

**NORTH LINCOLNSHIRE COUNCIL**

**PLANNING COMMITTEE**

**SAXBY WINDFARM APPEAL (WF/2011/0734)**

**1. OBJECT AND KEY POINTS IN THIS REPORT**

- 1.1 To update members on the Saxby Wold wind farm appeal in light of recent amendments to the scheme and to seek a fresh mandate for officers to continue working towards the public inquiry.

**2. BACKGROUND INFORMATION**

- 2.1 The council refused the application at Planning Committee on 8 February 2012. The reasons for refusal were:

1.

The proposed development would introduce very substantial industrial structures into an area of significant natural beauty, which is largely unspoilt, on the highest and most prominent point in North Lincolnshire, where the landscape is characterised by gently rolling agricultural land within the Wolds. In this area vertical structures of the size and scale proposed would be particularly harmful to the visual amenity of wide areas of North Lincolnshire and beyond. The landscapes which would be adversely affected are particularly highly valued locally and this development would be contrary to paragraph 24 of PPS7. The proposals are therefore contrary to policies DS1, DS21 and LC7 of the North Lincolnshire Local Plan, policy CS18 of the North Lincolnshire Core Strategy, policy 2 of the Supplementary Planning Document 'Planning for Renewable Energy', PPS7 and PPS22, and policy ENV10 of the Regional Spatial Strategy.

2.

The proposals would lead to significant disruption to users of the Viking Way, a nationally important network of footpaths and bridleways, both during construction of the wind farm and long term, due to the fact the proposal includes laying access roads over the line of the Viking Way itself. Furthermore, the proposals would be visually detrimental to users of the Viking Way due to the introduction of industrial structures close to the public rights of way which would disrupt important views and create an intimidating and overbearing environment for walkers and riders. The proposals are therefore contrary to policy CS18 of the North Lincolnshire Core Strategy, policy 13 of the Supplementary Planning Document Planning for Renewable Energy, policies R5, DS1 and DS21 of the North Lincolnshire Local Plan and PPS22, PPS7, PPS18 and PPG17.

3.

The proposed wind farm development will be a totally new noise source located in a quiet rural area and the predicted turbine noise levels would exceed the measured background noise level across a variety of wind speeds by between 10dB to 14dB at most of the assessment locations during the night-time period, and by 10dB at several of the assessment locations during the daytime period. The proposed development would therefore be likely to cause loss of amenity to residents of nearby properties due to undue noise impact. The proposals are therefore contrary to policy CS18 of the North Lincolnshire Core Strategy, Policy 8 of the Supplementary Planning Document Planning for Renewable Energy, policies DS1 and DS21 of the North Lincolnshire Local Plan and PPS22.

- 2.2 When the appeal was lodged the appellants stated they wished a reduced 16 turbine scheme to be considered: two turbines from the northern end of the site were to be omitted and the appellants put forward their view that this overcame the council's reasons for refusal. Officers did not accept this and the first tranche of appeal statements made it clear that this amendment made no material difference to the council's decision.
- 2.3 Since then a planning application (PA/2012/0159) seeking permission for a dairy farm and two dwellings, very close to the appeal site, has been determined at Planning Committee and has been granted planning permission. As a consequence of this the appellants have submitted a further amended scheme omitting a further six turbines which would have been too close to the approved new dwellings to comply with ETSU-R-97 guidance on noise and would have been so close as to have substantial impacts upon the amenity of occupiers of those properties.
- 2.4 The amended scheme now omits the six southernmost turbines from the scheme. The original application proposed turbines 1 through to 18; the amended scheme now comprises the residual development of turbines T3, T4, T8, T9, T10, T11, T13, T14, T15 and T16.
- 2.5 Despite an initial objection from North Lincolnshire Council to the appeal continuing in its amended form, and despite a feeling shared by members, residents and officers that it is quite unfair that North Lincolnshire Council and residents have to virtually start again from scratch in assessing the 'amended' scheme, detailed legal advice has made it clear that when assessed against nationally established 'tests' used by the Inspectorate to assess amended schemes there is no substantive legal case to object to the appeal continuing.
- 2.6 This is a very unusual set of circumstances. At the initial pre-inquiry meeting in November, the inspector stated he had not encountered this in 23 years of being an inspector.
- 2.7 The dates for the appeal have all been put back now: the amended Environmental Statement will have been available to the public from 22 January and reconsultation carried out, representations to be forwarded to the Inspectorate, who will send copies to North Lincolnshire Council. Any representations received can be verbally reported to the Planning Committee.

- 2.8 The public inquiry itself will run from 8 to 10, 14 to 16 and 21 to 24 May 2013. It will be held at Elsham Hall Country Park starting at 10am on the first day.
- 2.9 The three main issues which need reassessing, relating to the three original reasons for refusal, are noise, landscape and the Viking Way. On all three issues it is felt that the proposals are still substantively unacceptable and officers feel the appeal must be defended to the utmost.

### **3. ISSUE ONE – NOISE**

- 3.1 With regard to noise, the Environmental Protection Officer has reassessed the noise impacts following the reduction in turbine numbers from 18 to 16 to the current proposed scheme involving 10 turbines. It is considered that the amended scheme does not overcome the council's reason for refusal on noise and the appeal should still be fought on the issue of noise.
- 3.2 The predicted noise levels and the background noise levels referred to in this report are all based on the appellants' data for wind speeds of 7 m/s measured at 10m height. The candidate turbine is reported as reaching maximum sound power level at this wind speed.
- 3.3 The impact of the Saxby Wind Farm proposals has been considered with reference to the government guidance document, *ETSU-R-97*. Also assessed is the likely noise impact of the proposals with reference to other relevant guidance, including *BS4142:1997*, *WHO Guidelines for Community Noise 1999*, and *WHO Night Noise Guidance for Europe 2009*.
- 3.4 The Companion Guide to PPS22 states that ETSU-R-97 should be used to assess and rate noise from wind energy development. The National Policy Statement for Renewable Energy Infrastructure (EN-3) states that the assessment of noise from the operation of wind turbines should use ETSU-R-97, taking account of the latest industry good practice. This might be interpreted as stating that if a wind turbine development meets ETSU-R-97 derived noise limits, then there would be no grounds to refuse such a development for reasons of noise impact. However, the Planning Inspector's decision in the case of Weaverthorpe Road, Bradford\* recognised that other guidance in addition to ETSU could be used in the assessment of wind turbine noise, and allowed the use of BS4142:1997 for the assessment of the impact of wind turbine noise.

\* (Appeal Ref: APP/W4705/A/09/2114165: Weaverthorpe Road, Bradford, West Yorkshire, BD4 6SX Decision date: 11 February 2010)

#### **Original 18 turbine proposal**

- 3.5 The original application for 18 turbines included a noise assessment that indicated that the applicants' own ETSU derived limits would not be met at some residential locations. The predicted noise levels were also above World Health Organisation guideline levels relating to sleep disturbance at some residential locations. Assessment of the 18 turbine scheme using the BS4142:1997 method indicated that the applicants' proposed noise limits would not be sufficiently stringent for the protection of residential amenity.

## Revised proposal for 10 turbines

- 3.6 It must be noted that for many residential locations the predicted turbine noise levels for the revised 10 turbine proposal are significantly lower than the noise levels predicted for the original 18 turbine proposal. However, the appellants' proposed noise limits are generally the same as those proposed in the original 18 turbine application, with just a few minor amendments.

## Assessment with respect to ETSU-R-97

- 3.7 The revised application for 10 turbines includes a new noise assessment that indicates that the appellants' ETSU derived noise limits will be complied with. If the Planning Inspector is minded to make his decision based purely on ETSU-R-97 guidance, and if he is satisfied that the appellant's ETSU assessment has been correctly carried out, then it is likely that he will consider the noise impact of this proposal to be acceptable with respect to residential amenity.
- 3.8 The council does not currently have appropriate alternative background noise monitoring data, and it will not be possible to carry out comprehensive background noise surveys in the timescales available for this appeal, so it will not be possible to conduct our own ETSU assessment to verify that carried out by the appellant. However, it will be necessary to draw attention to potential underestimate of noise impact through the appellants' failure to take account of uncertainties in noise measurement and prediction etc.
- 3.9 The introduction of a new residential receptor at the dairy, Hall Farm, is difficult to assess as the background noise level is difficult to establish at this stage. The appellants' noise report has approached this by using another local background noise measurement location. This new residential site has the highest predicted turbine noise level. The reported ETSU derived limits at this site can only be met if specified turbines are operated on a lower sound power mode during the daytime.
- 3.10 The ETSU-R-97 guidance does not specify how to derive noise limits for public amenity areas such as the Viking Way.
- 3.11 To assess this issue the Environmental Protection Officer has considered the appellants' predicted noise levels at the Viking Way in relation to paragraph 123 on page 29 of the National Planning Policy Framework, 2012:

*Planning policies and decisions should aim to:*

- ***avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development;***
- *mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions;*
- *recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not*

*have unreasonable restrictions put on them because of changes in nearby land uses since they were established; and*

- ***identify and protect areas of tranquillity which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason.***

3.12 The appellants' Noise Amenity Assessment (November 2012) indicates that the 10 turbine proposal will lead to a significant increase in noise levels along part of the Viking Way. The appellants' proposal will result in the introduction of a new industrial noise source to this part of the Viking Way.

**Assessment with respect to British Standard BS4142:1997, *Rating industrial noise affecting mixed residential and industrial areas***

3.13 The BS4142:1997 method can be used to assess the likelihood that a development will give rise to noise complaints for noise experienced at residential locations. This can in turn be used as an indication of the likely impact on residential amenity.

3.14 The BS4142 method assesses the likelihood of noise complaints by subtracting the measured background noise level from the rating level. The 'rating level' is the average noise level measured as  $L_{Aeq}$  over a suitable time period, with the addition of a 5 dB correction if the noise source has certain intrusive characteristics. The greater the increase in rating levels above background, the greater the likelihood of complaints:

*'A difference of around +10 dB or more indicates that complaints are likely.*

*A difference of around +5 dB is of marginal significance.*

*If the rating level is more than 10 dB below the measured background noise level then this is a positive indication that complaints are unlikely.'*

3.15 None of the assessed locations have a predicted noise rating level that is 10 dB below the measured background noise level, in other words there is no positive indication that complaints are unlikely.

3.16 The appellants' proposed night-time noise limit is 43 dB  $L_{A90}$ . This is equivalent to 45 dB measured as  $L_{Aeq}$  and would be equivalent to a rating level of 50 dB if there were acoustic characteristics requiring a +5dB penalty. The measured night-time background noise levels at many of the assessed locations are below 35 dB, so that a BS4142 assessment would indicate that complaints are likely if turbine noise levels are at the proposed noise limit (difference of at least +13 in some cases). This example shows that the appellants' proposed noise limits are not sufficiently stringent to protect residential amenity.

3.17 When considering the predicted noise levels rather than the proposed noise limits, the increase above background levels is not so great, and for some locations the predicted turbine noise levels are below reported background levels. However, for some residential locations the predicted  $L_{Aeq}$  turbine noise level increase over background level is greater than 'marginal

significance' and reaches the 'complaints are likely' level if it is necessary to add +5 dB penalty for acoustic characteristics. For example, the reported night-time background noise level at Chapel Farm is 32 dB  $L_{A90}$ . The predicted turbine noise level at this location is 39 dB  $L_{Aeq}$ . This gives a difference of +7 dB, increasing to +12 dB if it is necessary to add the 5 dB penalty for the acoustic characteristics of turbine noise.

### **Assessment with respect to WHO Guidelines for Community Noise 1999**

- 3.18 Reference to *WHO Guidelines for Community Noise 1999*, indicates that the predicted turbine noise levels for the ten turbine proposal do not exceed the relevant guidelines for residential locations.
- 3.19 However, the proposed ETSU derived noise limits do exceed the relevant guidelines at higher wind speeds.

### **Assessment with respect to WHO Night Noise Guidance for Europe 2009**

- 3.20 This guidance is based on extensive research into the effects of noise on sleep disturbance. Predicted noise levels at Hall Top and Hall Farm are above the night-time 40 dB level recommended in this guidance (although the averaging time for the measurement parameter in this guidance is significantly longer than that reported in the appellants' assessment, so direct comparison is difficult).
- 3.21 Therefore, in light of the above assessment, officers believe that there is the potential for harm to residential amenity from the proposed amended scheme. Whilst the predicted turbine noise is significantly lower than the original 18 turbine scheme the planning permission sought by the appellant is for the **proposed** noise limits and not for the predicted noise levels, which are from a 'candidate' turbine and this is an unacceptable situation. Officers believe that residential amenity would not be properly protected were this permission to be granted.

## **4. ISSUE TWO - LANDSCAPE**

- 4.1 Whilst there has been a reduction in the number of turbines, the machines would still be visible over an extensive area. The impact of the machines in the wider landscape would continue to have impacts upon existing landscape character and visual amenity that would be significant and adverse.
- 4.2 Therefore, this reason for refusal has not been overcome and this should continue to be defended at appeal.

## **5. ISSUE THREE – VIKING WAY**

- 5.1 The application site runs close to the Viking Way, a nationally known route which is well used. The turbines would significantly impact upon users of the public rights of way as the turbines and associated development would dramatically change the way users would experience the Viking Way for considerable distances.

- 5.2 North Lincolnshire Council's Environment Team wished for improvements to the Viking Way to be offered by the developer, which would have been secured by a Section 106 legal agreement to adequately compensate for the impact of the wind farm, however this has not happened.
- 5.3 The Environment Team objects on the grounds of: site access, surfacing of the site access, and the potential for new public rights of way and the distance of the turbines from the bridleways.
- 5.4 The Environment Team has consistently objected to these proposals due to the unacceptable impact upon the rights of way network through physical alterations to the network itself and to the unacceptable harm to the enjoyment of the users of the rights of way, be they ramblers, horse riders or local people walking their dogs.
- 5.5 The rights of way, particularly the Viking Way, are very well used and are of more than local significance with the Viking Way being nationally famous attracting visitors from far afield.
- 5.6 The Viking Way is thought to be historical and appears to have been in existence for centuries, possibly with a historical association with fox hunting in and around the local settlements.
- 5.7 The developer acknowledged the harm the proposals would cause to the Viking Way by negotiating significant changes to the network, including new paths and diversions of existing paths, in order to make the proposals more acceptable. However, the developer was unable to deliver the necessary works.
- 5.8 Although a further six turbines have now been omitted from the appeal proposals four of the proposed wind turbines would still be significantly closer to the Viking Way than the adopted SPD 'Planning for Renewable Energy' allows. This would be severely detrimental to the safe enjoyment of the bridleway by horse riders and would diminish the enjoyment of walkers. The SPD sets out a separation distance of three times the height of the turbines which equates to 375 metres. The four turbines and their distances from the Viking Way are:
- T13 210m
  - T14 190m
  - T15 200m
  - T16 310m
- 5.9 It must be borne in mind that the blades will 'sail' closer to the Viking Way by another 45 metres, taking T14 to within 145 metres of the Viking Way. This is clearly contrary to the SPD which is fully adopted and should be given significant weight. The guidance in the Companion Guide to PPS 22 refers to

an Advisory Statement by the British Horse Society which urges developers and planners to recognise a 200 metre exclusion zone around bridleways.

- 5.10 There are two additional issues to be considered which were previously considered when the application was presented to the Planning Committee in February: pink-footed geese and the residential amenity of individual properties.

## **6. PINK FOOTED GEESE**

- 6.1 Natural England were consulted on the original proposals and although they objected originally they subsequently withdrew their objections to the proposals. In the meantime an application for a single turbine relatively close to the land earmarked for the goose refuge has been submitted (PA/2012/0559). Discussions with Natural England indicate this does not change their position on the Saxby Windfarm. If the single turbine were to be granted planning permission then the issue would need to be reconsidered then. At this time officers consider that an objection to the proposals based on the theoretical impact upon the goose refuge cannot be substantiated.

## **7. RESIDENTIAL AMENITY**

- 7.1 The issue of the impact upon the residential amenity of individual properties in terms of visual impact/outlook and whether the impact would be overwhelming has been raised by S.W.A.T (Saxby Wold Against Turbines) and by residents.
- 7.2 In light of this, two of the nearest properties were visited by the case officer on 9 January 2013. The two properties are Chapel Farm House and Barton Hill Farm Cottage, both accessed via tracks off the B1216. During the visit to Barton Hill Farm Cottage access was given to a rear first-floor room with clear views across the site. The site was viewed from the curtilage of Chapel Farm House and the case officer viewed the property from a point near to the nearest proposed turbine to get a clear impression of the distances involved and the likely impact.
- 7.3 Whilst both properties would have clear views across the site, Chapel Farm House would be 1.15km from the nearest turbine (T13) and Barton Hill Farm Cottage would be a considerable distance further and on the far side of the pylons that run east/west across the Wolds.
- 7.4 Although the turbines will be prominent in views from these two properties it is not considered that the impact would be so overwhelming or harmful that the council should now add an additional reason for refusal.

## **8. OPTIONS FOR CONSIDERATION**

- 8.1 That members mandate officers to continue to defend the original reasons for refusal referred to in paragraph 2.1 above.
- 8.2 That members put forward other reasons for refusal.



- 8.3 That members wish to cease defending one or all of the reasons for refusal in paragraph 2.1.

## **9. ANALYSIS OF OPTIONS**

- 9.1 Officers are of the opinion that the reasons for refusal outlined at paragraph 2.1 continue to be defensible at appeal.
- 9.2 Officers are of the opinion that additional reasons for refusal may not be able to be substantiated at the public inquiry.

## **10. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)**

### **10.1 Financial**

10.1.1 Ongoing costs of the barrister's fees, costs to the council of officer time, including planning officers and legal department staff, including a principal solicitor.

10.1.2 The risk of an award of costs if additional reasons for refusal cannot be substantiated.

10.1.3 The adoption of option 2 could lead to a risk of costs being awarded against the council if the additional reasons can not be substantiated at the public inquiry.

### **10.2 Staffing**

10.2.1 No implications.

### **10.3 Property**

10.3.1 No implications.

### **10.4 IT**

10.4.1 No implications.

## **11. OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17 – CRIME AND DISORDER, RISK AND OTHER)**

### **11.1 Statutory**

11.1.1 No implications.

### **11.2 Environmental**

11.2.1 Great significance for North Lincolnshire whichever way the appeal is ultimately determined. Either the landscape, the Viking Way and its users and the amenity of residents will be protected and safeguarded (if the appeal is dismissed) or these interests of acknowledged importance will be adversely affected if the appeal is allowed.

**11.3 Diversity**

11.3.1 No implications.

**11.4 Section 17 – Crime and Disorder**

11.4.1 No implications.

**11.5 Risk**

11.5.1 No implications.

**11.6 Other**

11.6.1 No implications.

**12. OUTCOMES OF CONSULTATION**

12.1 To be reported at committee.

**13. RECOMMENDATION**

That members ratify the option set out in paragraphs 8.1 and mandate officers to continue to defend the original reasons for refusal referred to in paragraph 2.1 above.

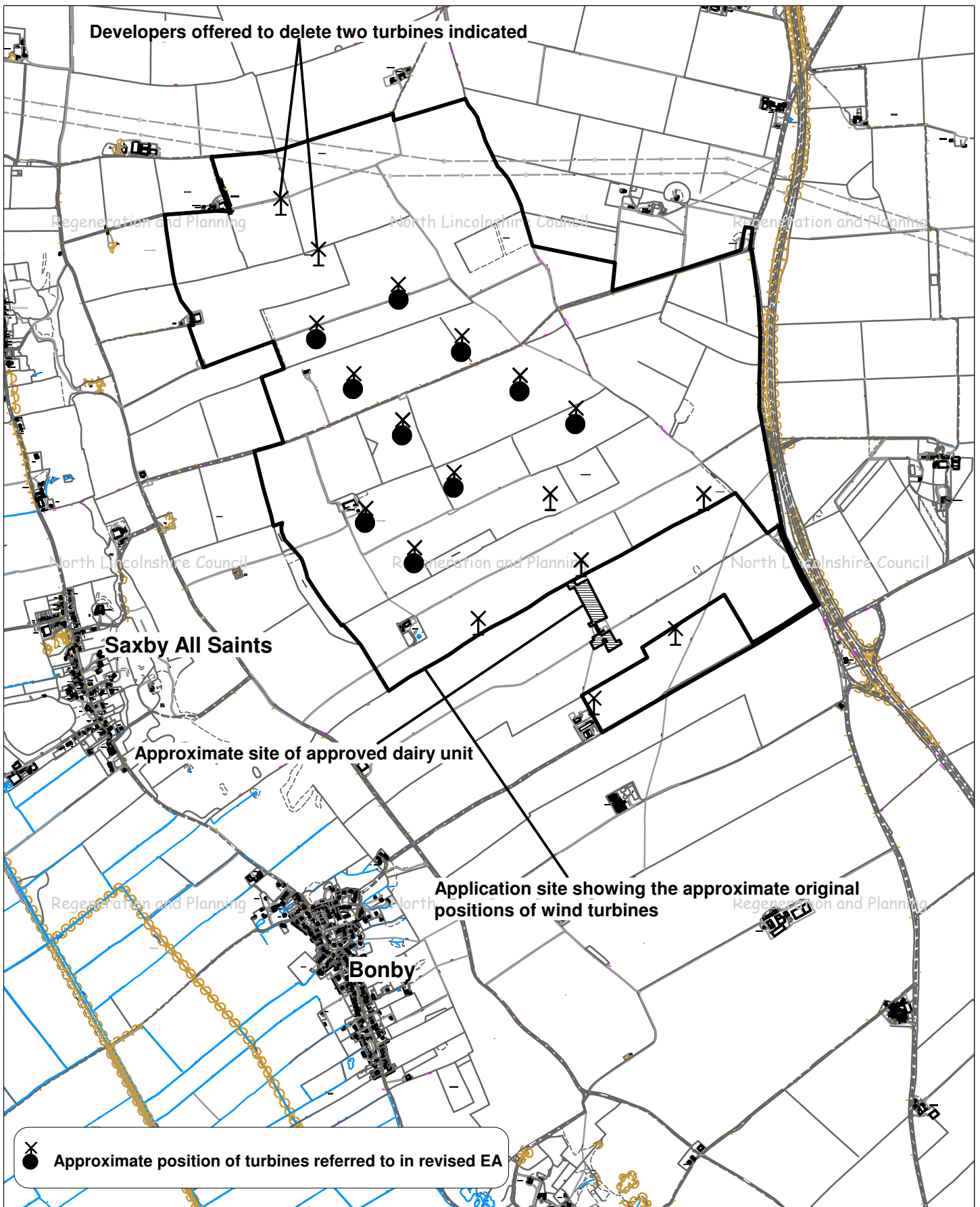
**HEAD OF DEVELOPMENT MANAGEMENT**

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Author: Mark Simmonds  
Date: 22 January 2013

**Background papers used in the preparation of this report**

Appeal documents.



Developers offered to delete two turbines indicated

Regeneration and Planning

North Lincolnshire Council

Regeneration and Planning

North Lincolnshire Council

Regeneration and Planning

North Lincolnshire Council

Saxby All Saints

Approximate site of approved dairy unit

Application site showing the approximate original positions of wind turbines

Regeneration and Planning

North Lincolnshire Council

Regeneration and Planning

Bonby

 **Approximate position of turbines referred to in revised EA**

Drawing Title: 2011/0734

OS Grid Ref: TA00411710

Drawn by: KC

Scale: 1:25000

Date: 23/01/2012



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