

**Appellant's Statement of Case:
Spring Brook Wind Turbine Planning Appeal**

Planning Application Reference: 2013/0784

Planning Appeal Reference:

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1 Introduction

1.1.1 The appealed proposal is for the erection of a single wind turbine, of up to 79m in height (to blade tip), and associated infrastructure.

1.1.2 The appeal site is on agricultural land associated with Sheephouse Farm, above Underbank Reservoir near Stocksbridge, as shown in **Figure 1.1.**

Planning History and Reasons for Refusal

1.1.3 The subject of the current appeal was validated by Barnsley Council ('the Council') on the 15th July 2013 and refused planning permission by Notice dated 24th March 2014 (**Appendix 1**). The Energy Workshop Ltd (TEW) prepared the planning application and is now the agent for this appeal.

1.1.4 The Spring Brook wind turbine proposal was initially submitted by TEW to the Council in a single planning application, which also contained a proposal for a met mast at the same location. Following concerns raised by the Council, regarding the possibility of a split decision, the application was split into two: one for the met mast (2013/0747), the other for the wind turbine (2013/0784).

1.1.5 Whilst the Council were processing the planning application for the wind turbine appeal, TEW responded to several representations from members of the public, Council departments and key agencies. These responses are included with the appeal documents.

1.1.6 The case officer's Report to the Council's Planning Regulatory Board (**Appendix 2**) presents both the met mast and the wind turbine proposals together but contains separate conclusions for each. The conclusions pertaining to the wind turbine proposal are given in the case officer's Report, pp.80-88. The reasons for refusal are stated on the Decision Notice as follows¹:

¹ The reasons for refusal given on p.91 of the case officer's Report include a biodiversity reason. This is not included on the Decision Notice, as the Council's Biodiversity Officer removed his objection prior to the Board Meeting, as reported to Members at the meeting (see **Appendix 3** for correspondence on this issue).

- 1. The site lies within the Green Belt in the Barnsley Unitary Development Plan and the proposal constitutes inappropriate development. The Local Planning Authority is of the opinion that the very special circumstances put forward do not clearly outweigh the harm to the character and openness of the Green Belt by virtue of the proposed scale and siting of the turbine in relation to the immediate surrounding landscape character. As such the proposal conflicts with the provisions of the NPPF, the advice contained within the National Planning Practice Guidance for Renewable and Low Carbon Energy and Barnsley Core Strategy policies CSP6, CSP21, CSP20, CSP34, CSP37 and the Barnsley Landscape Character Assessment.*
- 2. In the opinion of the Local Planning Authority, the proposed wind turbine would harm the character and appearance of the nearby Peak District National Park in that the height and scale of the turbine would have a detrimental visual impact to the open character of the highly sensitive landscape, including the Dark Peak, Dark Peak Pennine Fringe and Eastern Moorland, conflicting with the statutory purposes of the National Park. The proposed development therefore conflicts with the Peak District National Park Landscape Strategy and European Landscape Convention Action Plan, the Barnsley Council Landscape Character Assessment, Barnsley Core Strategy policies CSP6, CSP21, CSP20, CSP37 and the Climate Change and Sustainable Building Supplementary Planning Document (SPD) adopted by the Peak District National Park Authority.*
- 3. In the opinion of the Local Planning Authority, the proposal fails to satisfy Core Strategy policy 30 and Section 12 of the NPPF and the Planning Practice Guidance for Renewable and Low Carbon Energy in that it has not been adequately demonstrated that the form of development proposed would protect or enhance the character and appearance of the grade II listed buildings at Underbank Hall, Underbank Lane as heritage assets.*

4. In the opinion of the National Air Traffic Control Service the proposed development has been identified to have a potential impact on air traffic control systems and presenting a potential hazard to aircraft safety. The proposal would therefore be contrary to CSP6 of the Barnsley Core Strategy and the advice contained within the National Planning Practice Guidance for Renewable and Low Carbon Energy.

1.1.7 Appeal Appendix 3 contains correspondence with the case officer post determination. This correspondence contains confirmation of the removal of the biodiversity objection (referred to in the case officer's report) and confirmation that the Council would request any appeal be dealt with through written representations.

2 Greenbelt

2.1.1 Green Belt covers around 77% of Barnsley Borough, as shown on the Barnsley Unitary Development Plan (UDP) proposals maps. The appeal site is located within the UDP Green Belt boundary, and the emerging Development Sites and Places DPD does not propose a change in this area.

2.1.2 Development Plan Policy on the Green Belt is contained in saved UDP Policy GS6 (Extent of the Green Belt), and Core Strategy Policy (CSP) 34 (Protection of the Green Belt), the latter of which leaves national planning policy on Green Belts (then contained in PPG2, now NPPF) to define appropriate uses and acknowledges that very special circumstances may arise where other types of development may be considered acceptable, after weighing harm against benefits.

2.1.3 The NPPF states (at paragraph 91) that 'many renewable energy projects will comprise inappropriate development' when located in the Green Belt, but that the wider environmental benefits associated with renewable energy schemes may be considered as very special circumstances. The meaning of 'very special circumstances' was clarified in a case at the High Court, which established that if very special circumstances are to exist, they must clearly outweigh harm

not only to the Green Belt but any other harm that may be identified.²

2.1.4 Recent planning decisions in Barnsley Borough and further afield demonstrate that there is no absolute bar on wind energy developments in the Green Belt. Consented developments in Barnsley include the windfarms to the northwest:

- Royd Moor Wind Farm - 13 (54m) turbines - erected in 1993 and due to be decommissioned in 2018
- Hazlehead Wind Farm (2006/1575) - 3 (100m) turbines
- Blackstone Edge Wind Farm (2008/0171) - 3 (101m) turbines
- Spicer Hill Wind Farm (2009/0572) - 3 (95m) turbines

2.1.5 Wind turbines located in Green Belt outside Barnsley Borough, also in the north of England, include: Scout Moor³, Marr⁴, Cliffs Farm⁵, Darrington⁶, and Hook Moor⁷. At the Darrington appeal, the Inspector noted that 'the decision on individual cases turns on the balance between harm by reason of inappropriateness and any other harm on the one hand and the benefits that the wind farm would bring on the other hand. The weighing of harm against benefits is a matter for a case-by-case assessment' (p.84).

2.1.6 Regarding harm to Green Belt, the NPPF states that the essential characteristics of Green Belts are their openness and their permanence, and sets out their 5 purposes. Harm to the Barnsley Green Belt's essential characteristics and purposes is not discussed in the case officer's Report until the summing up section (p.87 - Overall), where it is stated that the development would harm the openness and visual amenity of the Green Belt and conflict with one of the purposes of including land within the Green Belt - to

² High Court of Justice Judgment (The River Club v SSCLG & Royal Borough of Kingston upon Thames ([2009] EWHC 2674))

³ Inquiry on S36 application - Rochdale, Greater Manchester (2005)

⁴ Planning application - Doncaster, South Yorkshire (2007) - 07/00445/FULA

⁵ Planning appeal - Lancashire (2008) APP/D2320/A/08/2069152

⁶ Planning appeal - Wakefield, West Yorkshire (2009) APP/X4725/A/09/2101120

⁷ Planning appeal - Leeds, West Yorkshire (2011) APP/N4720/A/10/2121279

safeguard the countryside from encroachment - with the wind turbine's associated infrastructure adding to these aspects of harm.

2.1.7 As noted in the LVIA (5.7.9 - 5.7.13) the Barnsley Landscape Character Assessment (BLCA) describes features which contribute to the openness of the land around the site (i.e. within Penistone Upland Farmland) – low settlement density, unimproved pasture, panoramic views – but also describes features which illustrate the local landscape is by no means undeveloped – scattered farmsteads, pylons and power lines. The LVIA discusses the impact of the appeal proposal on the openness of the Green Belt, as experienced from the viewpoints agreed with the Council. Whilst it cannot be denied that the proposal would lead to a loss of openness compared to the baseline condition, due the nature of the single medium scale turbine proposed, and its separation from other vertical features, views across the site would not be significantly disrupted, and hence its impact on openness would be modest.

2.1.8 Also of relevance to maintaining the permanently open character of the Green Belt, is that planning permission is sought for a temporary period of 30 years, after which time the wind turbine would be removed and the land reinstated (assuming planning permission to extend the life of the project was not sought or forthcoming).

2.1.9 Regarding any other harm, the case officer's Report asserts that due to the turbine's scale and siting the proposal would harm the character of the local landscape. The case officer's Report elaborates on this reason, by first noting the policy context, as set out in the submitted Planning Statement. Namely:

- CSP6 allows for renewable energy developments as long as there is no significantly harmful effect on (*inter alia*) the character of the landscape and appearance of the area; and
- CSP37 expects that all development will retain and enhance the character and distinctiveness of the individual Landscape Character Area in which it is located (as set out in the Landscape Character Assessment of Barnsley Borough 2002).

2.1.10 The case officer's Report (p.81) summarises the landscape character description for the local landscape (Penistone Upland Farmland) by quoting from the Barnsley Landscape Character Assessment (BLCA) document, and follows this with the statement: 'In view of the above, landscape sensitivity to built development is judged to be high and landscape capacity is considered to be low'. As discussed in the submitted ES (5.7.12), this judgement corresponds to the assessment of Penistone Upland Farmland given in the BLCA. However, as set out in the ES, the BLCA assessment was carried out primarily for the purpose of predicting the effects of new Greenfield housing development, and not specifically relevant for wind turbine development proposals. The BLCA assessment of sensitivity is not irrelevant, particularly as the Spring Brook site lies within the Green Belt, where any inappropriate development is by definition harmful to the Green Belt. Both the refusal of the previous Sheephouse Heights wind farm proposal and the EIA screening and scoping exercises for Spring Brook highlight the delicate and sensitive nature of the local landscape, and the requirement for very special circumstances. This is the context within which the Spring Brook wind turbine proposal has emerged.

2.1.11 In discussing the impact of the proposal on local landscape character, the case officer's Report notes that a LVIA was submitted as part of the planning application, but also notes that the accuracy of the associated photomontages 'has been challenged in objections from the Sheephouse Action Group, Cllr Barnard, and the Peak District National Park Authority'. The issue of the accuracy of the photomontages was addressed in our response to the Peak District National Park Authority (PDNPA) representation on 21st November 2013 (attached). In our response (to point 6 of the PDNPA representation) we demonstrate that the photomontages are compliant with both SNH and Landscape Institute (GLVIA) standards. We encouraged the case officer to take a view on this matter prior to determination but none was taken, and only the objections are noted in the Report.

2.1.12 The case officer's Report does not discuss the LVIA but states that the associated photomontages show the proposed turbine would be

seen above the skyline on the ridgeline of Sheephouse Heights Hillside when viewed from the south and west, and as the tallest structure in the vicinity. The case officer's Report repeats the assessment in the BLCA that the local landscape has a High sensitivity/ Low capacity for development, and states that 'a turbine of this scale (79m to blade tip) would have a significant and harmful impact upon the landscape character area', and therefore contrary to CSP6 and CSP37. The case officer's Report does not consider cumulative landscape and visual impacts to be of significant concern in its assessment of the proposal.

2.1.13 Although not mentioned in the case officer's Report, local residents who had objected to the proposal – Paul Groobey, Charles Halstead, Alan Hey and David Weldon – commissioned a company (Julie Martin Associates) to prepare a landscape and visual appraisal of the proposal in support of their objections. This appraisal was handed to us at a meeting with the case officer on 29th November 2013.⁸ The appraisal discusses impact on local landscape character, and notes that the BLCA assessment of sensitivity and capacity for development relates primarily to the capacity for housing development. It acknowledges that neither Barnsley Council nor Sheffield Council have produced landscape sensitivity or capacity guidance for wind turbines in their areas but notes that the Peak District National Park's SPD 'Climate Change and Sustainable Building' includes a Landscape Sensitivity Assessment and Guidance for Wind Turbine Development which covers land peripheral to the National Park.

2.1.14 The closest landscape type to the Spring Brook site covered by the SPD, 'Slopes and Valleys with Woodland', is classed as having a 'high' sensitivity to 'large scale turbines' (i.e. over 65m to blade tip). This point is raised in the PDNPA's representation and our response to the PDNPA discusses the relevance of their landscape sensitivity assessment to the proposal and Government policy on proposals outside the boundaries of nationally designated landscapes.

⁸ Barnsley Council does not upload representations to its website, and does not notify applicants when representations are received.

- 2.1.15 The appraisal prepared for local residents quotes from the SPD that the peripheral area is 'not suitable for large scale turbines owing to its small scale character and strong sense of peace and tranquillity'. However, in our response to the PDNPA, we question the relevance of this guidance to the Spring Brook site. Firstly, the guidance only discusses the sensitivity of the Slopes and Valleys with woodland landscape where it is within the National Park. Secondly, the small scale character and strong sense of peace and tranquillity described in the SPD for the fringe landscape does not tally with the descriptions of the local landscape in the LVIA, which draw on regional and local character area/ type descriptions, AHLV descriptions and site visits, and include reference to large scale manmade features (electrical infrastructure and communications masts, and to the south, the A616, Underbank Reservoir and the main industrial and residential areas of Stocksbridge).
- 2.1.16 The appraisal prepared for local residents (at p.8) does not directly consider the characteristics of the receiving landscape or the likely area of effects. The appraisal intermingles issues of character views and designated landscape, and is most concerned with views of the site from the south, within the National Park, the landscape setting of the National Park, and the potential for the Spring Brook turbine to set 'a considerable precedent'. The LVIA acknowledges that the turbine would be a prominent feature along the ridgeline when viewed from the south and west, though not the only vertical feature, but considers that the proposed single turbine would preserve the upland rural character of the area. As will be discussed below, National Parks do not have protected settings. Regarding the comment about precedent, precedent can be a material consideration where similar future proposals in parallel situations could be submitted. However, each proposal should be judged on its merits and in this case it is unlikely that the planning circumstances could be replicated in future. Any future wind turbine proposal in this area will need to take cumulative effects into account.

3 Peak District National Park

- 3.1.1 Another harm requiring to be weighed in the balance against the appeal proposal's benefits relates to impacts on the Peak District National Park, which the Council's Decision Letter cites as the second reason for refusal.
- 3.1.2 The case officer's Report justifies this second reason for refusal by noting that the PDNPA has objected to the application – 'asserting that the turbine would have a substantial adverse visual impact on the setting of the National Park'. The case officer's report notes the landscape sensitivity guidance contained in the National Park's SPD (discussed above), and considers that the proposal would be in conflict with this guidance 'if it is accepted that the SPD should apply to sites located within the Barnsley boundary'. The case officer considers this a reasonable approach 'given that it would affect the setting of the Peak District Park from locations within it, which the SPD seeks to protect from the form of development proposed'.
- 3.1.3 The PDNPA initially expressed support for the Spring Brook proposal in pre-application discussions (as set out in the ES), but submitted their objection to the Council on 15th November 2013. Our response to the PDNPA objection was submitted to the Council on 21st November 2013, and is attached.
- 3.1.4 The appraisal prepared for local residents also discusses impacts on the National Park and states that effects on the National Park would be adverse, but not significant. Page 12 of the appraisal suggests there would be harm to the National Park's setting. National Parks do not have protected settings. It is clearly set out in national policy that it is the effect on the special qualities and purposes of designation which matter. The Whinash Inquiry in 2005-6 discussed the relationship between a windfarm proposal and nearby National Parks. In that case, the Inspector considered that the effects of the 24 turbine proposal would be far reaching with consequential damage to the natural beauty of the adjoining and nearby National Parks. In other cases, Inspectors have considered the harm to be outweighed by the importance of the contribution of the schemes to meeting renewable energy needs. The LVIA and our response to the

PDNPA acknowledge that from parts of the National Park, the proposed turbine would appear as a relatively prominent feature on the farmed landscape to the north, however the extent of harm is not considered to be significant in this case, with regards to the special qualities of the Park.

4 Heritage

4.1.1 The Council's third reason for refusal states that 'it has not been adequately demonstrated that the form of development proposed would protect or enhance the character and appearance of the grade II listed buildings at Underbank Hall, Underbank Lane as heritage assets'. This reason is justified in the case officer's Report by reference to an objection from the Barnsley Council Conservation Officer, which was passed to us at our meeting with the case officer on 29th November 2013. The case officer sent us an email on 8th August 2013 after being contacted by residents at Underbank who sought recognition that the turbine would be visible from some of the properties, and visited the properties. We responded to his email on 9th August 2013 (attached) to confirm the potential visibility of the turbine in this area and offer a more detailed assessment, though none was subsequently requested. Visualisations from the Underbank area can be provided to the Inspector to aid assessment if required. Our response to the case officer's email supplements the Heritage Statement assessment in the ES (9.5.26), and confirms that two of the four listed buildings are predicted to experience complete screening whilst the remaining two should be largely screened by views to the west. As noted in our response, the impact of the proposed turbine on the settings of these listed buildings is not simply determined by the level of visibility of the turbine, but involves making a judgement about the contribution of the view towards the Spring Brook site in understanding the heritage asset and its reason for designation.

4.1.2 The NPPF (Glossary) defines setting as follows:

The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive

or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.

- 4.1.3 Given the potentially wide extent of setting, the historic context of the locality was researched and informed the assessment of the significance of heritage assets as well as the assessment of the contribution made by their settings. In the case of the listed buildings at Underbank, the assessment concludes harm to their settings would not be significant, with regard to their special architectural or historic interest.
- 4.1.4 As noted in the case officer's Report, the Barnsley Conservation Officer also raises concerns about harm to the setting of Midhopstones Conservation Area, but this was not carried through as a reason for refusal as Sheffield City Council raised no objection and Midhopstones lies within their administrative area. Impact on Midhopstones Conservation Area was a reason for refusal of the Sheephouse Heights wind farm proposal, and was a particular focus in the redesign of the proposal.
- 4.1.5 Viewpoint 1 for the LVIA is located within Midhopstones, and the existing and proposed view are described in the ES (5.10.6-12). Due to its location, the LVIA predicts widespread visibility of the turbine from open areas within the Conservation Area, but considers the scale of the turbine would not be out of proportion with the landscape. The Heritage Statement also notes visibility of the turbine from the open areas between buildings but some screening from the area's listed buildings, particularly in the case of the Church of St James.

5 Aviation

- 5.1.1 The final reason given on the Council's Decision Notice for refusal of the Spring Brook wind turbine proposal relates to potential harm to air traffic control systems and aircraft safety. As noted in the case officer's Report, the initial objection from NATS, on the grounds that the proposal would cause false plots to be generated on radar and reduce the probability of detection for real aircraft, was followed by a second response stating that a mitigation solution exists in the form of radar blanking should the Council be of the opinion that this

solution is warranted in preference to two other current applications for wind turbines within a 5km radius of the site. This is set out in our email to the case officer on 18th September 2013. None of the schemes have been approved, therefore the mitigation patch is still available. Following discussions with the case officer, we proposed a condition could be applied to any approval requiring the developer to submit to the Council and Radar Mitigation Scheme for approval, prior to construction of the project. A proposed condition was supplied to the case officer by email on 2nd December 2013 (attached).

5.1.2 Negative planning conditions of the Grampian type can lawfully be imposed on any permission provided the issue being addressed is relevant to planning and to the development, and that the proposed conditions are reasonable. In terms of general policy such conditions can be imposed provided that they are also necessary, precise and enforceable.

5.1.3 The Secretary of State has, as a matter of policy, taken the view that such Grampian conditions should only be applied where there is a reasonable prospect of their application within the lifetime of the planning permission in question. This is often taken to be a requirement as opposed to a declaration of policy. The point was considered in a case of [*Merritt v Secretary of State for the Environment, Transport and the Regions Queen's Bench Division, 05 August 1999*] ("the Merritt case"). In that case the Court made it clear that the Secretary of State's reasonable prospects test was one material consideration to be set alongside others in the determination of an application. There may be many cases where such other considerations outweigh the Secretary of State's policy.

5.1.4 This point has been considered at a number of planning inquiries in England. At the inquiry into the proposed and now operating wind farm at Middlemoor in Northumberland, the Inspector recommended that permission should be granted, and the Secretary of State issued a consent subject to a Grampian condition relating to aviation issues. In that case the appellant did not promote any solution to the aviation objection at the inquiry, and it could not have been said

that at the date of issue of the permission that there were reasonable prospects of overcoming the aviation issues in question, which in this case related to military Air Defence Radar concerns. This condition has since been discharged with the developer providing a suitable mitigation solution for the military Air Defence radar in question.

5.1.5 In the context of this appeal, it is considered that the use of a Grampian condition is appropriate as it can be demonstrated that a potential solution(s) is feasible and has a reasonable prospect of being implemented.

6 Environmental benefits

6.1.1 Regarding the benefits of the appeal proposal, the NPPF states that even small-scale renewable energy projects provide a valuable contribution to cutting greenhouse gas emissions. The Government's web-based Planning Practice Guidance also advises (paragraph 021) that where decisions are finely balanced, information about the likely energy output of a proposed wind turbine can be particularly useful. The predicted carbon emissions savings of the Spring Brook project are presented in paragraph 3.3 of the ES and greater detail was provided on 5th September 2013 in response to a local resident's representation (attached).

6.1.2 There are also substantial local economic benefits to the proposal, which should not be overlooked, and which support the case for demonstrating very special circumstances. The Core Strategy (CSP 21) acknowledges the need to support the sustainable diversification and development of the rural economy whilst also respecting the character of the rural landscape, biodiversity, and the Green Belt. The Spring Brook wind turbine would lower, and make more predictable, the running costs of the appellant's dairy farm and bring an additional income stream into the business through export to the grid.

6.1.3 The NPPF is clear that 'very special circumstances' will not exist unless the potential harm to the Green Belt by reason of

inappropriateness, and any other harm, is clearly outweighed by other considerations.

6.1.4 The ES and associated supporting documentation accompanying the planning application and this appeal identify the harm the appeal proposal could give rise to, and demonstrate that the identified harm – whether to the Green Belt, or any other harm – does not outweigh the environmental benefits of the proposal.

7 References

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This Statement of Case was prepared by The Energy Workshop Ltd and submitted on behalf of Mr John Darwin and Family to the Planning Inspectorate on the 21st July 2014.

8 List of Documents

Appeal Documents

Completed Appeal Form

Statement of Case (this document)

Appeal Appendices

Appendix 1 – Decision Notice

Appendix 2 – Committee Report

Appendix 3 - Post Decision Emails from Case Officer

Planning Application Documents

Documents submitted whilst in planning

- Response to local resident representation re Underbank Hall heritage impacts - 9 August 2013
- Response to local resident representation re noise impact assessment - 19 August 2013
 - Additional Noise Assessment - 19 August 2013
 - Appendix 11.1(a) - Noise EWT 900kW - 19 August 2013
 - Appendix 11.2(a) - Spring Brook EWT 900 - 19 August 2013
- Response to local resident representation re project output - 5 September 2013
- Response to NATS objection - mitigation situation - 18 September 2013
- Response to PDNPA representation - 21 November 2013
- Response to NATS objection - Draft Condition - 2 December 2013
 - Bullamor Conditions - MOD radar - 2 December 2013

Documents submitted prior to validation

Planning Application Form

Spring Brook NTS

Spring Brook Planning Statement

Spring Brook Wind Turbine ES

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Appendix 3.1. Screening Request July 2012

Appendix 3.2. Barnsley Screening Opinion August 2012

Appendix 3.3. Screening Request December 2012

Appendix 3.4. Barnsley Screening Opinion January 2013

Appendix 4.1. Agent's Consultation Letter re. Turbine Heights etc., July 2012

Appendix 4.2. Barnsley Consultation Responses, August 2012

Appendix 6.1 & 6.2 List of Bird Species Recorded

Appendix 7.1. Consultation Responses

Appendix 7.2 List of Plant Species and Target Notes

Appendix 7.3 HSI Scores

Appendix 9.1 Table of Listed Buildings outside Conservation Areas

Appendix 11.1 Noise Modelling Results

Appendix 12.1 Ofcom Response

Appendix 12.2 BT Response

Appendix 12.3 Arquiva Response

Appendix 12.4 MII Response

Appendix 12.5 Atkins Response

Appendix 12.6 JRC Initial Responses