

APPENDIX F

GOV 05 – 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, including a summary of Cllr Barnes’ address, is included as Appendix G to this statement. 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 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 a subsequent application is required to be accompanied by a Environmental Impact Assessment. 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 12th March 2013 and I responded, as part of the initial approach to seek to resolve the matter informally, on 14th March 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 ownership or income). I also gave my opinion that I do not agree that his support for the application at Pickwell constitutes an interest.

This is my view 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 one location, one similar, or even identical, will be so in another. As a simple analogy, approval of, say, a house in any given location does not mean that all future applications for houses in all locations then have to be approved, or indeed that it would improve their prospects of success. This is because the applications concerned would have different individual merits (referred to as ‘material considerations’ in planning law) e.g. planning policy differences, physical differences between the locations concerned, different infrastructure implications depending on the respective infrastructure capacity etc. These factors can (and regularly do) result in different outcomes for applications that are similar or identical in content.

The requirement to follow this approach, and that the influencing factors (‘considerations’) will vary applies equally to wind turbines; each will have a different impact depending on its location, which in turn affect the judgement to be made on its acceptability.

Applying this in terms similar to the housing example above, the planning merits affecting a turbine will differ from case to case because of differences 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 designation, the proximity of 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 generation 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.

This diversity 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 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 Parish Council responded to my letter on 8th April rejecting its content. This reply is included as Appendix E, the content which I will now address:

6a: "We maintain that, as Councillor Barnes was in the process of submitting an application for a wind turbine, he should have at least declared this prior to addressing the committee and preferably not have addressed the meeting at all"

My understanding is that involvement in an issue constitutes an interest if the Councillor stands to benefit from that involvement. I understand there was no basis Cllr Barnes would gain financially nor, for the reasons set out above, that his support of the Pickwell application would be to his benefit in terms of improving the prospect of success of his own application.

6b: "12/00723/FUL – this may only be a "screening opinion" but it clearly demonstrates that Cllr. Barnes was intending to submit an application".

This is factually correct and is not in dispute.

6c: "It is a very arguable point that Cllr Barnes' application would be assisted if the Pickwell Turbine was approved by virtue of precedent"

This statement appears to address the heart of the matter and is a matter of serious concern. The suggestion that a decision may be made on the grounds of 'precedent' 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. Clearly there is a basic misunderstanding and that has been allowed to influence the PC's view of this matter. The complaint does not set out *how* Cllr Barnes would benefit (i.e. how it would improve the prospects of success of his application). The complainant may be reassured on this point if he were to review the basis on which permissions are granted. Each decision notice has a summary of the reasons it was granted and he will find that 'because there is precedent' is never a reason. This is a direct reflection of the discipline I have sought to explain at 5 above.

6d: "As the Pickwell Turbine and his would be separated by ca. 4 km the cumulative impact consideration is, in our view, of no relevance. "

I find myself disagreeing with statement, but do recognise that may be a result of it being stated in brief terms. 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. It does not take long to travel 4km by car and installations such as those being addressed here are visible for several km each. It remains my view that to someone travelling through the countryside in the area of Pickwell, Somerby etc, these installations would appear in quick succession. Accordingly, with the Pickwell installation now in place, the addition of the Somerby proposal would result in the frequent occurrence of successive installations could well diminish the quality of the experience.

I consider that 'cumulative impact' is, therefore, 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.

6e: "However neither of these points, however you argue them, are relevant to our complaint. Simply by virtue of the fact that Councillor Barnes was in the process of submitting an application (12/00723/FUL clearly shows this) means that the outcome of the Pickwell Turbine application would be of relevance to his application. He was intending to submit an identical application (in principle if not in size) in the very near future. If this does not show that he had a real interest in the outcome and hence a conflict of interest that we fail to understand what would."

I find this statement confusing as I understood the complaint is founded on precisely one of these points. The first of the points ("*It is a very arguable point that Cllr Barnes' application would be assisted if the Pickwell Turbine was approved by virtue of precedent*") is surely central to this complaint? As I understand it, only if there is benefit to be gained, does the Councillor have an interest and reason to declare it. If this point is dismissed as irrelevant, and there is no other explanation of how the Cllr would benefit, on what basis is the complaint made?

Having dismissed precedent as irrelevant, the paragraph reasserts that the outcome of the Pickwell application is relevant to Cllr Barnes' application, but does not explain how this would be the case. Accordingly, I do not understand the basis for the relevance and am not in a position to comment.

6f: "Certainly we as Parish Councillors would have declared an interest in such circumstances."

I don't think a Cllrs conduct should be measured by comparison to what others believe they would do in a similar situation.

6g: "Once you accept that he had an interest in the outcome of the application then he clearly broke the Code of Conduct and should be dealt with accordingly".

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