



Legal Issues in Assessing Wind Turbine Impacts

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Changes in scale

- Scale of the onshore wind energy industry
- Scale of the technology
- Scale of opposition



The policy framework

PPS 22: *Renewable Energy*

- Renewable energy developments should be capable of being accommodated throughout England
- The regional dimension
- Wider environmental and economic benefits to be given substantial weight
- 1997 ETSU report should be used to assess and rate noise

EN-3: draft NPS on *Renewable Energy Infrastructure*

- Where the correct methodology has been followed and a project is shown to comply with ETSU-R-97 it should be reasonable for the IPC to conclude it may give little or no weight to adverse noise impacts from wind turbines (para. 2.7.66)

Environmental issues

Alternative sites

- North Dover Appeal 2010
- *Derbyshire Dales DC v. SSCLG* (2009)

Visual impact and Shadow Flicker

- Hockley Farm Appeal 2010
- North Dover Appeal 2010

Heritage

- Thackston's Well Farm Appeal 2008
- *Friends of Hethel v. South Norfolk DC* (2010)



Noise

The four stages of ETSU-R-97

- Measurement of prevailing background noise
- Generation of maximum permissible day and night time noise levels
- Prediction of the likely noise emissions at each representative property
- Drafting conditions requiring that noise levels not be breached



Stage 1- measuring background noise

- “Not a precise science”
- Importance of agreement and fastidious compliance with ETSU
- Implications of defective studies: Wood Farm, Shipdham 2009
- Precautionary approaches: Willow Bank Farm, 2010; *Hulme* (2008)
- Consequences of failure to challenge/co-operate: *Friends of Hethel* (2008)
- Disparity of resources: *Barnes v. SSCLG* (2010)



Stages 2 and 3

- Setting maximum noise levels
- Predicting noise emissions
 - How much confidence in background study?
 - How much confidence in turbine type?
 - How much of a margin for error?

See e.g. North Dover, Shipdham, Rushley Lodge Farm

Assumptions on form and scale of wind farm:

Barnes v. SSCLG (2010)



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Stage 4 – Planning Conditions

- Guidance in Circular 11/95
- How much confidence will conditions give? See e.g. North Dover
- How will they operate in the real world? See e.g. Shipdham, Thackston's Well
- Can they deal with AM? See Hockley Farm



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Nuisance

Statutory Nuisance

*Nichols, Albion and Lainson
v. Powergen Renewables
(2004)*



Private nuisance

Davis v. Tinsley, Watts,
Fenland Windfarms and
EDF



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How prescriptive is PPS 22?

- Inspectors are generally reluctant to depart from it
- Lack of reasoning for doing so: *Tegni Cymru* (2010)
- Support for applying ETSU: *North Devon* (2008)
- Amplitude modulation and ETSU: Carsington Pastures
- Room for flexibility: Weaverthorpe Road



Overall messages

- The importance of rigorous compliance with ETSU, especially on background studies
- ETSU represents a balance struck in 1997 which has been subsequently endorsed
- ETSU is not the complete answer to every situation
- Inspectors are alert to the dangers of formulaic application of ETSU
- The lack of nationally endorsed generic conditions is undesirable
- Disputes on noise will continue within and outside the planning system

