

GOV 07 – COMPLAINT REGARDING CLLR M BARNES RE DECLARATION OF INTERESTS ON PLANNING APPLICATION 11/00913/FUL – PROPOSED WIND TURBINE, PICKWELL

STATEMENT BY HEAD OF REGULATORY SERVICES

1. Application no 11/00913/FUL for “One wind turbine and associated control kiosk (26.4m to the hub and 34.2m to the tip)” was considered by the Development Committee on 18th October 2012. Cllr Barnes addressed this Committee in accordance with the adopted procedure which allows Ward Members to address the Committee on applications within their Ward. The minutes of this meeting, which includes a summary of Cllr Barnes’ address, is included as Appendix G. I would confirm that this record accords with my recollection of his address to the Committee.
2. Cllr Barnes did not declare an interest on this application. For ease of reference, the content of his address, as summarised in the minutes, is reproduced as follows:

Cllr Mark Barnes, Ward Councillor for the area, was invited to speak and stated that:

- *Each application site should be considered on their own merit and need*
- *The Council cannot afford to ‘blanket’ refuse wind turbines*
- *The site is not a designated ‘Area of Outstanding Beauty’*
- *The Borough has lots of open space away from the main villages which will see increasing numbers of applications which should be fairly considered*
- *He supports the Officer’s recommendations in the report.*

I can also confirm that Cllr Barnes did not seek advice from me or my staff on addressing the Committee or on the content of his address, prior to attending this meeting.

3. Cllr Barnes’ own application 12/00108/FUL for “Wind turbine with hub height of 55 metres” was submitted on his behalf (by agents) on 28th February 2013. To date it is undetermined and there is no firm timetable for its determination.
4. Prior to submitting his application, through agents Cllr Barnes submitted a ‘screening opinion’ on 2nd October 2012 under the Environmental Impact Assessment Regulations 2011. The purpose of a screening opinion is to establish whether the Planning Authority (i.e. the Council) considers that any subsequent application is required to be accompanied by a Environmental Impact Assessment (EIA). This is determined by reference to the criteria set out in the Regulations and accompanying Circular. This request was responded to on 19th October 2012, advising that no EIA was required.
5. The complaint that is subject of this statement was received on 2nd April 2013 and I responded, as part of the initial approach to seek to resolve the matter informally, on 30th April 2013. This letter is included as Appendix D. As will be evident, I set out that, to my knowledge, Cllr Barnes has no *direct* in the application at Pickwell (i.e. he had no reason to stand to gain financially through land ownership or income). I also gave my opinion that I do not agree that his support for the application at Pickwell constitutes an interest.

I note the complainant is critical of my use of the phrase 'direct interest' and apologise if this has served to confuse. My use of the phrase was simply seeking to 'set the scene' for subsequent content by distinguishing this kind of interest (the creation of a source of income from the proposal at Pickwell) from the interest subject of the complaint, which I understand to be an enhancement of the prospects of success of Cllr Barnes' application.

My view expressed in my letter to the complainant that Cllr Barnes did not have an interest is formed because it is a central element of the administration of planning is that every planning application must be determined on its individual merits. The content and location of each application and the considerations that apply differ in each case. Planning decisions by their nature are discriminatory and there is nothing to suggest that because an application was successful in any given location, one similar, or even identical, will be so in another.

The requirement to determine 'each case on its individual merits' applies equally to wind turbine proposals as it does to all other types. The influencing factors ('material considerations') will vary on each application and each will have a different impact depending on its location, which in turn affect the judgement to be made on its acceptability.

Proposals for turbines in different locations mean that they encounter differences in planning policy, proximity to houses (particularly relevant to noise, flicker and amenity issues); the type and nature of the topography, landscape and vegetation in the location (all of which affect visual and landscape impact); landscape designations; proximity to public viewing points such as footpaths, roads, parks and other public spaces; the nature, proximity and importance of heritage assets of all types and of course differences between the proposed turbines themselves in terms of energy generating capability. This latter point – generation capacity – is important because ultimately adverse effects arising from any of the issues listed above have to be balanced against this capability.

In my letter I sought to demonstrate this point with an analogy of a house, hoping this would assist in understanding this principal. However I note that, in his letter of 29th May 2013, the complainant does not find this helpful and seeks an explanation as to the differences between the Pickwell and Somerby applications. The Somerby proposal is very much larger and its proposed location differs significantly in respect of all of the factors described above except planning policy (for the reason the complainant sets out; there is no local planning policy specific to such proposals). Accordingly, every factor that has to be taken into account and that will influence the determination of the application at Somerby will be different from those at Pickwell – and the findings at Pickwell are not 'transferable' to, or 'binding' upon, Somerby (or any other location) because of these differences.

If I can perhaps illustrate this point further through use of a genuine consideration, that of noise emissions. The noise emissions associated with the Pickwell application were considered acceptable because of its volume and its distance from properties. The proposal at Somerby will generate a different volume of noise (because it is larger, taller and a more powerful generator) and is a different distance from properties. Therefore, the Somerby proposal will generate a different level of noise and the noise will have a different impact on properties. The findings at Pickwell can have no bearing on what noise impacts will arise at

Somerby, and their acceptability at Pickwell has no influence on whether the noise levels at Somerby will be.

This range of considerations and the influence they have, dependent upon the specific site and proposal, is clearly demonstrated by the Council's decision making record on single turbines. This contains a series of both approvals and refusals which reflect differences in their impacts arising from size, type and location and the factors described above. None of these decisions have been based upon, or influenced by, the fact earlier decisions resulting in approval or refusal should be followed or emulated. I note the complainant is critical that I did not mention the refused applications at Thorpe Satchville in my letter, and I would clarify that I had them in mind (amongst others at Burrough, Eye Kettleby, Waltham, Eastwell and Melton Mowbray) in making this comment. As a 'footnote', those at Thorpe Satchville (2) have subsequently been granted panning permission on appeal, in May 2013.

I also suggested that 'cumulative impact' has a role and that this could be argued to be disadvantageous to the prospects of success of Cllr Barnes' application.

6. The complainant responded to my letter on 29th May challenging its content. This reply is included as Appendix E, the content which I will now address (save for the points of clarification set out above):

On Mr Worley's second point, I of course accept that the law says that each application has to be considered on its merits. But his inference that precedent has no place in the decision making process is highly questionable. In the absence of a policy on wind turbines, and as far as I know, MBC still does not have one, most people will believe, as I do, that precedent is important in planning decisions. Mr Worley claims that there are fundamental differences between the Pickwell and Somerby applications but fails to say what they are.

- 6a I find this paragraph confusing and contradictory in its content - it appears to be stating an understanding of the 'each application on its own merits' requirement, but then states the opposite – a belief that 'precedent' has a role.

In my letter of 30th April I asked the complainant to explain this point further (i.e. how it would improve the prospects of success of the Somerby application) but I can see no content of his letter of 29th May that does so. Accordingly, I understand it is founded solely on the issue of 'precedent' – that because it was granted in one location it must be ion others. The suggestion that a decision may be made on this basis shows a fundamental misunderstanding of the requirements of decision making in planning, for all of the reasons set out above. Each application must be determined on its own merits.

The complainant may be reassured on this point if he were to review the basis on which other permissions are granted. Each decision notice has a summary of the reasons it was granted and he will find that 'because there is precedent' (or similar expression) is *never* a reason. This is a direct reflection of the discipline I have sought to explain at above.

And on the general point of precedent and the impact of one decision on another, Mr Worley shoots himself in the foot in the last paragraph of his letter by asking me to agree that a rejection of the Pickwell application might have helped Councillor

Barnes's application in Somerby. Mr Worley cannot have it both ways – either earlier decisions can have an impact on subsequent ones or they do not.

- 6b I find myself disagreeing with statement. Cumulative impact is a material consideration (n.b. established in law, not as a matter of opinion) and has featured in numerous decisions made at all levels.

'Cumulative impact' is not limited to 'inter-visibility' (a direct line of sight between 2 structures) but includes 'proliferation' – the concept that frequently occurring installations offer no (or insufficient) 'respite' from sight of them and their cumulative effect is to diminish the quality of the landscape overall and therefore the experience of the person(s) travelling through it. The installations being addressed here are 4km apart and are visible for several km each. It remains my view that to someone travelling through the countryside in the area of Pickwell, Somerby etc, the addition of the Somerby proposal would result in the frequent occurrence of successive installations could well diminish the quality of the experience.

Accordingly, with the Pickwell installation now in place, I consider that 'cumulative impact' is of relevance and it is a matter of logic that the introduction of another consideration which would not otherwise exist, can only be to the disadvantage of subsequent applications. To this extent it is a 'one way' concept – the introduction of a turbine triggers the presence of this consideration, which would otherwise not exist.

Mr Worley has failed to address the issues in my complaint, namely that Councillor Barnes should have declared a personal interest in the discussion on the wind turbine application at Pickwell at the Development Committee on 18th October 2102 because, before that date, he had started the planning process for his own application for a wind turbine at Somerby.

- 6c I apologise that my letter was insufficient to address this question, and would like to offer reassurance that it was not my intention. I had intended that my expressed view that Cllr Barnes had no interest in the Pickwell application (both financial ('direct', as I described it) or more general in terms of increasing his prospects of success) was sufficient to indicate that it was not necessary for one to be declared: i.e. if he has no interest, it follows logically that he has nothing to declare.

In summary, my points are:-

1. Councillor Barnes had an interest in the discussion of the wind turbine at Pickwell under Section 9 (1) (b) of the MBC Code and that he should have declared it under 11 (1) of the MBC Code of Conduct.
2. Councillor Barnes should, at the very least, have asked if his application amounted to an interest that had to be declared.
3. I wonder what advice would have been given to the Chair of the Committee if Councillor Barnes had started his statement on 18th October 2012 by telling the Development Committee that he had commenced the planning process for his own wind turbine in Somerby? Would he have been allowed to continue with his statement if he had made the position clear to the Committee?
4. Why did he not do so? If his own application was not relevant to the Pickwell one, as suggested by Mr Worley, he had nothing to hide and everything to gain by being open with his fellow councillors and the residents of Pickwell and Somerby about his own intentions.

6d I would like to comment on no. 3 above , simply to state that it is my understanding that the declaration of interests is a matter for the Councillor concerned. It is not the responsibility of The Chair to *require* declarations if s/he is aware of them, nor to exclude Councillors from addressing the Committee if they are at fault for failing to declare them.

I again remind you of paragraph 9 1 (b) of the Code which says

'a decision in relation to that business might reasonably be regarded as affecting your wellbeing or financial position or the wellbeing or financial position of a relevant person to a greater extent than the majority of other council tax payers,

ratepayers, or inhabitants of the electoral division or ward, as the case may be, affected by the decision'.

Perhaps more importantly, I remind you of paragraph 10 which says

'The Council has decided that in addition to disclosable pecuniary interests referred to in paragraph 8 (1) above, you also have a pecuniary interest if you have a personal interest in any business of the authority where the interest is one which a member of the public with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest and where that business:- (a) affects your financial position or the financial position of a person or body described in paragraph 9'

I ask again whether, in the light of the paragraphs noted above, Councillor Barnes had a pecuniary interest in the topic under discussion at the Development Committee on 18th October 2012 which should have been declared?

6e Without revisiting the entirety of the requirement to make planning decisions 'on their individual merits' as set out at 5 above, I agree that this is the central question.