

Environment & Climate Change - Denmark

High Court rules on compensation for noise from wind turbines

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Background

Facts

Comment

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Depending on their location, wind turbines can cause noise, visual interference and light reflections.

These issues are governed by public and private law, including neighbour law. The main rules regarding noise from wind turbines can be found in Executive Order 1284 of December 15 2011 on wind turbine noise, issued pursuant to the Environmental Protection Act. To some extent, the order safeguards neighbours from noise inconvenience by establishing maximum noise levels from wind turbines in outdoor areas. The noise limit varies depending on the surroundings.

Wind turbines may also cause visual interference which may negatively affect the value of surrounding properties. Thus, the location of wind turbines on land has proved a difficult political issue for years. Every municipality supports the idea of more wind turbines – just not within its own borders.

In order to promote local support for wind energy projects, the Parliament passed the Promoting Renewable Energy Act, which establishes a compensation scheme for neighbours of wind turbines. Under the scheme, those who build one or more wind turbines are obliged to compensate their neighbours for any reduction in property value that the wind turbines may cause, regardless of whether the wind turbines accord with the necessary permits.

The compensation scheme departs from the court-based neighbour law in that it does not operate with a tolerance limit which the neighbour must prove has been exceeded.

The starting point is that the issue of compensation must be settled before the wind turbines are built. However, the Promoting Renewable Energy Act does allow neighbours to claim compensation in certain circumstances thereafter. The competent authority to deal with claims for compensation is the assessment authority set up by the act.

Compensation granted to neighbours under the act has been relatively low so far.

Facts

In a recent case before the High Court for Western Denmark the plaintiffs had been awarded Dkr250,000 in compensation for the erection of eight wind turbines by the assessment authority. They brought the matter before the courts seeking higher compensation.

Before the erection of the wind turbines, an environmental study had concluded that the noise level at their property would amount to 38.8 decibels at wind speeds of 12 knots and 40.9 decibels at wind speeds of 16 knots.

Before the city court, a court-appointed expert stated that the reduction in the value of the property

amounted to between Dkr600,000 and Dkr800,000. The city court also arranged a visit to the property.

Where the assessment authority found that the plaintiffs' property would be subject to limited noise pollution, the city court found the level to be more significant. The court further ruled that the plaintiffs had documented their loss of value at Dkr600,000 and thus awarded them an additional Dkr350,000.

Finally, the court held that the plaintiffs had suffered no other economic loss covered by the Promoting Renewable Energy Act. In particular, the court held that the fact that the wind turbines had been erected with all necessary permits prevented the plaintiffs from claiming compensation under neighbour rules.

The High Court for Western Denmark upheld the city court's judgment, but fixed the compensation at Dkr500,000 because, among other things, there were certain deficiencies in the masonry of the house. However, the court also considered the findings of the court-appointed expert witness who had seen the plaintiffs' house after the erection of the wind turbines – which the assessment authority had not done – as well as the city court's own observation of the property. Finally, the court ruled that the Promoting Renewable Energy Act does not restrict the courts' competence to review decisions from the assessment authority.

Comment

The judgment is significant as it granted compensation after the erection of the wind turbines. This is contrary to the main rule in the Promoting Renewable Energy Act; however, both the city court and the high court found sufficient legal authority under the act to admit the claim after the erection of the wind turbines.

Moreover, both courts paid considerable attention to the evaluation of the court-appointed expert. While this is quite normal in Danish case law, it is unusual in cases where an authority such as the assessment authority has previously dealt with the matter.

Finally, the high court paid attention to the city court's own observations of the property. It is quite unusual to see such a reference to the observations of a lower court in a higher court's grounds of judgment.

The judgment gives cause for optimism to those who intend to challenge decisions of the assessment authority under the Promoting Renewable Energy Act. From a procedural point of view, it seems to be important for the court to see the property at issue to form its own opinion of the level of noise pollution caused by wind turbines.

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