

Swift Windfarm Timeline Planning application R12/2009

"I find that the degree of harm to landscape, visual amenity and heritage interests is considerably greater than the ... Council acknowledge..." (IR281):

- 31/10/2013 Planning application registered
- 19/12/2013 Neil Collett's brief landscape assessment email.¹
- 23/12/2013 English Heritage objects to the application.
- 18/02/2014 *Barnwell Manor* Court of Appeal judgement, confirming High Court judgement of March 2013.
- 06/03/2014 Planning Practice Guidance re Heritage updated; now includes: "*In most cases the assessment of the significance of the heritage asset by the local planning authority is likely to need expert advice in addition to the information provided by the historic environment record, similar sources of information and inspection of the asset itself. Advice may be sought from appropriately qualified staff and experienced in-house experts or professional consultants...*". Despite intending to go against the English Heritage objection, no such advice was taken.
- 24/03/2014 CPC sends Nathan Lowde their supplementary representations and additional information, including a page of discussion about *Barnwell*.
- 25/03/2014 Lowde requests the *Barnwell* appeal reference.
- 26/03/2014 CPC sends Lowde the full *Barnwell* judgement.
- 06/04/2014 CPC sends Lowde the first known appeal decision to take account of *Barnwell*, drawing his attention to the relevant paragraphs.
- 23/04/2014 Planning application refused. Committee Report presumably completed about 16 April?
- 16/10/2014 Appeal lodged (APP/E3715/A/14/2227479)

¹ The criticism of Collett's lack of professional appraisal of LVIA of R12/2009 relates to prejudging the issues in the previous 9-turbine scheme. The references in the Committee Report for that latter application (R10/2303), 07/09/2011, which go towards proving that are:

1. "It is felt that on the whole the conclusions reached by White Consultants concur with our own (i.e. that if this site is to accommodate wind turbines the number should be limited to a maximum of four and these should be the four located to the east of the site)." [p.25]
2. "It is considered that a reduced size of development of up to 3 turbines (Nos. 1-3) could potentially be acceptable, as it would delete the turbines that have the most identified harm, and also better contain the extent of the wind farm and associated infrastructure." [p.40]
3. "Unfortunately the application for 9 turbines, now under consideration, is of such a large size, extent and scale that it is unable to overcome the significant identified harm in this instance, and therefore fails to comply with local and national planning policy." [p.40]

- 23/10/2014 Appeal recovered by Secretary of State
- 18/06/2015 Written Ministerial Statement issued: *"local planning authorities can find the proposal acceptable if, following consultation, they are satisfied it has addressed the planning impacts identified by affected local communities and therefore has their backing."*
- 14/07/2015 Despite having twice agreed in writing that the development does not have local support (*"It is clear that there is a significant degree of local opposition to the proposed development"* [Committee Report for 23/4/2014] and *"the presence of a rule 6 party {actually two rule 6 parties} demonstrates that the proposals do not have the backing of the local community"* [letter to PINS 25/6/2015]), RBC argues:
- "However the second part of this condition set out in the amended PPG suffers from an inherent illogicality in that it assumes that if the planning impacts identified by affected local communities have been fully addressed those communities will "back" the proposals. The word "therefore" (it can be demonstrated that the planning impacts identified by affected local communities have been fully addressed and therefore the proposal has their backing") cannot carry the weight that has been placed upon it. If the PPG is to be interpreted to mean that lack of backing in and of itself must lead to refusal it would have the effect of converting opposition per se into a material consideration, contrary to established case law."*
- Suggesting that the SSCLG has made a statement which does not actually say what he means is breathtaking, given that the SSCLG is an intelligent man with significant experience in planning; indeed his appointment was welcomed by the planning fraternity as someone who understood and spoke their language. He is also a strong proponent of localism. It seems inherently unlikely that he said in the Written Ministerial Statement something that he did not mean.
- 05/08/2015 (Exchange of Proofs). Lowde's Proof states: *"Since the time of the Council's previous decision, the Council has become aware of the recent Barnwell Manor Judgement which did not form a part of the Council's assessment of the previous application given the timing in which this judgement came out."* As shown above, this is untrue.
- 02 – 16/9/2015 Public Inquiry
- Lowde again denies knowing about Barnwell at the time he recommended that heritage issues did not offer grounds for refusal (IR281 f/n104), although he in fact knew about it a month before the Committee meeting.
 - RBC barrister attempts to defend Collett against criticisms re handling of landscape and visual, not by proving them wrong, or producing Collett as a witness, but by unsupported assertion.
- 18/01/2016 Secretary of State's decision to reject the appeal

Swift Windfarm Re-application R15/0908

- 22/04/2015 Application registered
- 12/06/2015 We write to Lowde suggesting that application has not satisfied the statutory requirements for pre-application consultation. It is a new application and therefore requires fresh consultation rather than relying on the consultation carried out 2 year earlier for the previous application.
- 12/06/2015 Lowde states the application does satisfy the requirements.
- 12/06/2015 We question the morality of relying on 2 year old consultation for such a significant development as this. Also points out that the distribution of letters to residents does not constitute consultation which is "engaging with the local community" as required.
- 16/06/2015 Lowde replies re-stating that the application complies with the relevant regulations and that the necessary consultation has been carried out.
- 10/07/2015 We refer Lowde to appeal decision APP/D0840/A/14/2227424 in Cornwall where a re-application for a single wind turbine did not carry out fresh community consultation and therefore the re-application was deemed invalid by an Inspector at appeal; hence there was no legal application to be appealed.
- 13/07/2015 Lowde confirms receipt and states that RBC are taking legal advice on the matter. He also confirms that he has forwarded our whole email conversation to the developers.
- 20/07/2015 Lowde replies stating that after taking legal advice they believe the Cornwall appeal decision has material differences with R15/0908 because no further consultation at all had been carried out in that case, whereas with R15/0908 the letter sent by RES in their view did constitute new consultation and therefore RBC continues to treat the application as valid.
- 20/07/2015 We request copies of all communication with RES on the community consultation issues raised as he saw fit to send them all of ours. Lowde replies stating that they have not received any communication from RES or their legal representatives on this matter.
- 21/07/2015 Lowde asked to clarify that RES made no communication with RBC about the matters raised, which he does on 22/07/2015.
- 24/07/2015 We write to Nathan Lowde pointing out that the dates involved with RES' supposed fresh pre-application community consultation conclusively prove that this consultation was not pre-application and therefore the application does not comply with the statutory requirements and should be deemed invalid.
- 24/07/2015 Lowde responds stating that they will seek further advice.

- 31/07/2015 Lowde replies stating that after seeking further legal advice they are now of the opinion that application R15/0908 is indeed invalid for reasons of not complying with SI 2015 No. 595.
- 31/07/2015 Application deemed invalid, RES informed, and deleted from planning register.
- 03/08/2015 We ask Lowde what the response from RES has been since he wrote to them to formally inform them of the invalidation of the application.
- 04/08/2015 Lowde says that RES could appeal against the decision to invalidate application R15/0908.
- 05/08/2015 We email Lowde asking if RBC are confident that they can defend the decision to invalidate the application if RES was to appeal.
- 05/08/2015 Lowde replies stating that they are confident they can defend the decision and also points us to the RES press release acknowledging and criticising the invalidation of the application.
- 19/08/2015 We ask Lowde to send a copy of a letter sent from Burges Salmon (RES's solicitors) to RBC on 29/07/2015 relating to the issues raised around pre-application consultation.
- 19/08/2015 Lowde sends the Burges Salmon letter in which they continue to claim the application does satisfy requirements, and dismiss the reference to the Cornwall appeal decision as not being comparable to R15/0908.

The matter is taken no further at that time.