

# High Court Ruling Supports Wind Turbine Exclusion Distances

The Renewable Energy Foundation (REF) regrets the misreporting of the High Court ruling on the RWE Judicial Review of Milton Keynes Borough Council's attempt to set a minimum separation distance between wind turbines and residential dwellings.

Milton Keynes Borough Council is to be congratulated on the [judgment](#) reached in the High Court case on their Wind Turbine Supplementary Planning Document (SPD) on Monday 15 April 2013. The judgment confirms that local authorities can set exclusion zones to protect local people from inappropriate development. Press reports and press statements from the wind industry suggesting that the judgment prevents local authorities from doing so are incorrect.

Two wind farm development companies, RWE Npower Renewables and Ecotricity, had objected to the minimum separation distances between turbines and dwellings that were defined in Milton Keynes' SPD and had sought a judicial review on four grounds. Although nominally successful in that the judge upheld one of those grounds, the other three grounds for the judicial review were not upheld and the judgment as a whole provides significant encouragement for other local authorities to define separation distances between turbines and dwellings which would be considered acceptable as long as all other environment impacts are satisfactorily addressed.

The single ground on which the judicial review succeeded was that Milton Keynes, perhaps unusually, had already defined in its local plan in 2002 a specific turbine buffer zone of 350m. The Judge ruled that the amended separation distances in the SPD were in conflict with the pre-existing buffer zone in the local plan. If a pre-existing separation distance had not already been part of the local planning policies, Milton Keynes Council would have succeeded on all points. As it stands, the SPD will be quashed but it is probable that Milton Keynes Council will be able to devise a remedy.

The Milton Keynes judgment is essential reading for other authorities who wish to safeguard local amenity from inappropriate renewables development. What appears to be clear is that:

- (i) Local authorities may define separation distances between turbines and dwellings,
- (ii) Separation distances may be defined in Supplementary Planning Documents (SPDs).

The latter ruling is particularly useful because the time taken to prepare SPD can be significantly shorter than rewriting local plans. The message too is that separation distances should be phrased positively rather than negatively, i.e. that policies should not be phrased in terms of planning permission being refused if turbines are within x meters of a dwelling, but rather that planning permission may be granted if turbines are more than x meters of a dwelling, provided there are no significant adverse environmental or other impacts.

Dr John Constable, director of REF, said: “To avoid public anger and disenchantment, it is crucial that there are reasonable safeguards to protect the amenity of wind turbine neighbours. The judgment in the Milton Keynes case shows that the law in fact supports Local Authorities that wish to set minimum separation distances, although it also shows that these must be designed and worded carefully.”

#### Notes for Editors

1. The Renewable Energy Foundation is a UK charity publishing data and analysis on the UK energy sector. It is supported by private donations, is not in receipt of government funding, and has no political affiliations.
2. For the convenience of readers, the Milton Keynes judgment is available for download from the REF website:

[www.ref.org.uk/Files/MK\\_SPD\\_Judgment.pdf](http://www.ref.org.uk/Files/MK_SPD_Judgment.pdf)