

NORTH LINCOLNSHIRE COUNCIL

PLANNING COMMITTEE

UPDATE ON WF/2008/0900

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To inform members of the progress of the appeal.
- 1.2 To re-assess the reasons for refusal in the light of recent advice

2. BACKGROUND INFORMATION

- 2.1 Members will recall that this application was refused by the Planning Committee on 29 April 2009 (minute ref. 1133(i)). The reasons for refusal were:
 - 1. failure to minimise the visual and physical impacts of the development;
 - 2. the undesirable cumulative impact of the turbines in a small geographical area;
 - 3. proximity to residential properties and concern of local residents;
 - 4. achievement of targets contained in policy WIND1 of SPG13.
- 2.2 The applicants appealed against the refusal on 21 May 2009. The appeal was originally to be determined by way of an informal hearing but, after considering all the information, the Planning Inspectorate decided that the best course of action would be to hold a public inquiry into the proposed wind farm. The inquiry is to be held on 26-29 January and 2-3 February 2010.
- 2.3 Following this decision by the Planning Inspectorate, the council has instructed a barrister to put forward its case. He has considered the evidence and advised in conference that the council needs to re-assess its position prior to the inquiry, particularly since the publication of the Renewable Energy Strategy by the Government in July 2009.

3. OPTIONS FOR CONSIDERATION

- 3.1 The committee is requested to re-assess the need to balance the benefits of renewable energy against the specific proposals at Flixborough and the harm this scheme would cause.
- 3.2 The overriding factor in favour of siting the wind turbines is to meet the accepted national imperative to reduce the production of CO₂ and to turn instead to renewable forms of energy, of which wind is a fundamental element.
- 3.3 The Renewable Energy Strategy states that

'We need to radically increase our use of renewable electricity, heat and transport. This Strategy explains how and why we will do so. It sets out the path for us to meet our legally-binding target to ensure 15% of our energy comes from renewable sources by 2020: almost a seven-fold increase in the share of renewables in scarcely more than a decade.

This Strategy will help us tackle climate change, reducing the UK's emissions of carbon dioxide by over 750 million tonnes between now and 2030. It will also promote the security of our energy supply, reducing our overall fossil fuel demand by around 10% and gas imports by 20–30% against what they would have been in 2020. And it will provide outstanding opportunities for the UK economy with the potential to create up to half a million more jobs in the UK renewable energy sector resulting from around £100 billion of new investment. In parallel with energy saving, nuclear and carbon capture and storage, this is a key element of our overall transition plan for setting the UK on the path to achieve a low-carbon, sustainable future that helps address dangerous climate change.'

- 3.4 This is reflected by the planning policy cascade from national through to regional and local policies detailed below:

PPS 1 Delivering Sustainable Development (2005) and Planning and Climate Change, Supplement to PPS 1 (2007)

PPS 1 sets out the overarching planning policies on the delivery of sustainable development through the planning system. It explains that the Government is committed to protecting and enhancing the quality of the natural and historic environment, in both rural and urban areas. A high level of protection should be given to most valued townscapes and landscapes (paragraph 17). At paragraph 18 it notes that the condition of our surroundings has a direct impact on the quality of life and the conservation and improvement of the natural and built environment brings social and economic benefit for local communities.

At the same time it calls for a prudent use of natural resources and requires development plans to seek to promote and

encourage, rather than restrict, the use of renewable resources (paragraph 22).

The supplement to PPS1 – Planning and Climate Change (2007) - sets out how planning should contribute to reducing emissions and stabilising climate change and take into account the unavoidable consequences. It advises that it does not seek to assemble all national planning policy relevant or applicable to climate change and should be read alongside the national PPS series. Where there is any difference in emphasis on climate change between the policies in this PPS and others in the national series, this is intentional and this PPS takes precedence.

In relation to renewable and low carbon energy generation the supplement (at paragraphs 19 and 20) to the PPS states:

‘19. In developing their core strategy and supporting local development documents, planning authorities should provide a framework that promotes and encourages renewable and low-carbon energy generation. Policies should be designed to promote and not restrict renewable and low-carbon energy and supporting infrastructure.

20. In particular, planning authorities should:

- not require applicants for energy development to demonstrate either the overall need for renewable energy and its distribution nor question the energy justification for why a proposal for such development must be sited in a particular location;
- ensure any local approach to protecting landscape and townscape is consistent with PPS 22 and does not preclude the supply of any type of renewable energy other than in the most exceptional circumstances;
- alongside any criteria-based policy developed in line with PPS 22, consider identifying areas suitable for renewable and low-carbon energy sources, and supporting infrastructure, where this would help secure the development of such sources, but in doing so take care to avoid stifling innovation including by rejecting proposals solely because they are outside areas identified for energy generation;
- expect a proportion of the energy supply of new development to be secured from decentralised and renewable or low-carbon energy sources.’

PPS 22 (Renewable Energy – 2004)

The Government published a revised PPS on renewable energy in 2004, together with a companion guide, which sets out practical advice on how policies for renewable energy can be implemented. These documents reinforce the overall regional role for renewable energy in helping to deliver national energy targets for energy generation and reductions in greenhouse gas emissions.

The PPS explains that it follows on from the Energy White Paper 'Our energy future – creating a low carbon economy' whose aim was to put the UK on the path to cut its carbon dioxide emissions by some 60% by 2050 with real progress by 2020.

The PPS sets out 8 key principles to be followed by regional planning bodies and local planning authorities. In particular:

- key principle (i) explains that renewable energy developments should be capable of being accommodated throughout England in locations where the technology is viable and environmental, economic, and social impacts can be addressed satisfactorily;
- key principle (ii) explains that regional spatial strategies and local development documents should contain policies designed to promote and encourage, rather than restrict, the development of renewable energy resources. Regional planning bodies and local planning authorities should recognise the full range of renewable energy sources, their differing characteristics, locational requirements and the potential for exploiting them subject to appropriate environmental safeguards;
- key principle (iii) explains that at the local level, planning authorities should set out the criteria that will be applied in assessing applications for planning permission for renewable energy projects;
- key principle (iv) explains that the wider environmental and economic benefits of all proposals for renewable energy projects, whatever their scale, are material considerations and should be given significant weight in determining whether proposals should be granted planning permission; and
- development proposals should demonstrate any environmental, economic and social benefits as well as how any environmental and social impacts have been minimised through careful consideration of location, scale, design and other measures.

The PPS sets out the principles for regional targets, policies in regional spatial strategies and local development documents, locational considerations and a range of other considerations relating to scale, landscape and visual effects, noise, odour and types of renewable energy, eg biomass and energy crops, and wind turbines.

In paragraphs 19 to 21 the PPS gives guidance on the landscape and visual effects of renewable energy developments. In particular it states that these effects will vary on a case by case basis according to the type of development, its location and the landscape setting of the proposed development (paragraph 19); that of all renewable technologies, wind turbines are likely to have the greatest visual and landscape effects, but that these impacts may be temporary if decommissioning conditions are attached (paragraph 20); and that planning authorities should take account of the cumulative impact of wind generation projects in particular areas.

Regional Spatial Strategy for Yorkshire and The Humber (2008)

The RSS at Section 2 (Spatial vision and core approach), in Table 2.1 (Spatial vision and headline outcomes), at outcome 7 says, 'Environmental quality has been raised, resource demands from development minimised, and the region is responding proactively to the global and local effects of climate change' and the headline indicators for this statement quote the installed renewable energy capacity as being crucial.

Policy YH1: Overall approach and key spatial priorities states at B, 'Plans, strategies investment decisions and programmes should aim to...:

6. Protect and enhance the region's environmental resources, including areas of international and national importance, and the character and qualities of the Region's coast and countryside including for economic and social development.'

The explanatory text accompanying the policy explains that a good quality environment is critical to the social, economic and environmental well being of the region. It acknowledges that pressure on environmental assets and resources are likely to increase with the demands for growth (paragraph 2.9).

Policy H2: Climate change and resource use sets out seven areas where plans, strategies, investment decisions and programmes should help meet the RSS target in relation to the reduction in greenhouse gas emissions, the seventh of which is increasing renewable energy capacity.

Policy YH3 (Working together) states that 'plans, strategies, investment decisions and programmes should be based on:

An effective collaboration between areas within the region, particularly to:

6. achieve effective environmental management and enhancement and address climate change.'

In delivering the RSS' core approach paragraph 2.76 explains that 'Change needs to be managed realistically and sensitively in the Region. The pace and degree of change must be handled in a way that is responsive to objectives such as urban regeneration, housing market renewal and rural renaissance and is reflective of local conditions, whilst ensuring the benefits of change and growth are delivered in a sustainable way as soon as possible.' Table 2.2 (Delivering the core approach over 15-20 years) sets out how this change might be achieved through different policy approaches during early, mid and later years. In the area of the environment the increased generation of renewable energy, mostly from wind turbines, is seen as being important as is the protection of important landscapes and habitats.

ENV5 (Energy) – 'The region will maximise improvements to energy efficiency by increases in renewable energy capacity. Plans, strategies, investments, decisions and programmes should:

- A Reduce greenhouse gas emissions, improve energy efficiency and maximise the efficient use of power sources by:
 - (1) requiring the orientation and layout of development to maximise passive solar heating;
 - (2) ensuring that publicly funded housing and Yorkshire Forward supported developments meet high energy efficiency standards;
 - (3) maximising the use of combined heat and power, particularly for developments within energy demands over 2 megawatts, and incorporating renewable sources of energy where possible;
 - (4) ensuring that development takes advantage of community heating opportunities wherever they arise in the region, including at Immingham and near Selby;

- (5) providing for new efficient energy generation and transmission infrastructure in keeping with local amenity and areas of demand;
- (6) supporting the use of clean coal technologies and abatement measures;

B maximise renewable energy capacity by:

- (1) delivering at least the following regional and sub-regional targets for installed grid-connected renewable energy capacity:

	2010	2021
Humber	124	350 megawatts
North	megawatts	428 megawatts
Yorkshire	209	160 megawatts
South	megawatts	295 megawatts
Yorkshire	47 megawatts	630 megawatts
West	88 megawatts	1862
Yorkshire	240	megawatts
Offshore	megawatts	
Total	708	
	megawatts	

- (2) monitoring annually planning permissions and developments against the indicative local authority targets for 2010 and 2021 set out in Table 10.2 and taking action accordingly to ensure the regional and sub-regional targets are exceeded;
- (3) promoting and securing greater use of decentralised and renewable or low-carbon energy in new development, including through Development Plan Documents setting ambitious but viable proportions of the energy supply for new developments to be required to come from such sources. In advance of local targets being set in DPDs, new developments of more than 10 dwellings or 1,000 square metres of non-residential floor space should secure at least 10% of their energy from decentralised and renewable or low-carbon sources, unless, having regard to the type of development involved and its design, this is not feasible or viable.

North Lincolnshire Local Plan (adopted May 2003)

Policy DS21 (Renewable Energy) states that:

‘Proposals for the generation of energy from renewable resources will be permitted provided that:

- (i) any detrimental effect on features and interests of acknowledged importance, including local character and amenity, is outweighed by environmental benefits; and
- (ii) proposals include details of associated developments including access roads and other ancillary buildings and their likely impact upon the environment.

Where appropriate, conditions will be imposed requiring the restoration of the site to its original condition or the implementation of an agreed scheme of after-use and restoration.’

Supplementary Planning Guidance 13, Wind Energy Development – March 2005

As well as outlining national and regional policies and guidance, the guidance sets out local policies against which North Lincolnshire Council will set proposals for electricity production by wind power in North Lincolnshire.

Other policy considerations

Since entering into the Kyoto protocol the Government has been committed to reducing greenhouse emissions by 12.5% below 1990 levels by 2012.

In the 2007 Energy White Paper, the Government proposed that 10% of electricity generation should be from renewable sources by 2010, 20% by 2020 and an aspiration for 60% by 2050.

The UK Renewable Energy Strategy (July 2009) sets out action for planning for delivering higher levels of renewable energy development. It describes the balance of fuels and technologies likely to achieve the Government’s goals, the strategic role of Government and the specific actions it intends to take. It also sets out the opportunity for all in society to harness renewable energy and contribute towards action against climate change. The strategy sets out the path for the country to meet its legally binding target of 15% of energy from renewable sources by 2020.

However the Government is still conscious of the need to protect the environment, including the landscape, from unacceptable

development. Paragraphs 4.9 and 4.10 of the Renewable Energy Strategy sets out this balance of considerations:

‘4.9 The planning system plays a central role in delivering the infrastructure we need to reduce our carbon emissions and ensure continued security of energy supply. Equally the planning system plays a vital role in safeguarding our landscape and natural heritage and allowing communities and individuals the opportunity to shape where they live and work.

4.10 We therefore need to ensure that the planning system properly reflects the range of interests in land use, applies existing safeguards to protect areas where development may not be appropriate, but delivers swift, consistent and effective decisions in areas where development is appropriate.’

3.5 The factors against siting the wind turbines are as set out in the reasons for refusal.

3.6 The third reason for refusal was the proximity to residential properties and the concern of local residents. The residents had suggested that the noise survey submitted by the applicants contained a number of errors and omissions and failed to reflect local topography. The peaceful countryside in the area was already compromised by the nearby Speedway track and the Bagmoor wind farm. Since the refusal, the council has engaged a noise consultant to address these concerns and re-appraise the potential for noise nuisance arising from the development.

3.7 The fourth reason for refusal is that the council has reached its renewable energy targets contained in policy WIND1 of SPG13. The relevant policy guidance on this matter is PPS22 Renewable Energy. This states that targets should be expressed as the **minimum** amount of installed capacity for renewable energy in the region and that the fact that a target has been reached should not be used in itself as a reason for refusal of further renewable energy projects.

4. ANALYSIS OF OPTIONS

4.1 Members need to re-assess the factors in favour of and against the siting of the turbines and to reconsider whether all reasons for refusal can still be substantiated.

4.2 Members have been advised at previous planning committees that if a reason for refusal is considered weak, costs can sometimes be awarded against the authority for failure to defend that reason even though the appeal may be dismissed. It is therefore sometimes better to drop one of the reasons for refusal and concentrate on the others.

- 4.3 It is considered that the first and second reasons for refusal are still valid. Evidence will be presented at the inquiry as to the impact of the surrounding area, in particular the escarpment woodland, and the undesirable cumulative impact of the turbines in such a small geographical area.
- 4.4 It is considered that the third reason is enhanced by the negative impact of noise on the residents of Burton-upon-Stather.
- 4.5 It is considered that the fourth reason for refusal is the least likely to be substantiated owing to the specific advice contained in PPS22.

5. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)

- 5.1 Failure to fully substantiate any reason for refusal at the inquiry could lead to an award of costs being made against the council.

6. OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17 - CRIME AND DISORDER, RISK AND OTHER)

- 6.1 N/A

7. OUTCOMES OF CONSULTATION

- 7.1 N/A

8. RECOMMENDATIONS

- 8.1 That members re-assess the balance between the benefits of renewable energy and the harm this scheme would cause.

- 8.2 That members consider whether, in the light of the up-to-date advice, the council should still defend the fourth reason for refusal and instruct officers accordingly.

SERVICE DIRECTOR: LEGAL AND DEMOCRATIC

SERVICE DIRECTOR: HIGHWAYS AND PLANNING

Pittwood House
Ashby Road
SCUNTHORPE
DN16 1AB
Author: V Wilcockson
Date: 20 November 2009

Church Square House
Church Square
SCUNTHORPE
DN15 6XQ
Author: M Simmonds

Background Papers used in the preparation of this report:

Legal file: PL/06/09-10/16
Planning file(s)