

[Seal]

NACKA DISTRICT COURT
Land and Environment Court

JUDGMENT
15 May 2014
Issued at
Nacka Strand

Case no P 129-12

APPELLANTS

1. Ylva Abrahamsson Thornefors, Brinkskavägen 2 B, SE-645 30 Strängnäs
2. Johan Andersson, Helgarö, Hagalund, SE-645 92 Strängnäs
3. Lennart Andersson, Helgarö Väla, SE-645 92 Strängnäs
4. Anna Björbrand Lövgren, Helgarö Rällinge 1, SE-645 92 Strängnäs
5. Catrine Fredlund, Helgarö, Haga, SE-645 92 Strängnäs
6. Föreningen Landskapsskydd i Strängnäs [*Association for Landscape Protection in Strängnäs*], Rällinge Stenhammar 2, SE-645 92 Strängnäs
7. Anncharlott Hedin, Rällinge Rosendal, SE-645 92 Strängnäs
8. Gunnar Hedin, Rällinge Rosendal, SE-645 92 Strängnäs
9. Claes Holmgren, Eldsbergagränd 7, SE-125 73 Älvsjö
10. Margareta Holmgren, Eldsbergagränd 7, SE-125 73 Älvsjö
11. Krister Hålldin, Stationsvägen 2, SE-632 39 Hällbybrunn
12. Gunilla Höjjer, Wiboms väg 9, SE- 171 60 Solna
13. Börje Jansson, Skimmelvägen 7, SE-177 39 Järfälla
14. Kent Karlsson, c/o Wilhelm Thornefors, Member of the Swedish Bar Association, Birger Jarlsgatan 42, SE-114 29 Stockholm
15. Rolf Karlsson, Källängen Helgarö, SE-645 92 Strängnäs
16. Tommy Karlsson, c/o Wilhelm Thornefors, Member of the Swedish Bar Association, Birger Jarlsgatan 42, SE-114 29 Stockholm
17. Örjan Karlsson, c/o Wilhelm Thornefors, Member of the Swedish Bar Association, Birger Jarlsgatan 42, SE-114 29 Stockholm
18. Hans Kroné, Helgaröby Klockargården, SE-645 92 Strängnäs
19. Åsa Lilja, c/o Wilhelm Thornefors, Member of the Swedish Bar Association, Birger Jarlsgatan 42, SE-114 29 Stockholm

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NACKA DISTRICT COURT
Land and Environment Court

JUDGMENT

20. Håkan Lindström, Åsbygård Helgarö, SE-645 92 Strängnäs
21. Kristina Lindström, Åsbygård Helgarö, SE-645 92 Strängnäs
22. Kaj Lundahl, Wiboms väg 9, SE-171 60 Solna
23. Arne Lövgren, Rellinge Stenhammar 2, SE-645 92 Strängnäs
24. Gun Lövgren, Rellinge Stenhammar 2, SE-645 92 Strängnäs
25. Henric Lövgren, Helgarö Rällinge 1, SE-645 92 Strängnäs
26. Lillemor Mårtensson, Rällingelund, SE-645 92 Strängnäs
27. Lilian Onelöv, Helgaröby 2, SE-645 92 Strängnäs
28. Sten Onelöv, Helgaröby 2, SE-645 92 Strängnäs
29. Silja Sandelin, Fogdö Eriksberg , SE-645 92 Strängnäs
30. Bernd Stümer, Väla Gård, Helgarö, SE-645 92 Strängnäs
31. Gun Söderlund Williamsson, Helgaröby 1, SE-645 92 Strängnäs
32. Eva Wesslén, Bäverdammsgränd 126, SE-124 63 Bandhagen
33. Börje Williamsson, Helgaröby 1, SE-645 92 Strängnäs

Representative of 1, 3–13, 15,18, 20, 21, 23, 25–29, 31–33: Gun Lövgren, Rellinge Stenhammar 2, SE-645 92 Strängnäs

Representative of 2: Bernd Stümer, Väla gård, Helgarö, SE-645 92 Strängnäs

Representative of 14, 16, 17 and 19: Wilhelm Thornefors, Member of the Swedish Bar Association, Advokatfirman Wilhelm Thornefors, Birger Jarlsgatan 42, SE-114 29 Stockholm

OPPOSITE PARTIES

1. Planning and Building Committee in the Municipality of Strängnäs, SE-645 80 Strängnäs
2. Diocese of Strängnäs, Prästlönetillgångar, Box 84, SE-645 84 Strängnäs

Representative of 2: Tove Andersson, Member of the Swedish Bar Association, Wistrand Advokatbyrå, Box 11920, SE-404 39 Gothenburg

DECISION APPEALED

The decision of the County Administrative Board of Södermanland of 15 December 2011 in matter nos 403-2103-11, 403-42-2011, 403-43-2011, 403-4710-2010, 403-4711-2010, see annex 1.



NACKA DISTRICT COURT
Land and Environment Court

JUDGMENT

Page 3
P 129-12

MATTER

Rejected appeal

RULING

1. The Land and Environment Court rejects Johan Andersson's appeal.
 2. The Land and Environment Court sets aside the decision of the County Administrative Board regarding Håkan Lindström.
 3. The Land and Environment Court refuses the other appeals.
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BACKGROUND

The Planning and Building Committee of the Municipality of Strängnäs, called the Committee below, decided to grant the Diocese of Strängnäs a building permit under the Planning and Building Act (1987:10) for the construction of two wind turbines on the properties Strängnäs 1:4 and Strängnäs Knutsberg1:2.

The decision of the Committee to grant a building permit for the wind turbines was appealed by a large number of private individuals and several associations, including Föreningen Landskapsskydd i Strängnäs [*Association for Landscape Protection in Strängnäs*], called the association below. The County Administrative Board then decided to reject the appeals from several private individuals and the association, who have, in turn, appealed the decision to reject their appeals.

Today the Land and Environment Court is also deciding case P 635-12 and case P 1924-12. In these cases the Court has set aside the decisions of the lower bodies granting building permits for the measures in question in this case.

CLAIMS AND POSITION

[Text deleted]

Johan Andersson and Bernd Stümer have, as they must be understood, presented a claim that the decision appealed be set aside and that the matter be referred back to the County Administrative Board for further processing.



[Text deleted]

PRESENTATION OF ACTIONS

In support of their actions the parties have, in all essential respects, stated what is set out in the decision appealed. In addition the parties have, in summary, made the following additional comments and clarifications that are of interest here.

[Text deleted]



[Text deleted]

Johan Andersson and Bernd Stümer

The nuisance caused by the wind turbines means that private individuals are the public concerned. Under the Environmental Code the public affected is entitled to appeal the Committee's building permit decision.

The question of standing and who is to be deemed to be the public concerned are not regulated explicitly in the Environmental Code or the Planning and Building Act. Private individuals have also a right to appeal a building permit decision on the basis of Sweden's international commitments. These commitments include the European Convention on Human Rights (ECHR), the Aarhus Convention and the EU Charter of Fundamental Rights from 2007, which is a statute that is parallel to and supplements the ECHR. Similarly the European Treaty and the EIA Directive recognise a right for private individuals to appeal. These provisions are all superior to Swedish law and therefore cannot be set aside by Swedish public authorities. The right of the public to appeal building permit decisions is also stated by the Court of Justice of the European Union (CJEU) in case C-263/08.

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NACKA DISTRICT COURT
Land and Environment Court

JUDGMENT

Page 7
P 129-12

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NACKA DISTRICT COURT
Land and Environment Court

JUDGMENT

Page 8
P 129-12

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INVESTIGATION IN THE CASE

The Land and Environment Court has held a hearing and viewed the site.

The appellants have submitted certain written investigations.



REASONS FOR THE JUDGMENT

Points of departure for the examination

The Planning and Building Act in its wording before 2 May 2011 is applied in this case. The Planning and Building Act (1987:10) does not have an explicit provision concerning who has a right to appeal a building permit decision.

Under Section 22 of the Administrative Procedure Act (1986:223) a decision may only be appealed by a person whom the decision concerns, provided that the decision has gone against him or her and the decision is subject to appeal. The meaning of that provision is [Translator's note: sentence not completed in source text.]

The circle of persons with a right of appeal has been developed in more detail in case law. Regarding building permit decisions, the Supreme Administrative Court stated, in case RÅ 1992 report 81, that under established case law such decisions are deemed to concern – in addition to the applicant – owners of the properties bordering directly on the property that the building permit applies to and, in addition, owners of properties in a close neighbourhood that are particularly affected on account of the nature and scope of the measure covered by the building permit, natural conditions at the site, etc. Even if a road separates the appellant's property from the border of the property in question in the case, there is usually deemed to be a right to appeal, see Didón et al. Plan- och Bygglagen [*Planning and Building Act*] (1 October 2010, Zeteo), commentary on Chapter 13, Section 2 under the heading "Who has the right to appeal?".

The ruling referred to, RÅ 1992 report 81, also applied to the construction of wind turbines. The Supreme Administrative Court noted that the wind turbines were considered to be an unfamiliar feature of the landscape and that they could contribute to nuisance and that they could be seen from the appellant's properties that were about 550 metres away. In addition, the Land and Environment Court of Appeal has stated in a ruling that an owner of a property at a distance of 800 metres from a wind turbine was deemed to have a right to appeal a building permit decision, see Land and Environment Court of Appeal, judgment 2013-06-03, case no P 1574-13.

Assessment of the Land and Environment Court

Ylva Abrahamsson Thornefors et al.

The Land and Environment Court begins by noting that it only emerged during proceedings at this Court that, in addition to owning Strängnas Helgarö-Åsby 3:7, Håkan Lindström is also the



owner of a property that is separated from Knutsberg 1:2 by a road. This statement has not been contradicted by the Committee and the Diocese of Strängnäs. This means that, with reference to the statements made in the commentary to the Act set out above, Håkan Lindström shall be deemed to have a right to appeal the Committee's building permit decision in the capacity of a neighbour with a property bordering on the property in question. However, the Court has set aside the building permit decision for the wind turbines in case nos P 635-12 and P 1924-12. This means that there is no reason to refer the case back to the County Administrative Board for further processing.

As regards the other appellants, the understanding of the Land and Environment Court is that they have mainly put forward public interests to support their right to appeal the building permit decision. Public interests, for example the impact of the wind turbines on the high natural and cultural values in the area, are not grounds that can grant them a right of appeal, see RÅ 1989 report 104. The Land and Environment Court therefore shares the assessment of the County Administrative Board that the properties owned by Ylva Abrahamsson Thornefors et al., with the exception of Håkan Lindström, are located at such a distance from and in such a relationship to the wind turbines covered by the building permit application that they cannot be deemed to have a right to appeal the decision. Their appeals shall therefore be refused.

Johan Andersson and Bernd Stümer

The Land and Environment Court begins by noting that Johan Andersson was not recorded as a party in the decision being appealed. The decision to reject the other appellants can therefore not be deemed to have gone against him. Johan Andersson's appeal shall therefore be rejected. The Court also notes that Johan Andersson is an appellant in case no P 635-12 which concerns the substantive legality of the wind turbines.

Regarding Bernd Stümer, the Land and Environment Court notes that his property is not a property bordering on any of the properties on which the wind turbines are to be erected. Nor has it emerged in the case that Bernd Stümer's property is located in a close neighbourhood that is particularly affected in view of the nature and scope of the measure covered by the building permit, the natural conditions at the site, etc. The references that Bernd Stümer has made to the ECHR and a ruling of the CJEU do not alter the assessment of the Court in this part of the case. In line with the deliberations that the Court has made above, public interests cannot be cited to



support standing. The Court therefore shares the assessment of the County Administrative Board that Bernd Stümer cannot be considered to have a right to appeal the decision. Bernd Stümer's appeal shall therefore be refused.

The association

A non-profit association does not normally have a right to appeal a building permit decision merely in its capacity as an association that is active in the area or because a number of its members live in the area. The understanding of the Land and Environment Court is now that the association is citing the view that in its capacity as an interest organisation it is able to base its standing on the fact that the matter is said to concern its members. There is no such general right. Nor does a non-profit organisation of the kind referred to in Chapter 16, Section 13 of the Environmental Code have a right to appeal building permit decisions – in contrast to the position regarding certain plan decisions under Chapter 13, Section 6 of the Planning and Building Act. No other fact that could result in standing for the Association has been cited. The Court therefore shares the assessment of the County Administrative Board that the association cannot be considered to have a right to appeal the decision. The association's appeal shall therefore be refused.

Kent Karlsson et al.

Kent Karlsson et al. have, as they must be understood, referred to the fact that they are often on the property Knutsberg 1:3 in the vicinity of the wind turbines. Moreover, Kent Karlsson and Tommy Karlsson have also asserted that they shall be deemed to have a right to appeal the building permit decision on account of the fact that they lease the property Knutsberg 1:3. The Committee and the Diocese of Strängnäs have not questioned the information about how and to what extent Kent Karlsson et al. use the property Knutsberg 1:3.

The mere fact that Kent Karlsson et al. are often in the vicinity of the site where the wind turbines are to be erected cannot, in view of the statements in the preparatory works reported above, be sufficient for them to have a right to appeal the building permit decision. Then when it comes to the right that Kent Karlsson and Tommy Karlsson have since they lease the property Knutsberg 1:3, the Court notes that the forms of nuisance that the wind turbines have been said to cause are not such as prevent Kent Karlsson and Tommy Karlsson from making use of the



rights that their lease for agriculture, forestry and hunting gives them. The Court also notes that Kerstin Karlsson, the stated owner of Knutsberg 1:3, has appealed the decision and that she is a party in case no P 1924-12.

Summing up, the Land and Environment Court therefore shares the assessment of the County Administrative Board that Kent Karlsson et al. do not have a right to appeal the building permit decision. The appeals shall therefore be refused.

HOW TO APPEAL, see annex 2 (DV427)

Appeal no later than 5 June 2014. Leave to appeal is required.

Claes-Göran Sundberg

Maria Backström Bergqvist

Chief Judge Claes-Göran Sundberg, presiding, and Technical Judge Maria Backström Bergqvist took part in the ruling of the Court. The reporting clerk was drafting lawyer Alexandra Venander.

Translated from Swedish by Ian MacArthur, public translator authorised by the Swedish Legal, Financial and Administrative Services Agency for translation from Swedish to English (Stamp no 393).


Stockholm, 5 October 2015

