This morning I will concentrate on wind turbines and solar farms as they are causing great concern to many people.

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

Substantial developments such as a wind farms, solar farms or large housing developments will generally need an EIA, which means that an Environmental Statement (ES for short) must be submitted with the planning application. However, an EIA is not mandatory in all cases.

The first thing that a developer should do is to ask the Local Planning Authority (LPA for short) 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 opinion stating whether or not an EIA is required. If the screening opinion is that an EIA is not required 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 opinion 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 and the applicant disagrees then the applicant can request a second opinion from the Secretary of State through the National Planning Casework Unit. That second opinion is often 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 scope 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. 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

Once the application has been validated, 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.

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.

The Decision Making Process

Many applications are decided by means of delegated powers whereby the planning officer makes the decision. For large or contentious proposals the application is often decided by the planning committee and the planning officer submits a recommendation 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 applications 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 benefits of a proposal and the adverse impacts that it would have. If the harm outweighs 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.

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. 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) or in the Planning Practice Guidance?

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

<u>Landscape and visual impacts</u>

- 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 LPA's Landscape Character Assessment (which can usually be downloaded from the LPA's website). It is important to note that the Devon Landscape Policy Group has produced a Devon-wide landscape character assessment.

- 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 asses impacts on the historic environment? It should be remembered that any degree of harm to a heritage asset carries considerable weight and importance and automatically means that there is a presumption against the grant of planning permission.

- Are there any footpaths or bridleways nearby? If so has the applicant adequately assessed the effects on them?

Effects on those living nearby.

This mainly applies to wind turbine developments.

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 invertor housing cooling fans can be intrusive for those living nearby.

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.

Dr Bratby has already dealt with noise issues so I need say no more on this subject.

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.

An associated effect is shadow throw which is the effect of blade shadows 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.

Ecology issues

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 feature likely to be used by bats, often a hedgerow, of 50m, and developers often assume that this is sufficient to protect bat populations. This is arguable and a number of appeals have been dismissed over this.

A wintering bird survey and a breeding bird survey should be carried out but these are often not carried out.

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.

The NPPF states that development should not take place on best and most versatile agricultural land unless no other land is available. Best and most versatile land is specified as land in grades 1, 2 and 3a of the Agricultural Land Classification. This is particularly relevant to solar farm applications.

Tourism issues

The wind and solar industry 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.

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 in the surrounding area, 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.

Government Policy

The latest Government Policy was published on 6 March 2014. It is solely web based and can be accessed by searching the internet for the words Planning Practice Guidance or going to:

http://planningguidance.planningportal.gov.uk/

The Law

The law takes precedence over policy.

The most important planning acts are:

- the Town & Country Planning Act 1990 (which has undergone many changes)
- the Planning (Listed Buildings and Conservation Areas Act) 1990 and
- the Planning & Compulsory Purchase Act 2004.
- The Countryside and Rights of Way Act 2000 is also important.

The latest law that needs to be considered is the Town and Country Planning (Development Management Procedure and Section 62A Applications) (England)(Amendment) Order 2013. Quite a mouthful so it is normally referred to as the 2013 DMPO.

This is very important with regard to wind turbine applications as it sets out that applicants for any development involving the installation of more than 2 turbines or where the hub height of any turbine exceeds 15 metres must carry out pre-application consultation with the public.

The DMPO inserted a new Section 61(W) in to the Town & Country Planning Act which requires that:

- the applicant must publicise the proposed application in such manner as the applicant reasonably considers is likely to bring the proposed application to the attention of a majority of the persons who live at, or otherwise occupy, premises in the vicinity of the land.
- The applicant must consult each specified person about the proposed application.

The DMPO sets out three requirements:

- The applicant must show how section 61(W) of the 1990 Act was complied with

- Must set out any responses to the consultation that were received by the applicant; and

- Must set out the account taken of those responses.