

Town & Country Planning Act 1990

**Site at Kirkby Moor Wind Farm, Grizebeck, Cumbria**

Appeal by Zephyr Investments Ltd  
against the decision of  
South Lakeland District Council  
ref SL/2017/0687  
to refuse an Extension of Time  
which elapsed on 26<sup>th</sup> August 2018

**PINS ref: APP/M0933/W/18/3204360**

**Public Inquiry at Ulverston 22<sup>nd</sup> January 2019**

**CLOSING SUBMISSIONS**  
of the Rule 6(6) Party  
**Kirkby Moor Protectors**  
**(KMP)**

**31<sup>st</sup> January 2019**

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**Sir:**

**1 KMP - an exercise in localism**

I used my Opening Statement to set out the position of Kirkby Moor Protectors (KMP) and stressed that it has deep and established roots going back in some cases beyond the 25-year history of this windfarm. The concerns of its witnesses at this Inquiry are contemporary and valid expressions of concern as their expectations of decommissioning at the 25-year stage have been thrown into the public arena by the appeal. This has been amply vindicated by the evidence you have heard from just the key selection of KMP's 80 witnesses, whose variety, sincerity and individuality are telling.

**2** I refer you to the distribution map of witnesses' homes attached to my evidence which neatly coincides with the 5km radius Zone of Theoretical Visibility of the turbines. In particular, I would stress that a large proportion of these local people have been resident for lengthy periods: many for decades before the turbines were built; others moved here during their permitted 25-year life with expectations that the moor would be freed from August 2018. Their contributions are so clear, compelling and yet personally distinctive that it is invidious to do a roll-call of individuals.

**3** Among those who have compiled statements for KMP you have heard from County, District and Parish councillors. They represent not just their own views, but a significant selection of local opinion. They are in touch with all shades of response to the wind farm in the local communities, and are active, motivated and responsible citizens. John Woodcock MP has also given this sector an authoritative underline in his two statements. And, significantly, not one elected representative has come before you to support the extension proposal.

**4** The adjoining Parish Councils have by due democratic process resolved to join in KMP's Rule 6 case. This demonstrates a further example of localism in practice, which is in itself a weighty consideration in terms of the Written Ministerial Statement of 2015 and its aftermath in more formal planning guidance.

## 5 The future of the planet

The individual representations, and the Petition by supporters of green energy, rest upon a simple, single argument which KMP - despite being accused by Mr Hardy of invective against wind power - does not dispute. It is simply this: the future of the planet requires urgent and sustained action to reduce global warming. But it is, in the case of these obviously sincere proponents, also just a single point expressed by the many. Numbers do not add to it. KMP does not dispute what the contents of the unopened Orange Box of c120,000 petition responses were, or might be. But the astonishing thing is, Sir, that the Inquiry was not shown the precise question or statement to which these myriad responses were solicited.

6 The mantra '*every little helps*' running through individual submissions is true ... but trite. It is true, because no responsible person – and none of KMP's witnesses - could fail to be concerned about the predicaments facing our planet. But it is also trite because it tells you nothing which might help you in your planning balance. It may be simply expressed in familiar terms as '*wind power good: objectors bad*'. An exception is the sober contribution to the Inquiry by Dr Kate Rawles. A few, fairly, said they just liked wind turbines. They are entitled to that view and the turbine landscape they described. But in opposing KMP and the democratic decision of the local elected Councillors they offer no evidence to help you.

## 7 The Repowering Fallacy

Contrary to all the details of their assessments and publicity – the appellants now say that this Extension of Time proposal is to be re-branded as a Repowering application. It is thereby outside the scope of footnote 49 and thus, beyond the scope of localism. We disagree. This reached its definitive pronouncement by Mr Hardy during exchanges in the planning evidence on day 5. Locals know what a repowering proposal looks like – after all they helped the Council resist one in 2015 and the developers did not even appeal. Quite simply, it means taking down one set of existing turbines and replacing them with new, larger, modern and reliable ones; inevitably with the capacity to contribute more to the problems for which they have been designed. This is not the case. Life–extension means life extension, even if impacts have to be re-assessed from scratch.

- 8 I now turn to a key factor – the Uniqueness of the site.**  
In my own evidence I took a deep breath and dared to use this ‘u’ word – one I have been cautious to avoid in all previous Inquiries. There are key reasons which do make this a **special case** in the context of planning decisions throughout England and Wales and which I submit are all legitimate considerations for you, Sir.
- 9 KM’s unique planning provenance and history**  
The original proposal is accepted as being novel, exploratory or experimental. It was called in to Inquiry for those reasons and Inspector Williams – who in 1992 was able to look at the site in its undeveloped state – made a series of telling comments about its unsuitability. Extracts are conveniently summarised in Mr Hudson’s evidence at KMP40. It is difficult to imagine that the Inspector’s recommendations would have been overturned were it not for the Secretary of State’s wish to consider the site as ‘experimental’: I use the same word as Mr Hoar in his 2017 report to SLDC’s Members. The 25-year period was then characterised by these special circumstances and is a left-over from that period. While accepting the legality of the SoS powers 25 years ago this is still, essentially, yesterday’s wind farm, born of that era. Its extension of time now falls to be decided in today’s terms.
- 10 KM’s unique and unsuitable ecology for a wind farm site**  
Why is an intact heather moor and SSSI unsuitable for a wind farm? Essentially it is because of the disturbance factor to its habitat that the construction and operation of the turbines involves. No applicant later repeated that part of the experiment – no comparable heather wind farm sites were subsequently consented.
- 11** Dr Huckle was not able to dispute my claim that this was the only windfarm on intact heather moorland in England and Wales. In my Proof I had openly challenged the appellants’ witnesses to provide evidence to the contrary – and none was forthcoming. Dr Huckle very fairly said that his experience was insufficiently widespread to refute my claim. I maintain that it would have made no difference as my unchallenged evidence showed that none could be cited.

**12 KM's unique landscape character**

It is recognised by all parties that KM is located on a conspicuous, heather moorland skyline on Open Access Land and crossed by public rights of way. Putting aside the formal assessments of landscape character which Mr Etchells deals with, I used terms which an open-eyed and experienced observer would recognise. It is not just close to the boundary of the Lake District National Park but is accepted as being a continuation of it in landscape terms.

**13** I hesitated and did my research before writing my evidence and throwing down the same challenge to Mr Denney as I had to Dr Huckle. Mr Denney's experience and provenance in these matters is beyond doubt. I had stated that this heather clad ridge between two spectacular estuaries was not just worthy of release from the turbines, but was unprecedented in England and Wales. I claimed further that no landscape with intact heather was a wind farm site. When he politely demurred from challenge, I was amused to hear Mr Hardy interject that there were some – even plenty – in Scotland! I think that rather makes my point.

**14** I was surprised to see that an expert of Mr Denney's standing should have fallen into the trap of not demonstrating the turbine impact in the 1km radius – which is effectively the site itself. The lack of formal Viewpoints in this key area is in my view a serious defect in the ES and subsequent material. This is not a site away in the wilds where the immediate locality is of less importance. In many ways it is the essence of this special site in view of its heather, its accessibility and its value to local people. The conventional problem of not being able to reproduce really large (100m) turbines in close visualisations (as Mr Denney responded in XX) just will not do. There are photos in the [actual] Repowering NTS, and fortunately in Mr Etchells' evidence. Photos and visuals or both in the ES would have been feasible and necessary and would have paved the way for a proper and realistic assessment of key impacts in the core of this landscape. As a result I consider that the close key impacts within KM itself have not been fully assessed.

**15** However, in this unique case, you are able to reach your own conclusions by the vastly superior means of looking for yourself.

**16 A valued landscape**

But is this a valued landscape (with or without capitals)? There can be no doubt that it is the former as the evidence from users testifies time and time again. The irony is that despite the presence of the turbines they still value the area with a passion, because of its position, its accessibility, its views, its skyline and its heather. To that should be added its potential when the turbines are no longer. As Gerry Scot KMP70 so clearly says – *'we'd like it back, please'*.

**17** Lorayne Wall for Friends of the Lake District (FLD) argued for KMP that – in addition to evidence of usage, enjoyment and appreciation by the public (which is beyond any doubt) NPPF requires a statutory status or identified quality in the development plan for a (capital letters) recognition of a Valued Landscape. I submit that the two are classically entwined at KM and the conclusion that it should be considered formally as a Valued Landscape is irrefutable (though Mr Hardy will doubtless differ).

**18 The National Park's 'non-objection'**

I submit that the decision by the LDNPA not to object was unduly influenced by its comments on the habitat of the SSSI. It accepted impacts on the landscape in the setting of the Park: these are part of the accepted and necessary remit of the Authority. But - as shown in the letter contained in Mr Huckle's appendix 1 (c) - to pass judgement on the SSSI entirely outwith the designated area and then use it as a key factor in its decision is clearly wrong. The Park officer has, as I see it, exceeded her remit. Accordingly I suggest that you place little weight on this response

**19** The problem goes further. In incorporating this response into his reasoning as to why members should allow the application, SLDC's own officer perpetuates and even elevates the flaw in the Park's approach. He stresses that it is material, notably in his conclusion at para 202. The members' decision to conclude otherwise cannot be regarded as maverick in view of this catalogue of errors by officers. They were right..

**20 The ‘better restoration’ option**

Finally, to an issue which – deriving in part from the above, could be pivotal in your deliberations. What is so compelling, I am spurred to ask, about the merits of 1ha of heather moor restoration and a quarter of a hectare tidying around the turbine locations? The HMP has little else to offer. It is a tiny element in 780 ha of the KM SSSI. It is also quite trivial and unambitious when considered in the context of the area almost twenty times as much which is the agreed management bonus to the slate quarry extension package defined by your fellow Inspector Susan Doran (KPM’s additional document).

**21** There are other measures available without the HMP, and Natural England has its own responsibilities alongside those of the landowner, Holker Estates. Likewise, in the enhanced decommissioning – if Condition 6 were to be adhered to – the turbines would be removed, and the landscape restored. The remaining ancillary equipment can be removed by other mechanisms.

**22** I am therefore not convinced that the package on offer is a good bargain in exchange for extending the life of the turbines until the appointed day when subsidies end.

*Finally, I hope, Sir, that you are able to share my view, and in closing I would like to thank you on behalf of KMP for your courteous, and at key moments patient, presence at the Inquiry.*

**Geoffrey Sinclair for Kirkby Moor Protectors (KMP)**

**31<sup>st</sup> January 2019**