

# Cornwall Council

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**Application number:** PA15/08659

**Agent:**

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TA4 2RL

**Applicant:**

Mr David Turner And Community Power  
Cornwall  
Mendennick Farm  
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Cornwall  
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United Kingdom

**Town And Country Planning Act 1990 (as amended)  
Town And Country Planning (Development Management Procedure) (England)  
Order 2015**

## Notice of Refusal of Planning Permission

**CORNWALL COUNCIL**, being the Local Planning Authority, **HEREBY REFUSES PERMISSION**, for the development proposed in the following application received on 15 September 2015 and accompanying plan(s), for the reasons set out on the attached schedule:

**Description of Development:** Erection of a single wind turbine with maximum blade tip height of 67m (hub height 40m), formation of new vehicular access, access track and associated infrastructure

**Location of Development:** Land North East Of Lower Withnoe Barton  
Freathy  
Cornwall

**Parish:** St. John

**YOUR ATTENTION IS DRAWN TO THE ATTACHED NOTES.**

**Phil Mason**  
**Head of Planning and Enterprise**

**DATED: 24 November 2015**

**SCHEDULE ATTACHED TO APPLICATION & DECISION NO: PA15/08659**

**REASONS:**

- 1 It is considered that the proposal is contrary to planning guidance contained in the Ministerial Written Statement issued on the 18th June 2015 and paragraph 14 of the National Planning Practice Guidance by reason that the proposal does not have the support of the affected community, and their concerns in respect of landscape harm cannot be fully addressed.
- 2 The benefits of the proposal do not outweigh the unacceptable visual impact upon the surrounding landscape and near by Areas of Outstanding Natural Beauty by reason of its scale, height, prominence in the landscape and rotating features. The development would fail to positively contribute to or enhance the natural and local environment and is therefore is contrary to paragraphs 17, 97, 109, 114 and 115 of the National Planning Policy Framework 2012, and saved policy CL7 of the Caradon Local Plan First Alteration 2007.
- 3 The proposed development is considered to lead to substantial harm to the setting of designated heritage assets including Withnoe Farmhouse and Withnoe Barton; the setting of the military fortifications that demonstrate the technical and tactical evolution of coastal defence (in particular Tregantle Fort) ; and would generate unacceptable visual impacts on the setting of the Church of St John and St Germanus contrary to paragraphs 132, 133 and 134 of the 2012 National Planning Policy Framework and saved policy EV3 of the Caradon Local Plan First Alteration 2007
- 4 Insufficient evidence has been submitted to demonstrate that the impacts of the development on military radars and fast jet aircraft at low level in support of Sea Training serials can be mitigated; and therefore the proposal is considered to be contrary to Government advice concerning aviation impacts set out in Section 5.4 of the National Policy Statement EN-1.
- 5 The proposal is likely to generate unacceptable adverse impacts on species of high conservation concern (including Skylarks, Starling, Gull, Owls and Raptor); and a lack of evidence about the potential impact on breeding skylark has been provided. The scheme is contrary to paragraph 118 of the 2012 National Planning Policy Framework



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**RELEVANT PLANNING POLICIES:**

Under section 38(6) of the Planning and Compulsory Purchase Act 2004 decisions on applications for planning permission and appeals must be taken in accordance with the development plan, unless there are material considerations that indicate otherwise.

The National Planning Policy Framework stresses the importance of having a planning system that is genuinely plan-led. Where a proposal accords with an up-to-date development plan it should be approved without delay, as required by the presumption in favour of sustainable development at paragraph 14 of the National Planning Policy Framework. Where the development plan is absent, silent or the relevant policies are out of date, paragraph 14 of the National Planning Policy Framework requires the application to be determined in accordance with the presumption in favour of sustainable development unless otherwise specified.

In Cornwall the development plan comprises the 'saved' policies from the adopted Local Plans which include minerals and waste Local Plans, and the Balancing Housing Markets Development Plan Document in the former Carrick area.

The policies in the emerging Cornwall Local Plan are not yet part of the development plan and have limited weight because of the stage that the Local Plan has reached in the adoption process but the policy and explanatory text does give a clear indication of the Council's direction of travel. This Local Plan has been developed from an up to date evidence base. The decision was taken to submit the Cornwall Local Plan to the Secretary of State for examination by the Council on 16 December 2014. The Cornwall Local Plan was submitted in February 2015 and the first stage of the Examination has taken place in May 2015. The first stage of the Examination addressed legal compliance and key strategic issues, including the level of housing growth and affordable housing targets.



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The weight that can be attributed to the Plan and its policies will develop as the Inspector's assessment of the document progresses. The Inspector has now released his preliminary findings on the first stage of the Examination. The Inspector has set out his initial assessment, recommendations for changes and request for further work to be undertaken to make the Plan sound. This additional work will involve a suspension of the examination for a period of months before it reopens (early 2016). However in the meantime the Inspector's findings are material to future decisions. The Inspector in his preliminary findings does provide clear recommendations in a limited number of areas. The Inspector's recommendations on these issues differ from the Local Plan policies as they stand. These recommendations along with the further work suggested will be considered by the Council for further consultation before being considered by the Inspector in the re-opened Examination. If the Council's proposed changes are consistent with the Inspector's recommendations they would attract significant weight. In the interim period the Inspector's comments and recommendations are a material consideration to be addressed when considering the emerging policy framework in decision making.

National Planning Policy Framework 2012:

Core planning principles

1. Building a strong competitive economy
3. Supporting a prosperous rural economy
7. Requiring good design
10. Meeting the challenge of climate change, flooding and coastal change
11. Conserving and enhancing the natural environment
12. Conserving and enhancing the historic environment

Planning Practice Guidance:

Paragraphs 16 - 31 relate to wind turbine considerations

The relevant policies from the Cornwall Local Plan - Proposed Submission Document -Strategic Policies 2010-2030 are as follows:

- 1 - Presumption in favour of sustainable development
- 2 - Key targets and Spatial Strategy
- 3 - Design
- 14 - Development standards
- 15 - Renewable and low carbon energy
- 16 - Safeguarding renewable energy
- 17 - Health and wellbeing
- 22 - Best use of land and existing buildings



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23 - Natural environment  
- Historic environment  
27 - Transport and accessibility  
28 - Infrastructure

Caradon District Local Plan First Alteration (adopted August 2007):

CL1: Nature Conservation  
CL2: Farm Diversification  
CL5: Agricultural Land  
CL7: Development near areas of outstanding natural beauty  
CL9: Areas of Great Landscape Value  
CL13 Cornwall Nature Conservation Sites  
CL18 Areas of Great Historic Value  
CL 16: Protected species  
EV3: Listed buildings  
EV11: Highways  
REN1: Non-fossil fuel Sources  
REN2: On Shore Wind Energy

Other relevant planning guidance:

S66 and S72 Planning (Listed Buildings and Conservation Areas) Act 1990.  
Conservation of Habitats & Species Regulations 2010 (the Habitats Regulations)  
Natural Environment and Rural Communities (NERC) Act 2006  
National Policy Statements for Energy Infrastructure EN-1 and EN-3  
Roadmap 2050  
Circular 06/2005: Biodiversity and Geological Conservation - Statutory obligations and their impact within the planning system  
Natural England Technical Information Notes  
TIN051 - Bats and onshore wind turbines  
TIN059 - Bats and single large turbines  
TIN69 - Birds and onshore wind farms  
Ministerial Statement 18th June 2015  
Cornwall Council - draft Renewable Energy Supplementary Planning Document (SPD). Consultation ended 27th March 2015  
The adopted Economic Development Strategy for Cornwall and the Isles of Scilly 2007-2021  
Theme - Improve Competitiveness: Ensure Energy Sustainability



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**PLANS REFERRED TO IN CONSIDERATION OF THIS APPLICATION:**

Proposed E3259-25-05-O received 16/09/15  
Proposed 1000901 received 16/09/15  
Site/location Plan 1164.E/D003 received 30/09/15  
Proposed 1164.E/D004 received 16/09/15  
Site/location Plan 1164.E/D005 received 16/09/15  
Site/location Plan 1164..E/D006 received 30/09/15

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with this proposal. On this occasion, the issues are so fundamental that it is not possible to negotiate a satisfactory way forward due to the harm that has been clearly identified within the reasons for refusal.



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## **NOTES**

### **Appeals to the Secretary of State**

If the applicant is aggrieved by the decision of the local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then they may appeal to the Secretary of State under section 78 of the Town and Country Planning Act 1990. If you want to appeal, then you must do so within 6 months of the date of this notice (or 12 weeks from the date of this notice in the case of householder appeals made in relation to applications submitted on or after 6 April 2009). Appeals must be made to the Planning Inspectorate using a form which can be obtained from the Planning Inspectorate at Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN or online at [www.planningportal.gov.uk/pcs](http://www.planningportal.gov.uk/pcs) A copy of the completed appeal form must also be submitted to the Council.

The Secretary of State can allow a longer period for giving notice of an appeal, but he will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State need not consider an appeal if it seems to him that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.

In practice, the Secretary of State does not refuse to consider appeals solely because the local planning authority based their decision on a direction given by him.

If this is a decision on a planning application relating to the same or substantially the same land and development as is already the subject of an enforcement notice, if you want to appeal against your local planning authority's decision on your application, then you must do so within 28 days of the date of this notice. If an enforcement notice is served relating to the same or substantially the same land and development as in your application and if you want to appeal against your local planning authority's decision on your application, then you must do so within 28 days of the date of service of the enforcement notice.

### **Purchase Notices**

If either the local planning authority or the Secretary of State refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.

In these circumstances, the owner may serve a purchase notice on Cornwall Council. This notice will require the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.