

## Dealing with the planning system

This morning I will try to help you to respond to planning applications.

There are two types of planning application – those that require an Environmental Impact Assessment (EIA) and those that do not.

Substantial developments such as a wind farms will generally need an EIA, which means that what is called an Environmental Statement (ES) must be submitted with the planning application. However, an EIA is not mandatory in all cases. Guidance in Government guidance states that:

***‘EIA is more likely to be required for commercial developments of five or more turbines, or more than 5 MW of new generating capacity.’***

However, this guidance is dated, and given the scale of modern turbines many people argue that an EIA should now be required in all such cases.

The first thing that a developer should do is to ask the Local Planning Authority (LPA) for a screening opinion to determine whether or not an EIA is required. This consultation is often not open to comments from the public.

The LPA should respond with a screening direction stating whether or not an EIA is required. If a negative screening direction is given then the Regulations require it to be in writing, to give clear reasons and to be included in the planning file for the application. It is a public document.

If the applicant submits an application without first issuing a screening request then the LPA must issue a screening direction within 21 days of receiving the application. Alternatively the applicant can assume that an EIA will be required and submit an application containing an Environmental Statement.

If the LPA decides that an EIA is required then the applicant can request a second opinion from the Secretary of State through the National Planning Casework Unit. If the application is for a single turbine then that second opinion is invariably that an EIA is not required.

If an EIA is required then the next step is usually for the developer to submit a Scoping Request. This document describes the proposal and sets out the proposed coverage of the ES. Comments from consultees are invited such as the Ministry of Defence, the Environment Agency and Natural England. CPRE is often invited to submit comments.

The purpose of this is to specify the scope of the ES, which will invariably be produced by consultants paid for by the developer. Other interested parties, such as local residents, can also submit comments on the scoping request.

Once the consultation period has expired, the Council issue a statement to the developers setting out what should be included in the ES.

The scoping opinion stage is not the time to make comments on the suitability of the proposal. Any comments on the scoping document should highlight areas of concern, and then it should be left to the developers themselves to decide how to address these concerns in the ES. If the applicants produce an inadequate ES then the time for criticism is when the planning application is submitted.

Once the application has been submitted the LPA will check that all the correct documents have been included and will then validate the application.

### **The Consultation Process**

The LPA will then notify the consultees and the neighbouring residents. There is a 21 day period for people to submit comments on the application, although normally any late comments will be taken into account up until the case officer makes a decision whether the application should be approved or refused.

The LPA has a deadline of 8 weeks in which to make a decision for a non-EIA application or 16 weeks for an EIA application. These are target deadlines and are often not met.

Depending on the comments that are submitted the LPA often asks the applicant to submit further information. In that case there is normally a further

21 day consultation period once the additional documents have been received although this is not required in a non – EIA application.

Comments on an application should be based on sound planning reasons. For example '*Saving the planet*' or the aesthetics of wind turbines does not come into it. I will explain some planning reasons later.

### **The Decision Making Process**

If every planning application was decided by the planning committee then they would sit 24 hours a day, 7 days each week. Therefore most applications are decided by means of delegated powers whereby the planning officer makes the decision. For contentious proposals the application is often decided by the planning committee and the planning officer submits a recommendation to the committee.

If you do not agree with the officer's recommendation to the committee then there is nothing wrong with writing politely to the members and pointing out why you do not agree with the officer and asking them to vote against the officer's recommendation. There is nothing to stop the members voting against the officer's recommendation if they give sound planning reasons for their decision.

If you feel strongly enough then you can register to speak at the committee meeting, usually for 3 minutes.

The law is that planning application must be decided according to the development plan unless material planning considerations indicate otherwise. This is often called the planning balance and in simple terms is the balance between the harm and the benefits of a proposal. If the harm would outweigh the benefits then planning permission should normally be refused.

## **The Decision**

If planning permission is granted then the only redress that the residents have is to apply to the High court for a Judicial Review. This is a costly process and is often unsuccessful. I can explain more about this later if needed.

If planning permission is refused then the applicant has the right to lodge an appeal with the Planning Inspectorate. This has to be done within 6 months of the decision date.

A planning inspector will then decide whether or not to allow the appeal and grant planning permission.

The appeal will be decided by one of three methods:

The simplest method is by written representations whereby the LPA and the appellant submit written statements and residents can do the same. The inspector then carries out a site visit and comes to a decision.

The next level is by means of a public hearing where the various parties can speak to the inspector and put their views in writing and verbally. The inspector will ask them questions and then conduct a site visit before coming to a decision.

The most complex method is by means of a public inquiry. In this case the various parties are usually represented by barristers who call expert witnesses to give evidence to the inspector. The barristers will usually cross examine the witnesses for the other side. The local residents have the right to appear and can form what is known as a Rule 6 Party if they wish which will give them equal rights to the appellant and the LPA. The inspector will conduct one or more site visits and then issue a decision.

This is a complex procedure but I am happy to answer questions on it later if needed.

If any party disagrees with the inspector's decision then the only redress is to apply to the High Court for what is known as a Statutory Review. Again this is a costly exercise which often fails

### **Planning Reasons**

Does the application comply with the development plan policies for the area? Download the Local Plan from the Council's website and test the application against the policies on landscape, renewable energy, historic environment, tourism, the economy and so on.

Does it comply with the national policies contained in the National Planning Policy Framework (NPPF) and the Planning Practice Guidance for Renewable and Low Carbon Energy?

If you wish to object then failure to comply with any of these policies are strong grounds for objection.

### Landscape and visual impacts

- Is the site in, or close to, a National Park, an Area of Outstanding Natural Beauty (AONB) or an Area of Great Landscape Value (AGLV)?
- Check to see if the application complies with Council's Landscape Character Assessment (which can usually be downloaded from the Council's website).
- Are accurate visualisations provided by the applicant? Do they comply with best practice guidance?
- Does the landscape and visual impact assessment comply with the Landscape Institute's guidance?
- Does the application adequately assess impacts on the historic environment?
- Are there any footpaths or bridleways nearby? If so the local branch of the Ramblers Association and the British Horse Society may be able to give invaluable support and advice.

### Effects on those living nearby.

The two main effects on dwellings are visual impact and noise. Developers usually assess these two effects separately when in fact they should be taken together; when judged separately these may be marginally acceptable but when taken together they may be totally unacceptable.

Remember that in the case of solar farms the noise from inverter housing cooling fans can be intrusive for those living nearby.

In the past, developers have often tried to ignore the visual impact on neighbouring dwellings and the assessments have been sub-standard or in some cases non-existent. Pressure from objectors, including CPRE, is now having the desired effect and developers are beginning to realise that impacts on properties will need to be properly assessed if they are to get planning permission.

So it is vital to study the residential amenity survey to ensure that it has been carried out properly and that the results are accurate. Again professional advice may be needed.

The planning system does not exist to protect views from private properties, but if a proposal would have an effect on a property such that it would come to be regarded as an unattractive and unsatisfactory place in which to live, then it is not in the public interest to create such living conditions. Such effects are grounds for refusal of planning permission.

The noise standard for wind turbines is ETSU-R-97 which was published in 1996 and is increasingly being criticised for being out of date and not being capable of addressing the noise issues with the large turbines that are proposed nowadays.

The document sets out to '*offer a reasonable degree of protection to wind farm neighbours without placing unreasonable restrictions on wind farm development or adding unduly to the costs and administrative burdens on wind farm developers or local authorities.*'

It has become clear over the years that compliance with ETSU-R-97 does not mean that turbine noise will be inaudible; even barristers representing developers at public inquiries have made it clear that residents will be affected by noise even though the development complied with ETSU-R-97.

ETSU-R-97 does not deal fully with Amplitude Modulation (AM) which is the characteristic “swish and thump” noise that all turbines exhibit. Even though the turbine noise levels may meet ETSU-R-97 limits, AM can be seriously intrusive especially under the atmospheric conditions that are often present in the evenings and at night.

Another issue is the increase in turbine noise above existing background noise levels. ETSU-R-97 noise limits are a maximum of 5 decibels(dB) above existing background noise levels or 35-40dB (43dB at night) whichever is the higher.

In a quiet rural area background noise level are often very low, especially in the evenings, meaning that the permitted turbine noise levels could be up to 20dB above background noise levels. BS4142, which is the noise standard used for all developments apart from wind turbines, states that an increase of 10dB above background is likely to lead to complaints.

Another effect is shadow flicker, which is the shadows of the turbine blades passing the windows of a house, causing the rooms to go dark at blade passing frequency, about once per second for large turbines and more frequently for the smaller turbines with fast rotating blades. It is often stated that shadow flicker can only occur within 10 rotor diameters of a turbine and only at properties that are situated within 130 degrees each side of North from a turbine.

The developers usually state that shadow flicker will not be a problem and that if it does occur then systems can be fitted to the turbine(s) to overcome the problem by switching off the turbine(s) when it is likely to occur.

Notwithstanding this there are many instances where people suffer from shadow flicker even though planning conditions have been imposed to prevent it occurring.

An associated effect is shadow throw which is the effect of blade shadow moving across the ground and this can be as intrusive or more intrusive than shadow flicker and is much more difficult to control with a planning condition.

It is said that since the changeover to digital television reception will not be affected by wind turbines, but that remains to be seen.

### Ecology issues

For wind farm and solar farm applications the ecological surveys are often substandard and for applications for single turbines are often non-existent.

As a minimum an Extended Phase 1 Habitat Survey should be carried out, but this is often not done.

Natural England sets out the minimum distance from turbine blade tip to the nearest bat corridor<sup>1</sup> (50m), often a hedgerow and developers often assume that this is sufficient to protect bat populations. This is arguable and it is often stated that proper bat surveys should be carried out.

A wintering bird survey and a breeding bird survey should be carried out but the developer is often anxious to submit the planning application and does not carry out the proper surveys.

Dormice and Great Crested Newts are protected by law and a proper habitat survey should be carried out to establish whether they are present on site, along with any other protected species; again this is often a matter that is ignored or skimped by the applicant.

### Tourism issues

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<sup>1</sup> <http://naturalengland.etraderstores.com/NaturalEnglandShop/TIN051>



The wind industry and solar continues to say that renewable energy schemes do not have any detrimental effects on tourism, and quote a number of surveys to support this stance. These surveys are seriously flawed for a number of reasons.

Very few, if any, surveys have been carried out at a local level to establish what effects these schemes would have on tourist based businesses, so the effects on local businesses remains unknown. The effects on tourism of a proposal for a wind turbine, wind farm or a solar farm in an area valued by tourists remain a valid ground for objection.

### **Summing up.**

So that was a short explanation of quite a complex process.

I am happy to now take questions, and I will do my best to answer them.

Thank you for listening to me.