

LINCOLNSHIRE VALUATION TRIBUNAL

Referencer:

Appeal against accuracy of Council Tax Band. Material Reduction. Wind Farms. Appeals Allowed.

Re: Grays Farm and the Farmhouse, North Drove Bank, Spalding

Appeal numbers: 2525475645/032C and 2525475651/032C

Hearing on: Thursday 26 June 2008 **At:** the Lincolnshire Chamber of Commerce

Parties in attendance: Mrs Jane Davis (Appellant)
Mr Julian Davis (Appellant's husband)
Mrs Claire Carrington (Listing Officer)
Mr Jeff Homewood (Expert witness for Listing Officer)

Before Chairman: Mr D Shepherd
Members: Mr P Pridgeon
Mr G Warrender

Introduction:

The absence in this notice of decision of a reference to any statement or item of evidence placed before it by the parties should not be construed as being overlooked by the tribunal.

The appeals arose following two proposals both dated 20 July 2007 that were made by Mrs Jane Davis, one was made on behalf of her parents in law and the other was in respect of her own house. The first proposal related to Grays Farm, which was occupied by Mr John Davis and Mrs Eileen Davis, who were the parents of Mr Julian Davis, Jane's husband. The second proposal related to the Farmhouse which was her home. With the agreement of the parties, the two appeals were consolidated and heard together.

In making the proposals, Mrs Jane Davis had cited the following as her grounds for making the appeals:

"Change in physical state. Noise pollution externally and internal low frequency. Noise pollution from new wind farm 930m. Under investigation for over one year."

The Farmhouse was built around 1910 and measured 114m², in terms of its reduced covered area. It was a three bedroom detached house and was assessed in Band B.

The dwelling known as Grays Farm was a three bedroom detached bungalow, which measured 122m², in terms of its reduced covered area. This property was also in Band B.

Appellant's case:

In May 2006, a wind farm at Vine House Farm, comprising eight 2 megawatt turbines, was built around 930 metres away from the appeal dwellings. Each wind mill was around 100 metres tall.

Following the construction of the wind farm, Mr Julian and Mrs Jane Davis's quiet enjoyment of their property had been disturbed to such an extent that they had been forced to vacate their house, for health reasons. With the aid of a power point presentation and an acoustic recording, they outlined the different types of noise pollution that emanated from the wind farm at various times of the day and night. These included swishing, ripping/flashing, low frequency humming, mechanical turning, background roar, helicopter noise (aerodynamic modulation) and enhanced helicopter noise.

Even with the benefit of double glazing, house insulation and the wearing of ear plugs, Mr and Mrs Davis were still disturbed by low frequency noises. The net effect of the noise pollution was that the Appellants were deprived of sleep. On 27 May 2007, they had had enough of the noise and, for the benefit of their health, decided to vacate their property.

Mr and Mrs John Davis continued to reside in the bungalow at Grays Farm and also suffered from noise pollution from the wind farm but to a less audible degree than the Appellants.

In support of their case, Mr and Mrs Davis referred to an extract from Hansard in relation to council tax. Mr and Mrs Davis explained that they used to receive a discretionary discount from the local authority, due to their proximity to the wind farm. However, this discount had since been removed.

They also tendered a copy of their evidence for submission to the House of Lords Select Committee on Economic Affairs on the economics of renewable energy. This submission included appendices on property values and houses prices plus statements from other noise and flicker victims.

In order to quantify the effect that the wind farm had had on the value of the appeal dwellings, Mr and Mrs Davis referred to the following:

- (i) The Barry Moon case. In this case, Mr Moon sought damages from the previous owners of his house, who had not made him aware of the proposed wind farm, when he was in the process of buying the property. The District Judge ultimately determined that the value of Mr Moon's house had fallen by 20% due to the wind farm.
- (ii) A copy of a letter dated 29 April 2008 from Munton & Russell Estate Agents. Within the contents of that letter, Russell Gregory MNAEA had declined any instructions to market the Farmhouse at Gray's Farm until the problems associated with the wind farm were resolved.

- (iii) A copy of a letter dated 16 May 2008 from Longstaff Chartered Surveyors. Within the contents of this letter, John Allen FRICS FAAV stated that the Farmhouse, in his opinion, would have been worth around £45,883 in 1991 based on the town of Spalding's post code index. It was also stated that properties affected by wind farms in Wales had experienced a 20% fall in their value(s) and applying this to the appeal dwelling, it would have resulted in a value of around £36,666.
- (iv) Copies of other estate agents' letters to confirm that the existence of wind farms had deterred potential purchasers from buying various affected properties.

In view of the foregoing, the Appellants asked the tribunal to create a precedent and lower the assessment of the appeal dwellings to reflect the adverse impact of the wind farm.

Listing Officer's Case:

In her response, Mrs Carrington defended the Listing Officer's existing assessment of Band B for both the Farmhouse and Gray's Farm.

Mrs Carrington referred to a number of dwellings, both houses and bungalows, to show that the tone of the list value for the appeal dwellings was Band B. She contended that both properties would have been worth around £50,000 as at 1 April 1991, prior to the wind farm being built.

Since the wind farm was built, the Listing Officer had not found any evidence to show that sale prices had fallen. Moreover, any compensation claims that had been made had since been withdrawn.

Mrs Carrington also contended that various local estate agents had been contacted, including John Allen at Longstaffs, and none of the agents that the Listing Officer had spoken to had any evidence to show that sale prices had fallen due to wind farm development.

Mrs Carrington called Mr J Homewood to give evidence as her expert witness. Mr Homewood had inspected the appeal dwellings, on behalf of the Listing Officer, and his inspection took just over one hour. During the course of his inspection, Mr Homewood was unable to hear any noise from the wind farm. There was a leylandii hedge outside the appeal dwellings which could have masked the noise. Mr Homewood drove away and parked his car a little further away from the appeal dwellings. At this point, he heard a slight noise.

In summing up her case, Mrs Carrington stated that no other appeals had been received relating to the effects of wind farms. In addition, there was no evidence from recent sales to show what effect, if any, the existence of the wind farms had had on property prices. If property prices were likely to be affected, what reduction would be warranted? In Mrs Carrington's opinion, if the 20% reduction that was applicable in the Barry Moon case was applied to the appeal dwellings, an assessment of Band B would still be applicable. With this in mind, she asked the tribunal to dismiss the appeals.

At the conclusion of the hearing, the tribunal reserved its decision.

Decision and Reasons:

After due consideration of all of the evidence submitted before it by both parties, the tribunal decided to allow the appeals, for the following reasons:

1. It was apparent from the evidence submitted that the construction of the wind farm 930 metres away from the appeal dwellings had had a significant detrimental effect on the Appellants' quiet enjoyment of their properties. The tribunal therefore found that the nuisance caused by the wind farm was real and not imagined and it would have had some effect upon the potential sale price of the appeal dwellings. The difficulty for the tribunal was the determination of what effect the wind farm had had in real terms.
2. Unfortunately, there was no direct or comparable sales evidence tendered by the parties to assist the tribunal in its deliberations.
3. Case law and experience elsewhere had shown that dwellings which were located in close proximity to wind farms had seen their property prices drop by around 20%.
4. In her evidence, Mrs Carrington had contended that the appeal dwellings would have been worth around £50,000, as at 1 April 1991. With this in mind, even a 20% fall in value would not take the appeal dwellings below £40,000 and into Band A. In contrast, Mr and Mrs Davis produced correspondence from local estate agents to substantiate their case. John Allen from Longstaffs had estimated that the Farmhouse at Grays Farm would have been worth £45,833 in 1991. As Mr Allen's starting point was lower than Mrs Carrington, a deduction of 20% for the effect of the wind farm, produced a value of £36,666 which fell comfortably within the Band A range of values. Another estate agent, Russell Gregory of Munton & Russell was not willing to market the farmhouse until the problems associated with the wind farm were resolved, because it would be difficult to sell.
5. Mrs Carrington contended that the Listing Officer had spoken to a number of estate agents, including John Allen, and the comments that she had received appeared to contradict the contents of the correspondence that the Appellants had tendered in evidence. However, the comments by various estate agents as relayed by Mrs Carrington, without any correspondence to substantiate them, could only be classed as hearsay. Consequently, more weight was attached to the copies of actual correspondence tendered by Mr and Mrs Davis.
6. More weight was attached to the contents of John Allen's and Mr Russell Gregory's letters to Mr and Mrs Davis than Mrs Carrington's unsubstantiated opinion of what the appeal dwellings would have been worth.
7. In his evidence, as expert witness, Mr Homewood had stated that when he inspected the appeal dwellings, he was unable to hear any noise. Moreover, noise from the wind farm only became audible to him when he parked up well away from the appeal site. Whilst the tribunal accepted that this may well have been the case on the day of Mr Homewood's inspection, the wealth of evidence produced by Mr and Mrs Davis, including their own log of events indicated that the noise patterns and intensity and was dependant upon the direction of the prevailing wind.
8. In view of the foregoing, on the balance of probability, the tribunal decided that if the wind farm had been in existence on 1 April 1991, the appeal dwellings would not have been capable of commanding a sale price in excess of £40,000. With this in mind, the appeals were allowed and the tribunal decided to reduce the assessment of both appeal dwellings to Band A with effect from 21 June 2006.

Order of the tribunal

As a consequence of this decision, the Listing Officer was ordered to amend the entries for the appeal dwellings in the Valuation List to Band A with effect from 21 June 2006.

Certified to be a true copy of the record of the decision and order of the tribunal made on: 17 July 2008

**David J Slater IRRV
Clerk of the Tribunal**