

NORTH LINCOLNSHIRE COUNCIL

PLANNING COMMITTEE

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| APPLICATION NO | WF/2010/1242 |
| APPLICANT | Grange Wind Farm Ltd |
| DEVELOPMENT | Planning permission to site six wind turbines and associated hardstanding, tracks, anemometry mast, switchgear house and underground cables – DISCHARGE OF CONDITION 16 |
| LOCATION | Land adjacent to Flixborough Grange Farmhouse, Flixborough |
| PARISH | FLIXBOROUGH |
| WARD | Burton Stather and Winterton |
| CASE OFFICER | Mark Simmonds |
| RECOMMENDATION | Discharge condition 16 |
| REASONS FOR REFERENCE TO COMMITTEE | Member 'call in' (Councillor Marper – significant public interest) |

BACKGROUND

This application to discharge condition 16 of planning permission WF/2010/1242 was received as valid on 7 September 2012. The application as submitted provided details of the noise levels produced by the candidate turbine. Subsequently various additional details have been submitted in support of the application and to address questions posed by officers.

Planning permission WF/2010/1242 was granted on appeal and gave permission for six wind turbines and associated hard-standing, tracks, anemometry mast, switchgear house and underground cables on land adjacent to Flixborough Grange Farmhouse, Flixborough.

The condition the developers wish to have discharged reads:

No development shall take place until details of the make, model and sound power levels, including uncertainty data, of the wind turbines to be erected have been provided to and approved in writing by the local planning authority. The information provided shall be of adequate detail to allow proper comparison with the contents of the Environmental Statement.

NATIONAL AND LOCAL POLICY AND GUIDANCE

National Policy Statement for Renewable Energy Infrastructure: This document sets out Central Government guidance on renewable energy.

National Planning Policy Framework: Paragraphs 93 to 99 (meeting the challenge of climate change, flooding and coastal change) – in assessing the likely impacts of potential wind energy development when identifying suitable areas, and in determining planning applications for such development, planning authorities should follow the approach set out in the National Policy Statement for Renewable Energy Infrastructure. Paragraph 98 informs local planning authorities of the factors which should be used to assess applications.

The Companion Guide to PPS22: At paragraph 5.10 the Companion Guide sets out what planning authorities must assess for each project and thereby come to an objective view:

- the extent to which the project is in conformity with the development plan, in particular criteria-based policies and any 'broad area' policies in RSSs
- the extent to which the reasons for any area-based designations may be compromised
- the extent of any positive or negative impacts, and the means by which they may be mitigated, if negative
- the contribution towards meeting the regional target, but recognising that a small contribution cannot, in itself, be a reason for refusal of permission.

The North Lincolnshire Core Strategy: The core strategy was adopted on 28 June 2011. The most relevant policy in the core strategy is CS18 (Sustainable Resource Use and Climate Change) – the council will actively promote development that utilises natural resources as efficiently and sustainably as possible.

Renewable Energy Supplementary Policy Document (2011): Policy 8 (Noise) – when determining the siting and design of turbines the proximity of noise sensitive developments such as residential properties or businesses that need a quiet location in which to operate, must be considered along with appropriate mitigations to ensure that any turbine-generated noise is at an acceptable level with other background noise. A noise assessment must be carried out to ensure that any turbine-generated noise is at an acceptable level with other background noise. Further assessments should be submitted to cover the noise impacts of the construction and decommissioning phases of the development. If it is proven that a development has significant noise impacts on surrounding communities then it will be refused.

North Lincolnshire Local Plan: 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.

Policy DS1 (General Requirements) is applied to all development proposals. It requires a high standard of design in all developments irrespective of location. Proposals for poorly designed development will be refused. All proposals must be considered against several criteria. In the case of this proposal the criteria are considered to be:

- (i) The design and external appearance of the proposal should reflect or enhance the character, appearance and setting of the immediate area.
- (ii) The design and layout should respect, and where possible retain and/or enhance, the existing landform of the site.
- (iii) No unacceptable loss of amenity to neighbouring land uses should result in terms of noise, smell, fumes, dust or other nuisance, or through the effects of overlooking or overshadowing.
- (iv) There should not be an adverse effect on features of acknowledged importance on or surrounding the site, including species of plants and animals of nature conservation value (particularly species protected by Schedules 1, 5 and 8 of the Wildlife and Countryside Act 1981), scheduled ancient monuments, archaeological remains, listed buildings and conservation areas, or trees and woodland covered by tree preservation orders.

Policy DS11 (Polluting Activities) states that planning permission for development will only be permitted where it can be demonstrated that the levels of potentially polluting noise does not create adverse environmental conditions likely to affect nearby developments and adjacent areas.

Supplementary Planning Guidance (SPG) 13: Wind Energy Development (March 2005): As well as outlining national and regional policies and guidance, the SPG sets out local policies against which North Lincolnshire Council will assess proposals for electricity production by wind power in North Lincolnshire. It does so in WIND1 by referring to targets and locational and environmental criteria that were set out in Regional Policy Guidance (RPG) 12. It then refers to the particular local plan policy relating to renewable energy (DS21) and then sets out in more detail in WIND2 to WIND9 those issues it will have regard to (based on the RPG and PPS22 criteria).

These are set out below:

WIND1 sets out the then RPG 12 targets for energy to be generated from renewable resources for the Humber sub-region of at least 146 megawatts for 2010. North Lincolnshire's target to meet its contribution from wind energy development was 40 megawatts for 2010 and a further 100 megawatts for 2021. These have been superseded by the RSS figures set out in Table 10.2. It then states that:

Proposals for wind energy development to meet these targets must:

- (i) *minimise the visual and physical impacts of wind energy developments on the surrounding area;*

- (ii) *minimise the cumulative impact on the area of other existing, and permitted wind developments as well as those which are the subject of submitted planning applications;*
- (iii) *minimise the impact of the proposed development on the landscape;*
- (iv) *minimise the ecological impact of any development.*

The policy states that *the Council will review its 2010 target when met whilst having regard to progress elsewhere in Yorkshire and the Humber.*

WIND2 relates to the planning implications of a proposal and states that:

The key issues that North Lincolnshire Council will assess in relation to planning applications for wind energy developments are:

- *visual effects*
- *cumulative impact*
- *noise*
- *amenity impacts*
- *landscape impact*
- *nature conservation and ecology interests*
- *archaeology and the built environment*

The explanatory text provides more detail about each issue and provides a clarifying policy in relation to each one as follows:

WIND3: North Lincolnshire Council will consider the following matters when assessing the visual impact of wind energy proposals:

- *distance from which it can be seen*
- *landscape characteristics*
- *siting and layout*
- *design of the turbine*
- *impact of ancillary elements*
- *potential after-use of wind farm site.*

WIND4: North Lincolnshire Council will consider the following matters when assessing the cumulative impact of wind energy proposals:

- *the proximity of existing, and permitted wind energy developments*

- *the impact on the surrounding zone of visibility*
- *the impact of development ancillary to the development*
- *the nature, character and landscape of the location in which the proposal is sited*
- *the impact on nature conservation and ecology interests*
- *the impact of noise*

WIND5: *In assessing the implications of noise from wind energy development, developers and the council should have regard to:*

- *the proximity of settlements and buildings*
- *the framework for assessing noise set out in the ETSU report*
- *the topography and local environmental conditions surrounding the proposed development*

WIND6: *In siting wind energy developments, developers should consider the following:*

- *minimising disturbance to residential amenity by means of noise, shadow flicker, visual and cumulative impacts*
- *how the proposed development will be accessed for construction, servicing and maintenance purposes and how any disturbance can be mitigated*
- *the impact on informal recreation sites and public rights of way, and*
- *liaising closely with local communities regarding the impact of the development*

WIND7: *In assessing the landscape impacts of wind energy development, the council will consider the following matters:*

- *ability of the landscape to accommodate the development*
- *impact on areas of landscape protection and enhancement, and nature conservation importance.*

Developers should also provide an assessment of their proposals against the council's approved Supplementary Planning Guidance on Landscape Character Assessment and Guidelines, and Countryside Design Summary.

Proposals for wind energy development must also comply with relevant landscape and conservation policies in the North Lincolnshire Local Plan.

WIND8: *In assessing the implications for ecology and nature conservation for wind energy development North Lincolnshire Council will assess the following issues:*

- *effect on designated sites for nature conservation*
- *effect on protected species of plants and animals*

- effect on cited bird species from designated sites feeding or roosting in areas adjacent or inland
- effect on migratory routes for birds, especially large, less manoeuvrable birds such as swans and geese
- assessment of cumulative effects in relation to other wind farms and other developments
- effects on nesting birds, especially during construction
- adequacy of mitigation measures

WIND9: Developers should consider the impact of their proposals for wind energy development, both during and after construction, on archaeology and cultural heritage, and the historic landscape, including designated conservation areas, scheduled ancient monuments and listed buildings, and other non-designated sites and remains.

Developers will need to demonstrate that the objectives of the designation of the area will not be compromised by the development, and that any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by the environmental, social and economic benefits.

ASSESSMENT

The determining issue in this case is whether the developer has submitted sufficient and suitable information to allow North Lincolnshire Council to confirm compliance with condition 16 of WF/2010/1242 and therefore whether the condition can be discharged formally.

Wind turbines produce noise when operating and this has the potential to cause disturbance to residents. When the wind farm was allowed on appeal the inspector imposed a number of conditions to protect interests of recognised importance, one of the most important of these being the amenity of residents, and the protection of that amenity from unacceptably harmful noise disturbance.

The developer has selected a wind turbine from those available on the market – the REpower MM92.

The Environmental Protection Team has been consulted and it advises that the condition has been met. There is no reason therefore to refuse to discharge the condition.

The specific advice of the Environmental Protection team was:

I write concerning discharge of condition 16:

'No development shall take place until the details of the make, model and sound power levels, including uncertainty data, of the wind turbines to be erected have been provided to and approved in writing by the local planning authority. The information provided shall be of adequate detail to allow proper comparison with the contents of the Environmental Statement.'

I have reviewed the information submitted by Natural Power Consultants Ltd:

SD-2 9-WTPC 03-B_D_EN Power Curve & Sound Power Level Repower MM92 [2050 kW]

The information submitted states that the turbine to be installed is the Repower MM92 2MW turbine (2050kW) with a rotor diameter of 92 metres, hub height of 78.5 metres and height to rotor tip 124.5 metres.

The sound power levels and turbine model, dimensions and locations are the same as those specified in the Environmental Statement. The predicted turbine noise levels reported in the Environmental Statement, based on this turbine model, showed compliance with the noise limits for this wind farm (given in condition 27). The sound power document does not include any detailed data for tonal analysis, but includes the statement 'Repower warrants that there is no tonal audibility'.

Given that the details supplied are the same as for the candidate turbine considered by the planning inspector at the appeal, and the accepted reported predictions for this turbine model showed compliance with the noise limits for this wind farm, I would consider that the information submitted is adequate for discharge of condition 16.

These comments are made on the understanding that the Council cannot seek to require a turbine model of lower noise impact than that specified by the noise limits of the planning permission.

Burton Against Inappropriate Turbines (BATS) have been fully involved in the discharge of conditions process, along with Members, and they queried whether the information did properly allow comparison with the original Environmental Statement.

All the developer has submitted are documents published by RE power which are lacking some details for comparison with the original ES and succinctly different in other details. How has comparison been achieved and the impact of the differences calculated?

Further comments from BATS make it clear that their concerns are:

For clarity we are comparing the Main WF/2010/1242 application, Section 8, specifically paras 8.4.2 to 8.4.7 with documents PP_MM92 and SD-2 9-WT PC 03-B-D-EN.

The application quotes a **manufacturer guaranteed maximum overall sound power level** (each turbine) of 104.2 dB(A) warranted by the manufacturer in accordance with IEC 61400-11 (noise measurement techniques) at the 10m reference windspeed of 8m/s. With no further clarifications this must be taken as an **absolute** guarantee level.

Note also that the noise calculation stated a maximum hub height of 80m, however the proposed turbine is quoted in Figure 5 with a hub height of 80m, hence it would be reasonable in the absence of any other defined figure to assume that the calculations had been performed at this height.

The discharge of condition document SD-2 9-WT PC 03-B-D-EN quotes guarantee **conditions** applicable to the measurement of the noise and power levels (for example the roughness length of 0.05m). However despite stating at section 3.0 that the sound power guaranteed by RE includes a measurement uncertainty of approx 1dB(A) **nowhere** in the document is the **actual guarantee** sound power level quoted. This is not comparable with the application data.

Note that the candidate turbine is now quoted both in condition 6 discharge with a hub height of 78.5m placing the noise source closer to the ground and receptors than analysed in the noise assessment and thus will result in an additional and so far unaccounted increase in noise level at the receiver.

Noting the omission of any spectral information it is impossible to validate the noise prediction model and hence the impact sound power levels will have at the receivers.

The condition states that 'information provided shall be of adequate detail to allow proper comparison with the contents of the Environmental statement'. It is clear from the highlighted differences above that it is not possible to compare the condition data with the Environmental statement and that such comparison has not to date taken place.

Environmental Protection were asked to comment further and they came back with the following comments:

As discussed, I confirm that I carried out calculations to assess the difference in noise levels that can be predicted to occur as a result of changing the hub height from 80m to 78.5m. The results (based on standard acoustic formulae) are as follows:

- If standing directly below the turbine, the sound pressure level will increase by less than 0.2 dB.*
- As distance from the turbine increases the increase in sound pressure level diminishes further. For example, at a distance of 200m from the turbine, the increase in sound pressure level associate with reducing hub height to 78.5m is approximately 0.02 dB. The relevant residential properties are all considerably further than 200m, so the increase in sound pressure level will be even less than 0.02dB. From the point of view of noise impact assessment this is an insignificant increase and is below accurate measurement level by most sound level meters and below detection by the human ear. In terms of complying with noise limits, the reduction of turbine height from 80m to 78.5m in this case would not be sufficient on its own to support a refusal to discharge this condition. As far as noise impact for residential properties is concerned, the difference between a hub height of 80m and 78.5m is not significant in this case.*

As the proposed turbine model is the same as the candidate turbine described in the Environmental Statement, and the technical specification of the turbine is the same (including guaranteed sound power levels), then it would be difficult to argue that the submitted details are not adequate to allow comparison with the contents of the Environmental Statement.

The turbine model is the same as that considered by the planning inspector who granted permission with noise limits. It is my understanding that it would be difficult for the council to refuse to accept this turbine model if the planning inspector already accepted that this could comply with the noise limits. [Bearing in mind that if the predictions are incorrect and the turbines did not comply then action can be taken to resolve this through enforcement of planning conditions].

The developer was asked to reword their documentation relating to the guarantees on sound power levels, but they will not do so.

Environmental Protection's comments on this matter are:

My understanding of the figures given in section 3 of the document SD-2.9-WT.PC.03-B-D-EN is that the figures quoted include the measurement uncertainty (ie already added to give the figure shown) and that the figures are the guaranteed sound power level.

In terms of validation, there are relevant conditions in the planning permission (attached - see conditions 28 to 31). The wind farm operator is required to measure wind speed using hub height anemometers, with derivation of the 10m height wind speed using the procedure listed in Guidance Note 1 of the planning permission. This requires measurement of wind speed rather than trying to derive wind speed from power generation levels.

I would also note that the planning permission does not require that the wind farm operator must validate that the turbine noise levels are the same as those predicted. They are only required to show that they comply with the noise limits (which in all cases, are higher than the predicted turbine noise levels).

In a letter dated 13 March the developer has confirmed that:

For the avoidance of doubt, the levels quoted in Table 3.1 of the enclosed REpower MM92 Power Curve and Sound Power Level specification (SD-2 9-WT PC 03-B-D-EN Power Curve Sound Power Level MM92_2050kW) are the absolute maximum sound power levels expected and include any uncertainty associated with measurements taken to produce this product guarantee. We would note that, for commercial reasons, REpower cannot change the wording of their sound power level technical specification document.

BATS have made it very clear they do not think it acceptable that REpower will not guarantee the maximum sound levels. However this has been discussed with Environmental Protection and the matter is considered not to be a deciding factor because other conditions imposed strictly limit the noise limits the turbines can operate at and contain the sanction, if necessary, of requiring turbines to be shut down until any breach of the noise limits is resolved.

Conclusion

Wind farms produce noise whilst operating. This is not in any dispute. The crucial issue is whether the information submitted meets the requirements of condition 16, and it is considered that it does.

When Flixborough Grange wind farm was allowed at appeal the inspector imposed a number of conditions which were suggested by the council to protect against harm to residents. Condition 16 requires information relating to the noise levels which the turbines will produce.

The turbine selected – the REpower MM92 – is the turbine which was considered through the application and appeal processes and was the turbine the inspector made their decision on. The additional noise conditions set absolute noise limits with the ultimate sanction available of requiring turbines to be shut down until an established breach of the noise limits is resolved.

The condition should now be discharged. There is no reason to withhold the discharge of the condition and other conditions provide the necessary protection of residents' amenity.

RECOMMENDATION That condition 16 of WF/2010/1242 be discharged.

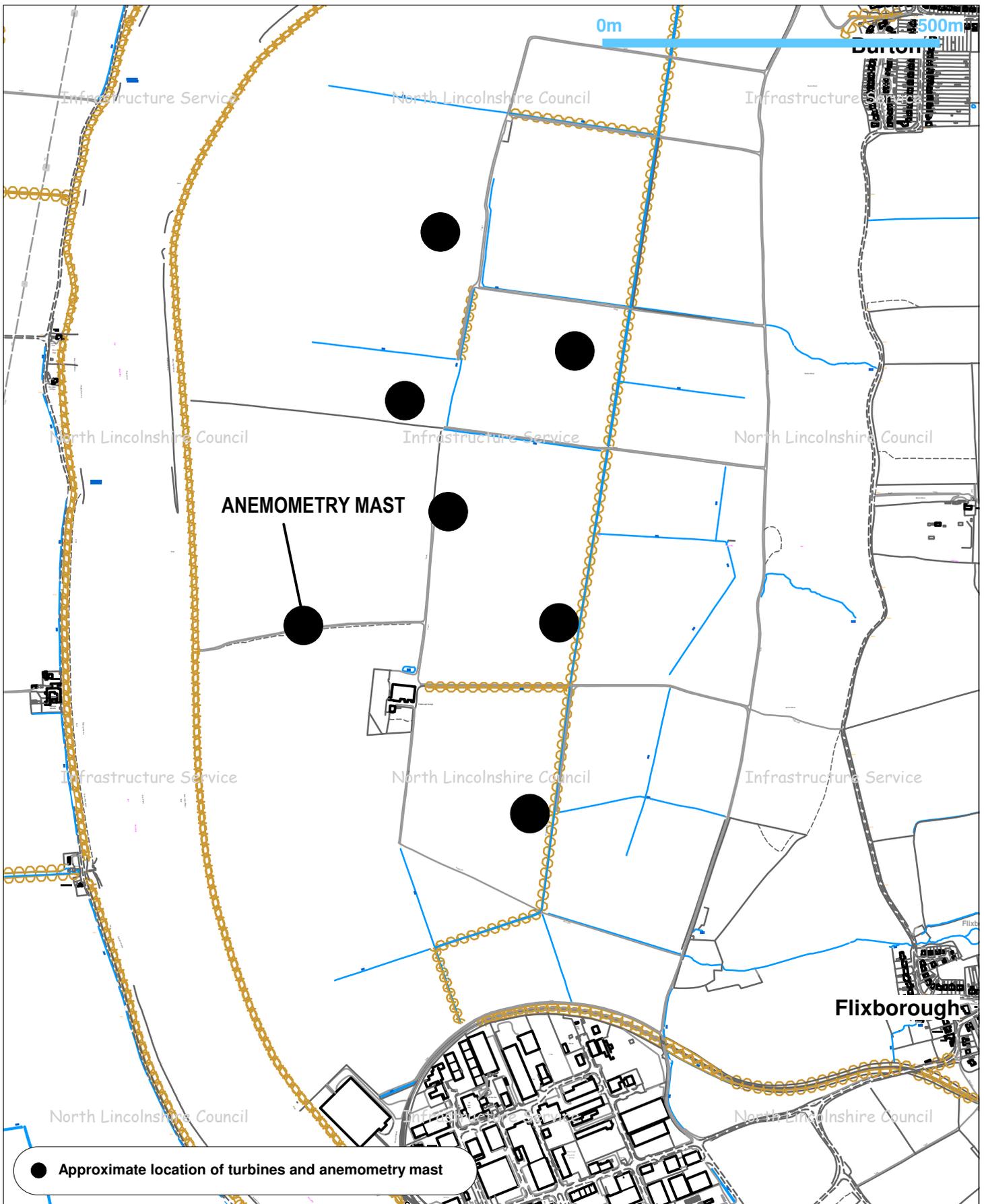
HEAD OF DEVELOPMENT MANAGEMENT

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Background papers used in the preparation of this report

Application to discharge conditions of planning permission WF/2010/1242



Title: PA/2010/1242

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