. The appellant has also indicated that a community package would provide direct community benefit in the form of a community benefit (capital) fund to the value of £10,000 per year (index linked) and a community services (revenue) package of £10,000 per year (index linked) to employ professional help to support delivery of objectives identified through the community fund. This would also be linked to feed-in tariff payments so that any government subsidy cuts would reduce community payments. There would also be a community ownership and local community share offer which it anticipated would provide a financial return of 5-7% although they would be 'at risk' shares in line with common community share offers. The Parish Council firmly rejected this offer. Moreover, I do not attach significant weight to the offers of financial support given there is no mechanism before me to secure them.

### **The Planning Balance and Conclusion**

78. The scheme would contribute to the production of renewable energy to which I afford considerable weight as policy both at a local and national level clearly indicates that wherever possible renewable energy schemes should be supported. I have no reason to doubt that this scheme would be undertaken

promptly and so could rapidly assist in the production of energy from non-fossil fuel sources. It would help support local farming and so provide a source of income and assist in management of the countryside.

79. The Framework makes it clear that there is a presumption in favour of sustainable development. The fact that this scheme seeks to develop a renewable technology does not mean that the proposal is sustainable development. Sustainable development has three dimensions: economic, social and environmental. In this case I have found no material harm to the tourist industry but found local economic benefits; thus, this aspect of sustainable development provides a slightly positive aspect of this proposal.
80. In terms of the social role it seems to me there is no great community support for this scheme; rather there is some considerable opposition. Some social benefit would arise from the support the scheme would provide to agricultural use as this is part of the culture of this area. However, there would also be cultural harms in terms of impacts upon well-loved views for instance of the village from the cricket ground within the Tamar Valley AONB. In terms of this aspect of sustainable development I consider that the dis-benefits outweigh the benefits that would arise.
81. Turning to the environmental role the proposal would help to adapt to climate change and move towards a carbon neutral economy and this is a matter of considerable weight. However, there would be a failure to protect and enhance the natural and historic environment. This relates to harms to listed buildings, as identified, and in particular to the harmful relationship in both heritage and visual impact terms to the landscape arising from the relationship with Brent Tor and the Church of St Michael de la Rupe. There is also the potential harm to trees which are a feature of the landscape. Furthermore, I am not entirely convinced that the development is well designed for the site given the capacity limiting requirements. In terms of the environmental aspect of sustainable development I find the balance is that the significant harms outweigh the considerable benefits.
82. Thus overall, I am not satisfied that the scheme represents a sustainable development.
83. I appreciate that certain aspects of some policies are complied with (for instance parts of SP3) and I have found there is no conflict with other policies (for example PS4). However, when the policies are taken together, I have concluded that the scheme fails to accord with both the Local Plan and the Core Strategy which has a specific policy that seeks to support renewable energy schemes subject to consideration of various criteria. That specific policy generally accords with the advice of the Framework which it predates. As such, the failure to accord with Development Plan means that the development should not be approved without delay. Rather, having regard to the s.38 (6) of the Act it should only be approved where material circumstances would justify a departure from the Development Plan.
84. Whilst the appellant does not indicate that the local policies before me are out-of-date neither local policy document includes heritage asset policies which allow for a balance to be made and I note that the appellant indicates that the scheme should be assessed under paragraph 14 of the Framework. That said, I have already concluded that the development does not represent sustainable development. Even had that not been the case, taking all the matters before



me into account, I conclude that together the totality of the harms significantly and demonstrably outweighs the benefits of the scheme.

85. Thus, I conclude that the proposal fails to accord with saved Policies NE10 and BE3 of the Local Plan and Policies SP1, SP3, SP17, SP18 and SP20 of the Core Strategy, and having taken all material considerations into account, it would be contrary to the Development Plan. It would also be contrary to the Framework, the Planning Practice Guidance, which was updated to reflect the WMS, and would not amount to sustainable development. As such, the proposed development is not acceptable and therefore the appeal is dismissed.

*Zoë Hill*

Inspector