

**STATEMENT OF RICHARD COWEN TO THE EXAMINATION IN PUBLIC
INTO THE
HARTLEPOOL LOCAL PLAN
RELATING TO MATTER 12**

1. I make this statement on behalf of the Campaign to Protect Rural England Durham Branch (CPRE).
2. As background to this Matter, I represented the Seaton Carew Wind Turbine Action Association in respect of three applications for turbines in the Brenda Road area of Hartlepool. These applications were called in by the then Secretary of State for Communities and Local Government and subsequently the Inspector found that the applications were invalid in that the pre application consultation had been inadequate.
3. Although I had written representations in respect of these three applications on behalf of CPRE, I acted for the Association in my own right as a lay advocate rather than as a CPRE representative.
4. CPRE did not make any representations in respect of the wind farm at High Volts, one of the first wind farms in this area.
5. The sites at both Brenda Road and High Volts are the subject of proposed further wind turbines under proposed Policy CC4. For the avoidance of doubt, this statement is made on behalf of CPRE rather than as a representative of the Association.
6. As a preliminary issue, I perhaps should also mention the Red Gap Wind Farm, also situated within Hartlepool. A colleague of mine from CPRE made representations at the application stage of this wind farm. Planning permission was subsequently granted for this wind farm but it was some time before work started on it and indeed it only became operational in the past 12months.
7. Before the turbines were erected, an application was made by the developers to change the turbines, reducing the height of the towers but increasing the length of the blades. I made representations on behalf of CPRE to this application, however it was approved.

8. The Red Gap wind farm does not feature under proposed Policy CC4 but it does feature in the Hartlepool Rural Neighbourhood Plan along with the High Volts wind farm as being a site suitable for further turbines. On behalf of CPRE, I have objected to the High Volts and Red Gap proposals in the Neighbourhood Plan.
9. While this Examination addresses only the Brenda Road and High Volts sites, on behalf of CPRE I believe I must also mention the very similar issues that arise in respect of the Red Gap site that arise as a result of the Neighbourhood Plan proposals.
10. Our stance is that the WMS does not require a local planning authority to include sites for wind turbine development. While the WMS says that permission can only be granted if

“the development site is in an area identified as suitable for wind energy development in a Local or Neighbourhood Plan”

and that

“In applying these new considerations, suitable areas for wind energy development will need to have been allocated clearly in a Local or Neighbourhood Plan”

we represent that this does not mean that a local plan must define an area for such development. Indeed, we understand that many if not all local plans that have recently been prepared do not have such a provision.

11. As a result, we represent that Policy CC4 should in fact be deleted in its entirety from the proposed Plan. However, we accept that it is appropriate to seek to answer the questions asked by the Inspector.

INSPECTOR'S QUESTIONS

Issue 1 - Whether the proposed sites at Brenda Road and High Volts are justified, effective and consistent with national policy.

Q1 What is the rationale for the proposed sites? Is it economic strategy, a reflection of demand/interest from the industry in these sites and a need to manage development consistent with national policy, part of a Borough commitment to addressing climate change or a combination of all of these factors?

This appears to us to be a question for the Council to address

Q2 The Plan clearly identifies that the landscape evidence led to the identification of additional capacity at High Volts. The CPRE (representation Pub0074) submit that the Arup Study does not support development of the proposed scale proposed at High Volts. What is the justification for the additional scale of turbine development at this location?

CPRE stands by its comments at previous stages of this Plan. While there are other issues that are also relevant in respect of the suitability of a site for wind turbines, this is an important one.

While we acknowledge that the Arup study does give some support in principle for further development at High Volts, we represent that when read in its totality, it does not support a doubling of the present site because of the constraints that exist.

Q3 In relation to Brenda Road, what is the evidence to support the identification of this particular area? Have alternative locations for strategic wind turbine developments been considered south-east of Hartlepool?

As has been outlined in our representations at earlier stages of this Plan, CPRE does not represent that the landscape at Brenda Road is anything other than poor. However, there are other issues as outlined in our representations which, we represent, makes this site unsuitable for wind farm development.

That said, CPRE would accept that, if a site is to be proposed for wind farm development in south east Hartlepool, there is only this area. In respect of the recent wind farm applications, issues were raised about residential development to the east of the sites and also to heritage assets within that area. Move away from the residential area of Seaton Carew and one then encroaches on areas of huge importance for wildlife.

Alternatively, should the sites be moved more to the west of the proposed sites and they would encroach upon the residential area at Greatham

If it is being suggested that south east Hartlepool extends to the more rural area east of the A19, this would raise separate issues that we would prefer not to speculate about at this juncture.

Q4 Is seven wind turbines with a potential installed capacity of 2MW each an appropriate basis on which to consider Policy CC4? Is the evidence clear that this would be the maximum number of turbines?

We understand that this question relates to both the Brenda Road area (4 turbines) and High Volts (3 turbines). CPRE represents that neither site is in fact suitable for such development for reasons that have already been given or outlined further below.

However, we also note the situation regarding Red Gap Wind Farm as mentioned above and in the Rural Neighbourhood Plan. We understand no maximum number has been given for this site. While this proposal is not a part of this Development Plan and so, at least directly, for this Examination, we represent that this proposal cannot be ignored.

Q5 Is wave and tidal technology a serious or viable renewables sector to develop or host in the coast off Hartlepool? Have there been proposals? Does the Plan directly or indirectly support off-shore renewables including the potential for tidal schemes?

CPRE is not aware of any actual proposals for wave and tidal renewable technology off the coast of Hartlepool. Clearly any such development within the area covered by this Submission Draft of the Plan would have to take into account the potential impact on shipping in the Tees estuary and to the port. In addition, this area is either within a Special Protection Area or perhaps a potential SPA. The Tees estuary and Hartlepool Headland are very important for wildlife and this would be a critical factor to consider.

Q6 The Planning Practice Guidance⁹ refers to community backing and this is reflected in the wording of Policy CC4. In this context is community backing necessary for the identification of suitable areas in Plans or is it specifically a criteria when considering development proposals?

We recognise this to be an important question. The Plan is clearly a framework rather than a document that considers the minutiae of planning issues. In this case, the proposed Policy gives a host of criteria that need to be satisfied when any planning application is considered. However, if a proposed Planning Policy has no chance of being delivered, should it be a policy in the first place?

We note the comments of the Inspector in a recent appeal relating to development proposals at Manston Airport in Kent¹ that potentially would not be consistent with any future development of the airport. The Inspector considered whether it would be appropriate for him to grant permission only then for the owners of the airport to seek a compulsory purchase order if a plan to re-open it did in fact come to fruition. At paragraph 37 the Inspector said

“It may well be the case that any successful DCO would include provision for a compulsory purchase order that would enable full vacant possession of the entire site to be secured, and that the proposed appeal schemes would not affect this process. In other words, were the site to be compulsorily acquired for the purposes of reopening the airport as part of a DCO, any existing occupiers could be given appropriate notice to leave their premises. However, I see no good reason to grant permission for non-aviation uses contrary to adopted development plan policy on the basis that non-conforming

¹ APP/Z2260/W/15/3140995

uses could be reversed in the future through a DCO. This would amount to granting permission under one regime only to override it under another.”

We represent that the final sentence of this paragraph is relevant in this case. Is it appropriate to adopt a policy, knowing that it may never satisfy the “community backing” test?

While we recognise that the views of the community may, at a different time, change, we are concerned that if this proposal does become a policy in the adopted Plan, the statutory presumption under Section 38(6) of the Planning and Compulsory Purchase Act 2004 would weigh heavily in the decision making process. What weight then would be given to “Community Backing” in the WMS? Even if the WMS is incorporated into the NPPF as a result of the section in the Housing White Paper relating to Wind Turbines, it has to be borne in mind that the NPPF is Guidance and, material consideration though it may be, carries less weight than the statutory presumption – see the East Staffordshire judgment².

We recognise that the Examination cannot dwell on this issue. However, we also represent that it cannot be ignored and that the comments of the Inspector in the Manston appeal are relevant. There is no point in having such a policy if there is no realistic prospect of its being delivered.

Q7 In respect of the proposed site at Brenda Road, what does the level of community comment (both for and against) indicate in terms of whether Policy CC4 proposal at Brenda Road would be deliverable? Consequently, would the policy be sound, in terms of being effective?

We represent that our comments above are relevant to this question. If there are major questions about the deliverability of such a policy, we must question whether it is sound in the first place.

Q8 Has it been satisfactorily demonstrated that on-shore wind turbine structures can be accommodated at Brenda Road without significant adverse impact on residential amenity and the amenity of those employed in the Southern Business Zone (primarily relating to noise and flicker)?

We acknowledge that the turbines proposed under the draft Plan are significantly smaller than those that were the subjects of the recent planning applications. The applications were for turbines 206 metres to the tip, although this height was subsequently reduced to 175 metres. Nevertheless, the proposals in the Plan concern large turbines which will have a major impact in the area.

As we have indicated previously, we acknowledge that the landscape in the Brenda Road area is poor. However, the existing structures are reasonably low and so do not have a major impact on residential amenity in Seaton Carew. Nor do they have a

² Barwood Strategic Land II LLP v East Staffordshire Borough Council [2017] EWCA Civ 893

major impact on heritage assets in Seaton Carew. But turbines 100 metres to tip are likely to have a major impact on such issues. It must also be borne in mind that the residential area has expanded towards the industrial area and so could now be more impacted than was previously the case.

While the amenity of workers is not a prime issue for CPRE, we represent that it cannot be ignored in this case. The impact of shadow flicker and noise upon them may be far worse than it is on the residential areas and cause significant problems.

When I was acting on behalf of the Association and making representations in respect of the applications for the previous turbines, I secured a noise report from John Yelland. That showed that there could be major noise issues for residents of Seaton Carew. Notwithstanding the lower height of the present proposals for turbines in this area, we represent that those concerns have not been addressed. We are aware of noise issues from other wind farms, including in the County Durham area, where residents are badly affected by noise. These are sparsely populated areas. The problem could be magnified many times if there are such problems in heavily populated areas such as Seaton Carew.

It should be noted that compliance with a planning condition may not be a defence to a nuisance claim – see *Coventry v Lawrence*³, particularly from paragraph 77, where the Supreme Court considered this fully.

We therefore represent that it has not been demonstrated that wind turbines in the Brenda Road area can be accommodated without significant impacts on residential amenity and also represent that there are likely to be significant impacts on people working in the area, who will in fact be closer to the turbines.

It is perhaps also worth noting that there are at least two residential properties that are situated within the employment sites. These are a house for a chicken farmer and a residential property on Brenda Road itself.

Q9 What would be the harm to local character? In what visual context do the turbines need to be considered?

In respect of Brenda Road, we recognise the poor quality of the landscape of the area but represent that turbines here will have an impact on the wider landscape. We represent that the impact on Seaton Carew is important bearing in mind proposals under the Supplementary Planning Document to improve this area and the heritage assets within it.

The potential impact on the landscape of further turbines at High Volts is likely to have a significant impact on a largely rural area, notwithstanding the existing wind farm that is there already. There would of course be a similar issue regarding any

³ [2014] UKSC 13

extension of Red Gap wind farm. We represent these would have to be assessed with the findings of the Arup study in mind.

Q10 Is there evidence that the Brenda Road proposal would 'sterilise' or inhibit employment proposals within the Southern Business Zone? Conversely, is there evidence that wind turbines at this location could have a positive impact on employment and businesses in the area?

CPRE has no evidence to this effect but is concerned that, in view of our comments above, any turbines here could inhibit future development and improvement in the Brenda Road area.

Q11 Are there any likely significant effects on bird populations associated with the nearby SPAs?

CPRE did not make representations in respect of this. Nor did I make representations in respect of this Policy on behalf of Durham Bird Club. I did make representations about the previous three applications on behalf of the Bird Club but recognised that the turbines were situated probably at a sufficient distance from the SPA.

However, there was a concern expressed both by Durham and Teesmouth Bird Clubs about night migration over this area. While there was a survey of bird movements as evidence for the three applications which did not reveal a major issue, it did not cover the possibility of night migration.

I am now aware, having attended the Bird Fair in Rutland this summer, that people are now conducting surveys by setting up acoustic equipment to see what does pass over a site overnight. This has produced some surprising results and more birds were found to be migrating at night than had been expected. Clearly, this is most relevant in the migration season but could also be relevant if birds are moving from resting to feeding sites.

We therefore represent that this is an issue that, if this proposal is to be found to be potentially sound, needs to be addressed and a further condition included to say that such surveys should be undertaken by suitably qualified people.

One other issue that may be relevant is whether the proposals in Brenda Road would impact on the seals that gather at Greatham Creek. It is acknowledged that seals gather here in some numbers notwithstanding the Tees Offshore wind farm. That however, although very visible from Seaton Carew, is a few miles away and so may not impact on seals swimming or feeding in the area. At Greatham Creek, they are resting and it may be appropriate to determine if wind turbines in reasonable close proximity may cause noise or other disturbance and so mean they desert this area.

Q12 The area for Policy CC4 at Brenda Road washes over general employment land at Policy EMP3g and land for specialist employment at EMP4e. Is that deliberate and does it prejudice the economic strategy for the area?

CPRE cannot comment on the first part of this question. If our concerns regarding the potential impact on workers in this area and future investment there are justified, it will prejudice the economic strategy.

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