

PLANNING COMMITTEE – 29 JANUARY 2015

DEFERRED ITEM

Report of the Head of Planning

DEFERRED ITEMS

Reports shown in previous Minutes as being deferred from that Meeting

REFERENCE NO - SW/13/1571			
APPLICATION PROPOSAL			
The erection of four wind turbines with a maximum blade tip height of up to 126.5 metres, together with a substation and control building, associated hardstandings, an improved access junction, connecting internal access tracks, and other related infrastructure.			
ADDRESS New Rides Farm, Leysdown Road, Eastchurch, Sheerness, Kent, ME12 4DD			
RECOMMENDATION APPROVAL			
SUMMARY OF REASONS FOR RECOMMENDATION			
The development would substantially contribute towards the production and provision of sustainable, renewable energy as dictated by current national and international policy, without giving rise to substantial identifiable harm to local amenity, the character of appearance of the wider marshland landscape, or to local wildlife and designated wildlife sites. As such there is no justification for the refusal of planning permission.			
REASON FOR REFERRAL TO COMMITTEE			
Parish Council objection, local objections, and significance.			
WARD Sheppey Central	PARISH/TOWN Eastchurch	COUNCIL	APPLICANT Airvolution Energy AGENT Mr Richard Frost
DECISION DUE DATE 12 December 2014 (extension agreed)	PUBLICITY EXPIRY DATE 1 August 2014	OFFICER SITE VISIT DATE Various	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
SW/10/1567	The erection, 25 year operation and subsequent decommissioning of a wind energy development comprised of the following elements: two wind turbines, each with a maximum overall height (to vertical blade tip) of up to 121 metres, together with new access tracks, temporary works, hard standing areas, control and metering building, cabling and new vehicular access from Brabazon Road.	Approved at committee	11.11.2011
This application related to land south of the prison cluster, and west of the current application site. The proposal was approved by Members in 2011 and the turbines have now been operating for approximately 2 years.			

1.0 BACKGROUND

- 1.01 Members will recall this application was reported at the last Committee meeting (the original report is attached as appendix 1). It seeks planning permission for the erection of 4 wind turbines and associated infrastructure on land at New Rides Farm, Eastchurch, immediately to the east of the prison cluster.
- 1.02 Each turbine will measure up to a maximum of 126.5m to the tip of the blade and be of a similar design to the two existing turbines – known as the PfR turbines – and have an output of 2.3MW per turbine. This will generate electricity sufficient to provide for the needs of approximately 6,186 households and annually displace up to 11,346 tonnes of carbon dioxide.
- 1.03 The motion to approve the application, subject to an amendment to condition 4 of the report, was defeated and Members discussed the potential of refusing the proposal. Three potential reasons for refusal were put forward, :
- i. Demonstrable harm to the landscape through cumulative impact of the existing and proposed turbines;
 - ii. Demonstrable harm to native and migratory bird populations; and
 - iii. Cumulative impact – in combination with the two existing PfR turbines – of acoustic issues upon local residents.
- 1.04 However, before that motion could be put to the vote the application was called in by the Head of Planning Services under Part 3 of the Council’s Constitution to enable officers to prepare a report to Members on the prospects of such a decision if challenged at appeal and if it becomes the subject of an application for costs.
- 1.05 Since the meeting we have received an additional letter of objection from Mr Day, who spoke against the proposal at the last meeting, in which he reiterates matters already discussed within the original report and, in particular, that the technical objection from Dr Yelland should be given great weight on the basis of his credentials.
- 1.06 The applicant has also submitted a written response to the issues raised by Members at the last meeting, a copy of which is attached to this report at appendix 5.

2.0 DISCUSSION

- 2.01 National planning policy is entirely focused on the drive towards sustainable development, and the presumption in favour of sustainable development is “*a golden thread running through both plan making and decision taking*” (NPPF, para. 14). The National Planning Policy Framework (NPPF) promotes renewable energy as a key planning objective and recommends that local planning authorities should support renewable energy projects. In addition, at paragraph 97, the NPPF notes that “*local planning authorities should recognise the responsibility on all communities to contribute to energy generation from low carbon or renewable sources.*” Furthermore the adopted Local Plan Policy U3 also supports renewable technology.

- 2.02 Members should also note the aims of the Kyoto Protocol; the EU Emissions Trading Scheme; Directive 2009/28/EC; and the National Renewable Energy Action Plan for the United Kingdom, all of which provide a clear international policy framework for the development of renewable energy projects.
- 2.03 There is therefore no justification for an in-principle objection to such proposals, and the Council should be looking to approve renewable energy proposals wherever possible.

The proposed reasons for refusal

- 2.04 I will address these in a slightly different order than noted above, starting with (ii): demonstrable harm to native and migratory bird populations.
- 2.05 It is noted that some Members appeared to give great weight to the local objection submitted by Mr Haynes – a local resident and volunteer RSPB warden – and Mr Haynes credentials and intentions are not disputed by officers. However, I would draw Member's attention to the comments submitted by the RSPB; Natural England; the Environment Agency; and the KCC Biodiversity Officer (and also note that a full copy of Mr Haynes' submission was provided to each of those authorities on receipt and prior to their consideration of the application).
- 2.06 Those agencies, who are the national bodies of expertise in regards to ecology and to whom – at least as far as Natural England and the Environment Agency are concerned – the Council is legally bound to defer consideration of ecological matters in applications such as this, **do not raise an objection to this application on ecological grounds.** Whilst the wording of their responses may not explicitly express support for the scheme (as discussed by Members during the meeting), the lack of objection is a reflection of the fact that – further to the additional information submitted by the applicant in mid-2014, and subject to the conditions attached to the report – **there is no reasonable or justifiable reason to refuse planning permission on ecological grounds.**
- 2.07 Save for Mr Haynes' objection, all of the technical data submitted in regards to ecology – in particular avian ecology – demonstrates that the impact of the development, when proposed mitigation and management measures are taken into account, would not be substantial and would not justify refusal of permission. Hence the submissions from the statutory bodies, who all express no objection to this application.
- 2.08 Without the support of the RSPB; Natural England; the Environment Agency; and the KCC Biodiversity Officer (in terms of an objection to the development) the Council would have no sound basis to refuse planning permission on suggested reason ii, and would be extremely unlikely to successfully defend such a reason at appeal.
- 2.09 The implications of such a refusal in terms of the potential award of costs against the Council if an appeal were made – which the applicant has indicated is likely to be the case – are considered in my Part 6 report for this application.

- 2.10 With regard to suggested reason (iii): cumulative impact – in combination with the two existing PfR turbines – of acoustic issues upon local residents: further to Dr Yelland’s technical submission the agent has provided a thorough and comprehensive response to all of the points raised. Their response clearly demonstrates that the proposed development would operate within established national guidelines on noise in relation to wind turbines (the Energy Technology Support Unit (ETSU) report ETSU-R-97). Both Dr Yelland’s submission and the applicant’s response have been reviewed by the Environmental Health Manager (EHM). He confirms that the applicant’s submission is sound and **does not raise an objection on the grounds of noise or disturbance**, taking into account both proposed and existing turbines in cumulation.
- 2.11 Paragraph 7.19 of the original report notes the EHM’s comments:
- “The assessment concludes that there is no evidence to show that any noise that the residents might hear will cause them a problem. All the readings and predictions from the model and standard used indicate this to be the case. There is also a noise contour plan of the whole site that indicates this. **I therefore, have difficulty in disagreeing with this amount of consistent evidence**, even though there are some issues that have not been completely explained **and thus can have no objections to the scheme.**”* [My emphasis.]
- 2.12 In specific regard to Dr Yelland’s objection the EHM has stated (at 7.20 of the original report):
- “Despite the late and sincere intervention from Dr Yelland, it does not change my overall opinion that **there is insufficient argument to say that this proposal should not go ahead**. An interesting addition has been from the applicant’s acoustic consultant who has suggested that a lengthy condition be included which they say that they can comply with. On this basis, I am satisfied that it is appropriate to include this condition.”* [My emphasis.]
- 2.13 Without the support of the Council’s Environmental Health Manager on such a technical issue as noise and disturbance, I have little doubt that officers would not be able to successfully defend such a reason for refusal at appeal.
- 2.14 As with ecology above, the implications of such a refusal in terms of costs implications at appeal are considered in the Part 6 report for this application.
- 2.15 I would also draw Member’s attention to the appeal at Turncole Farm, Southminster, Essex (PINS ref. 2174982), which was determined by the Secretary of State in February 2014, and which related to the erection of seven 126m-high wind turbines within a locally designated special landscape area, close to an SPA and an SSSI, and within 2km of a number of residential dwellings. The site also lies close to a number of other wind turbines of similar scale and thus cumulative impact was a key consideration.

- 2.16 The associated Inspector's decision is lengthy (approx. 100 pages) and I do not propose to reproduce it here – although a copy of the SoS's summary is appended to this report at Appendix 4. However, in dismissing the appeal the Inspector noted that the main issues included noise and disturbance to local residents, and particularly noted the issue of Amplitude Modulation. The findings of the ES data were similar to those of the current application, and the SoS noted that the principles of ETSU-R-97 were upheld or could be achieved through conditions similar to those recommended on the current application.
- 2.17 Lastly is the suggested reason (i). that the development would cause demonstrable harm to the landscape through cumulative impact of the existing and proposed turbines. I appreciate Members' concern in regards to this issue – wind turbines are by their very nature large structures which have potential to be seen from long distances.
- 2.18 Harm to landscape can be difficult to quantify. However, in this instance the starting point has to be landscape designations. As noted within the original report the site does not fall within any area designated for landscape quality (although it is noted that a Special Landscape Area lies to the south) and therefore does not benefit from any formalized protection status with which to initially support a reason for refusal on such grounds. The applicant draws attention to this point within their recent letter (attached at appendix 5):

“11. It is clear that landscape and visual issues were not a key issue for the planning committee when the original two turbines were approved by the planning committee. This is inconsistent with the argument that the councillor (who was in attendance at the Standford Hill meeting) is now making about the local landscape being unique and of very high, even national, value.

12. If the application is sent to inquiry, the applicant will closely examine the inconsistency of the current application being refused for landscape and visual reasons whilst the original scheme was approved without this being a major factor.

36. As the planning officer correctly stated in the committee report, the turbines are located within the Central Sheppey Farmlands landscape character area which is considered to be of moderate sensitivity. Immediately to the south lies the Leysdown and Eastchurch Marshes landscape area which is also considered to be of moderate sensitivity. It should be emphasised that the Sheppey Farmland LCA is not even covered by the council's lowest tier local landscape denotation, the Area of High Landscape Value (AHGL). Whilst the Leysdown and Eastchurch Marshes LCA has been given the Special Landscape Area status, this is significantly, a county level not a regional or national level designation.

37. At no point since its first proper denotation in the borough local plan in 2000, has it ever been argued that the marshland on Sheppey is of national, and therefore, Area of Outstanding Natural Beauty status. It should be remembered that it does include some detracting features such as the major set of pylons that pass through it at its western end at

Neatscourt and the enlarged agricultural fields (particularly in the east of Sheppey) which contrast to the more natural marshland landscape.”

- 2.19 Unlike such developments within designated areas, such as the recently refused appeal for a solar farm within the AONB at Hartlip (which was reported to Members at Part 5 of last month’s agenda), officers would have a difficult time in justifying a reason for refusal based solely on landscape character in the face of a designation void. It is likely that the Council would have to engage the services of a professional landscape specialist to prepare appeal documents and appear at the public inquiry.
- 2.20 Furthermore Members should note that **the application site lies within an area specifically designated (at map 7.6.1 – “Energy Opportunities”) by the emerging Local Plan “Bearing Fruits 2031” as having high potential, and being a preferable location, for wind energy developments.** Members agreed the Publication Draft of Bearing Fruits at Full Council on 26th November, and it therefore carries weight in determining planning applications. Furthermore, in drafting that map, consideration was given to a multitude of factors including landscape designations and ability of the landscape to absorb such developments.
- 2.21 In defending a reason for refusal on landscape grounds Members would need to clearly and unequivocally set out why this development was not considered to be acceptable on landscape impact grounds after only recently agreeing the wider area as suitable for such developments within Bearing Fruits. I see this as a difficult task in light of the above, and a particular issue which leaves the Council open to a costs claim as regards unreasonable behaviour.
- 2.22 I would also draw Member’s attention to a recent appeal decision for the erection of three 115m-high wind turbines on the Pevensey Levels, East Sussex. The application site was an extensive area of flat marshland with rising land levels to the south, and situated close to the South Downs National Park – a very similar landscape to the current application.
- 2.23 That application was refused on landscape impact grounds but in dismissing the appeal the Inspector commented on the capacity of such landscapes to absorb developments of this nature:
- “27. The large scale of the landscape, its openness and wide skies, would in my view enable this particular development proposal to be accommodated without harmfully undermining its openness or sense of remoteness, and without obscuring the distinctive pattern of fields and ditches. I therefore find that the proposed development would not conflict with the aims of Local Plan Policy EN11, which seek to ensure that development proposals within the Coastal Levels conserve its generally open and exposed landscape character.”*
- 2.24 Members should also note the differentiating factor here is that the current application proposes turbines adjacent to a significant area of built development in the form of the prison cluster, whereas the Pevensey case was within a significantly less built up area.

- 2.25 A copy of that appeal decision (PINS ref. 2208526) is attached at appendix 2 to this report, and I draw Member's attention to paragraphs 24 to 31 in particular, and also to the conditions attached to the decision which are of a similar nature to those recommended by officers for the current application (particularly condition 27, which relates to noise).
- 2.26 I would also refer Members back to the Turncole appeal as noted above, where in upholding the Inspector's decision the SoS concluded that there would be only moderate visual impact arising from the development and the cumulative impacts of the development in association with existing nearby turbines was not sufficient to justify refusal. The temporary (25 year permission) nature of the development is also noted in the decision.

3.0 CONCLUSION

- 3.01 The application proposes the erection of 4 wind turbines in accordance with local, national and international policy, and is considered to be acceptable in principle.
- 3.02 The evidence presented within the Environmental Statement accords with the requirements for such information and clearly demonstrates that the proposed wind turbines would not have a serious impact or, where an impact is anticipated, this could be mitigated to within acceptable levels (as set out by national guidance) by the conditions attached to the original report.
- 3.03 Furthermore the statutory consultees on such applications, including the RSPB, Natural England, the Environmental Agency, the Kent County Council Biodiversity Officer and the Council's own Environmental Health Manager do not object to the proposals, and the Council would therefore have no support in defending Member's suggested reasons for refusal at appeal.
- 3.04 With this in mind I consider that the original recommendation to approve this application was correct and justified by the evidence presented in the submission.
- 3.05 I therefore prevail on Members to approve this application.
- NB: For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website. The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.