

# **BWEA 29 APPEAL DECISIONS: AN ANALYSIS**

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## **Scope**

- Context of Appeals
- The Appeal process
- The likelihood of success at Appeal
- Issues at inquiries
- A look at some decisions
- Conclusion

## **Context**

- 8GW stuck in the planning system of the UK
- Local politicians unwilling to make difficult decisions
- Increased pressure on the appeals system
- Wind farms tip of the iceberg
- Slow down in appeals process
- This talk will mainly be about England and Wales

## The Appeal process

- 6 month period allowed from decision notice to appeal
- Or 6 month period from expiry of 16 week "determination period"
- NB don't lose right of appeal if period for determination is extended by agreement
- Written Representations: for simple cases where little public interest. Decision in around 8-10 months
- Inquiries: supposed to be 22 weeks from Appeal to Inquiry
- Currently 10 months plus to Inquiry in England and Wales and around 8 months in Scotland
- Decision 6 weeks after Inquiry if Reporter/Inspector. Many months if ministerial decision
- NB commitment in energy white paper that s36 decisions would be made in 3 months

## Likelihood of success at Appeal

- 32 Wind farm decisions from January 2004 to March 2007:
  - Approval rate for all these appeals: 44%
  - Approval rate for Public Inquiries: 38%
  - Approval rate for Written Representations: 67%
- Since renewable statement of need published (July 2006) 1 out of 9 appeals allowed
- Comparison with earlier periods
- Trends may now be upwards

## Issues to be dealt with at Inquiries

- Always
  - Landscape and visual impact
  - Noise
- Popular
  - Ecology
  - Cultural Heritage
  - Need
  - Highway Safety
  - Tourism
  - Aviation
- Opposition usually well prepared – website informed

## **Closer look at some decisions**

- England and Wales exercise only
- Principle of inconsistency in decision making
- But Courts won't intervene in findings of fact and subjective judgement
- Almost impossible to challenge

## Cambridge – Driver Distraction

- Inspector considered that wind farm would have a harmful impact on road safety by driver distraction
- Inspector reached this conclusion, freely admitting that there was no evidence.

*"I acknowledge that I have received no evidence that the distraction caused to drivers by turbines has resulted in accidents. Indeed, the evidence I received in respect of this matter points in the opposite direction."*

- PPS 22 Companion Guide advice acknowledges that driver distraction not an issue
- Yet Inspector found against project on driver distraction

# Yelland

- Landscape issues decisive but approach discordant with large number of other decisions

*“The turbines would represent a new and different element in this landscape, by virtue of their verticality and movement, to the extent that I consider they would represent a severe and adverse intrusion into the landscape.”*

- Earlier had referred to landscape as wide and open
- Landscape not designated
- If wide and open how is it not able to accommodate 3 turbines?
- View appears to be one of principle

## Elland's Farm

- Regarding Need
- Important that Need issue is properly considered so Inspectors can apply the right planning balance: harm vs. benefits of renewables

*"So even if only some of these were approved and implemented, the indicative regional onshore wind target would be met. It is a minimum, but the fact that it could be met relatively easily and could be substantially exceeded reinforces the need for caution in dismissing other objections in favour of the renewable imperative."*
- Acknowledged national policy on targets
- But ignored targets as "minima" approach in PPS22 and 2020 targets
- Inconsistent with Government advice

## **Conclusion**

- Appeal process currently frustratingly slow
- Current BWEA lobbying for resources
- Most decisions are sound (a few are objectively bad)
- BWEA has opened dialogue with PINS
- PINS are responding

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