

BOROUGH OF KETTERING

Committee	Full Planning Committee - 11/02/2014	Item No: 5.7
Report Originator	Rebecca Collins Senior Development Officer	Application No: KET/2014/0017
Wards Affected	Burton Latimer	
Location	Burton Wold Wind Farm, Wold Road, Burton Latimer	
Proposal	s.73 Application: Variation of condition 12 of KET/2003/0559, in respect of noise monitoring	
Applicant	Mr J Porter Entap Limited	

1. PURPOSE OF REPORT

- To describe the above proposals
- To identify and report on the issues arising from it
- To state a recommendation on the application

2. RECOMMENDATION

THE DEVELOPMENT CONTROL MANAGER RECOMMENDS that this application be APPROVED subject to the following Condition(s) and on the basis that no additional material planning matters, not already considered within the officers report, are raised between the date of the Committee and the 14th February 2014 when the consultation period ends:-

1. This planning permission is for a period not exceeding 25 years from the date that electricity from the development was first connected into the electricity grid. The Local Planning Authority shall be notified in writing of the connection being made.

REASON: In recognition of the expected life of the proposal to prevent an unacceptable impact on the landscape and the surrounding environment in accordance with policy 4 and 11 of the NPPF and policy 13 of the CSS.

2. If any wind turbine hereby permitted fails to produce electricity for supply to the grid for a continuous period of twelve months the wind turbine and ancillary equipment shall be removed from the site within a period of nine months from the end of the twelve months period.

REASON: In recognition of the expected life of the proposal to prevent an unacceptable impact on the landscape and the surrounding environment in accordance with policy 13 of the CSS.

3. In the event of either of the circumstances referred to in conditions 2 and 3 above the site shall be restored in accordance with the decommissioning section of the Environmental Statement submitted with the planning application.

REASON: In recognition of the expected life of the proposal to prevent an unacceptable impact on the landscape and the surrounding environment in accordance with policy 13 of the CSS.

4. The blades of all the wind turbines shall rotate in the same direction.
REASON: To prevent an unacceptable impact on the character of the landscape and the surrounding environment, as well as prevent an unacceptable impact on the amenity of neighbouring properties in accordance with policy 13 of the CSS.

5. The procedure outlined in the approved alleviation of any electromagnetic interference to TV reception report received 2005 shall be followed at all times.
REASON: In the interest of protecting local amenity and to alleviate any adverse electromagnetic interference in accordance with policy 13 of the CSS.

6. All works to the turbines and/or ancillary equipment which are audible at the site boundary shall be carried out only between the hours of 08.00 and 18.00 on Mondays to Fridays and between the hours of 08.00 and 16.00 on Saturdays and at no times on Sundays and Bank Holidays; without the prior approval of the Local Planning Authority.
REASON: In the interest of protecting local amenity in accordance with policy 13 of the CSS.

7. The noise emission from the combined effects of all the wind turbines as measured in accordance with the guidelines stated within ETSU-R-97, at any dwelling in existence (at the time of the permission) not associated with the scheme, shall not exceed the greater of 35 dBLA90, 10 minute or 5 dB(A) above background noise (LA90, 10 minute) at wind speeds within the site not exceeding 10 metres per second for day time periods and shall not exceed the greater of 43 dBLA90, 10 minute or 5 dB(A) above background noise (LA90, 10 minute) at wind speeds within the site not exceeding 10 metres per second for night time periods. The measurements and or calculation shall be made in accordance with the methodology detailed in ETSU-R-97 The assessment and rating of noise from wind farms, in particular the noise emission values for the wind turbines shall include the addition of any tonal penalty as recommended in that same document. The background noise levels shall be those measured and stated within the Hayes McKenzie report contained within the Environmental Statement, and attached to the approved document.
REASON: In the interest of protecting local amenity in accordance with policy 13 of the CSS.

8. Development shall accord with the submitted and approved scheme for the monitoring and modelling of noise submitted by Your Energy on 11th March 2005 and received on 15 March 2005.

Within 21 days from receipt of a written request by the Local Planning Authority, which sets out the date and time of noise disturbance alleged in a complaint by the occupier of a dwelling which lawfully existed or had planning permission on 23rd March 2004, the wind farm operator shall, at its own expense, employ a consultant approved by the Local Planning Authority, to assess the rating level of noise emissions from the wind farm at the dwelling, in accordance with a protocol, that has first been agreed in writing by the Local Planning Authority. The assessment shall consider compliance with noise limits, that are set out in the Environmental Statement, for a location that the Local Planning Authority has agreed, in writing, is representative of the dwelling and under a range of meteorological and operational conditions which the Local Planning Authority has agreed, in writing, and is representative of the conditions which prevailed when the alleged disturbance occurred. Within two months from receipt of the written request, the wind farm operator shall provide

the Local Planning Authority with the results of the consultant's assessment. Those results shall include consideration of whether there was a tonal component, to the noise, at the time of the alleged disturbance. The results shall also include all data which were collected for the purposes of the assessment and certificates of the measuring instruments' calibration.

REASON: In the interests of protecting the amenity of local residents in accordance with policy 13 of the CSS.

9. Sound insulation of the residential dwellings within the application site (edged red) and within land otherwise controlled by the applicant (edged blue), as shown on the location plan submitted with application reference KET/2003/0559, shall be in accordance with the approved scheme as outlined in Your Energy's letter dated 11th March 2005 and the Internal Memo for Kettering Borough Council reference 42133 dated 22 April 2005. The works required by the approved scheme shall be maintained in accordance with approved details.

REASON: In the interest of protecting local amenity in accordance with policy 13 of the CSS.

10. The noise emission from the combined effects of all the wind turbines as measured in accordance with the guidelines stated within ETSU-R-97, at any dwelling in existence (at the time of the permission) not associated with the scheme, shall not exceed the greater of 35 dBLA90, 10 minute or 5 dB(A) above background noise (LA90, 10 minute) at wind speeds within the site not exceeding 10 metres per second for day time periods and shall not exceed the greater of 43 dBLA90, 10 minute or 5 dB(A) above background noise (LA90, 10 minute) at wind speeds within the site not exceeding 10 metres per second for night time periods. The measurements and or calculation shall be made in accordance with the methodology detailed in ETSU-R-97 The assessment and rating of noise from wind farms, in particular the noise emission values for the wind turbines shall include the addition of any tonal penalty as recommended in that same document. The background noise levels shall be those measured and stated within the Hayes McKenzie report contained within the Environmental Statement, and attached to the approved document.

REASON: In the interest of protecting local amenity in accordance with policy 13 of the CSS.

11. (During bird nesting season) not more than 24 hours prior to the removal of any length of hedgerow in connection with the proposed development, arrangements to be notified to the Local Planning Authority (LPA), shall be put in place for a person(s) considered suitably competent by the LPA, to verify that no nesting birds will be disturbed either within the hedgerow to be removed or within an agreed distance of hedgerow either side of the length(s) being removed.

REASON: To ensure development is satisfactory in relation to nesting birds and the impact of construction on the landscape in accordance with policy 13 of the CSS and policy 11 of the NPPF.

12. The woodland planting shall be managed in accordance with the submitted woodland management maintenance plan(s) dated 19/01/05 produced by Arbor Vitea for E4environment Ltd.

REASON: To protect the character of the area in accordance with policy 13 of the CSS.

Officers Report for KET/2014/0017

This application is reported for Committee decision because there are unresolved, material objections to the proposal. Members of the Planning Committee will note the change to the recommendation, which is to approve this application, subject to conditions but on the basis that no additional material planning matters, not already considered within this report, are raised between the date of the Committee and the 14th February 2014, this is because the statutory EIA consultation period does not end until 13th February 2014. If this application as to wait till a later committee it would be outside the 8 week determination period date.

3.0 Information

Relevant Planning History

Application Site

KET/2014/0037, Screening Opinion – Solar Photovoltaic Farm

KET/2003/0559, 10 wind turbines, generators, anemometry mast, substation and associated infrastructure. (Approved)

KET/2010/0755, Anemometry mast. (Approved)

KET/2005/1012, Modify existing junction. (Approved)

A number of the conditions on the 2004 approval have either been complied with or no longer apply eg commencement of development and are therefore not included in the Section 73 recommendation.

Burton Wold and land to the south of Burton Wold

The following details relate to land to the north and south of the existing Burton Wold Wind Farm:

KET/2012/0075, Scoping Opinion - Revision to Burton Wold wind farm northern extension.

KET/2012/0249, Lawful Development Certificate - Commencement of planning permission reference KET/2007/1033 by the marking out of the access tracks and hedge removal positions. (Deemed a lawful commencement of planning permission).

KET/2007/1033, Wind farm consisting of 7no. wind turbines (100m tip height). (Approved)

KET/2007/0054, Scoping Opinion - Extension to wind farm.

KET/2006/1008, Erection of 50m guyed anemometer mast for 12 month period to measure wind speed and direction. (Approved)

KET/2011/0506, 5 wind turbines (100m height to tip), control building and substation within a secure compound, underground electrical cables connecting the turbines to the substation, alterations to existing site access, access tracks and crane hard standings, temporary construction compound and anemometry mast 65m height (Approved).

Site Description

Officer's site inspection was carried out on 22/01/2014

The application site is farmland consisting of 10 turbines, 100m to the tip. To the west of the application site is the A6 and Burton Latimer. To the north of the site is the A14 and the village of Cranford with significant planting to the south of Cranford in between the village and the A14. Also, the ground levels appear to rise up towards the A14 making the planting on a higher ground level than Cranford High Street. To the east of the site is A509, which leads to Finedon to the South of the application site.

The site is largely active farmland. There are a small number of properties within the application site namely Wold Lodge and a few other properties close to the application site and not on the opposite side of major highways to the application site including Poplar Lodge, Top Lodge, Windmill Cottages, Blackbridge Farm. On the opposite side of A509 and adjacent to the application site are The Listed Roundhouse and Fox Covert Farm. The main settlements of residential properties in close proximity to the proposal are Burton Latimer to the west, Cranford to the north and Finedon to the south.

The ground levels in this location do undulate. However, the grounds levels generally decrease to the southwest of the application site with some variance towards the external boundaries of the application site.

There is a designated SSSI and wildlife site running to the north of the application site, on the edge of previously quarried land and a potential wildlife site over Cranford Landfill and adjacent to the SSSI.

Proposed Development

Variation of condition application to vary condition 12 of KET/2003/0559, in respect of noise monitoring.

Condition 12 of the 2004 permission is in fact removed with the proposed monitoring arrangement as explained below, now part of condition 8.

Any Constraints Affecting the Site

- Public Footpath (UA005)
- Public Footpath (UA006)
- Public Bridleway (GF017)
- SSSI Cranford St John
- Setting of the Grade II Listed – The Roundhouse
- Burton Latimer Conservation Area
- Cranford Conservation Area
- Trunk Road
- Potential LWT
- Flood Plain

4.0 Consultation and Customer Impact

Parish/Town Council:

Burton Latimer Parish Council

No objection.

Cranford Parish Council

Comments to follow.

Environmental Health

Environmental Health support the amended condition as proposed and have no objections to the proposed changes to the condition, on the basis that much has changed since the original approval for Burton Wold Wind farm, including advances in technology; the understanding regarding noise generation from wind turbines; and the stance being taken by appeal inspectors with regards to this type of development. On this basis it is therefore important to review the stance taken previously. It is also worth noting the consistency of the past monitoring data submitted and that there has been no justified noise complaints received with regards turbine noise.

5.0 Planning Policy

The application is for a variation of condition application or section 73 application. This type of application allows the Local Authority the power to discharge or amend planning conditions. The approval of such an application would result in a new planning permission for the development being granted. With this type of application only the conditions subject to which the planning permission was granted can be considered and not the principle of development. Officers have three options with this type of application:

1. Grant planning permission subject to new or amended conditions
2. Grant planning permission unconditionally
3. Refuse planning permission.

The granting of a section 73 application cannot be used as an extension of time application. Given the wind farm has planning permission, for a period of 25 years (see Appendix A decision notice), and has commenced operation it would be prudent to only consider matters related to the condition which they have sought to vary. Therefore, the report and policies listed below only relate to the matters to be considered at this time i.e. Noise.

National Planning Policy Framework

Policy 10. Meeting the Challenge of Climate Change, Flooding and Coastal Change

Aims to secure radical reductions in greenhouse gas emissions, minimising vulnerability and providing resilience to the impacts of climate change, and supporting the delivery of renewable and low carbon energy and associated infrastructure. This is considered central to the economic, social and environmental dimensions of sustainable development. LPA's should not require applicants to demonstrate the overall need for renewable energy.

Policy 11. Conserving and enhancing the natural environment

Planning should contribute to and enhance the natural and local environment and prevent unacceptable levels of soil, air, water or noise pollution or land instability.

Development Plan Policies

North Northamptonshire Core Spatial Strategy

Policy 13: 'General Sustainable Development Principles'

Development should meet today's needs without compromising the ability of future generations to enjoy the same quality of life. Development should respect the character of the area and not have an adverse impact on residential amenity by reason of noise, vibration, smell, light or other pollution.

6.0 Financial/Resource Implications

None

7.0 Planning Considerations

The key issues for consideration in this application are:-

1. Principle
2. Noise
3. Environmental Impact Assessment

1. Principle

The principle was previously established by the grant of planning permission for 10 turbines in this location in March 2004. As explained above the principle of development can not be re-visited only those matters which are the subject of the application, in this instance noise. This is further discussed below.

2. Noise

The proposal is to vary condition 12 of the original permission for '10 wind turbines, anemometry mast, substation and associated infrastructure'. Condition 12 requires the applicant to undertake annual noise monitoring, which has been happening since first commissioning of the turbines. This condition also requires noise monitoring in response to notification by the Local Planning Authority that a complaint has been received relating to noise emissions from the wind turbines. As stated by Environmental Health there has been no cause for concerns from the previous annual noise monitoring reports which have been received and no justified noise complaints with regards to noise.

This application requests that condition 12 be amended to remove the requirement for 'annual' monitoring to be undertaken and replace this with 'noise monitoring is required within 21 days of a request being made by the Local Planning Authority'. In this instance if the Local Planning Authority feels it necessary or if a complaint is made by a local resident then the Local Authority would be able to require the necessary information to investigate any potential noise impacts.

As outlined above, this application is supported by Environmental Health as technology has moved on considerably since 2003 when this application was considered. There has been no cause for complaint or concern from the last five annual monitoring reports and no valid noise complaints or need for further action. There is no reason to expect this will change. Also, this type of condition is no longer supported in planning guidance or employed by Inspectors determining appeal applications for this type of development. The proposed revised condition (condition 8) is an adaptation of a condition used by an Inspector on a recent appeal decision. Refusal of planning permission is therefore unlikely to be upheld if the application is appealed.

Concerns have been raised that as the turbines age they could have a greater impact in terms of noise. As explained above, due to advances in technology this is unlikely to happen. Also, the Local Authority would still retain the ability to require noise testing as per the amended condition (condition 8) as and when necessary. Finally, given the levels of change expected in that area following works on junction 10a and if proposals for new employment and further green uses in this location are implemented then the background noise levels are likely to change making it difficult to enforce the existing therefore making the proposed condition more relevant to current circumstance.

The proposed revised condition is considered appropriate to protect the amenity of neighbouring properties and not put them at the adverse risk from noise in accordance with policy 11 of the NPPF and policy 13(l) of the CSS.

3. Environmental Impact Assessment

As the original full planning application for this site (application reference KET/2003/0559) was EIA development, this application for the variation of condition 12 is also regarded as an EIA application. Under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (which came into force on 24th August 2011) subsequent EIA applications include reserved matters and matters requiring approval before development can commence e.g. approval of conditions.

As part of the requirements contained within the Regulations, a Screening Opinion has also been carried out for this AOC application. The local planning authority has adopted the screening opinion that the proposed development as described by the applicant is EIA development but that the original Environmental Statement (ES) (original dated May 2003) accompanying KET/2003/0559 adequately addresses the environmental effects of the proposals. Therefore, in accordance with Regulation 8 (2) no further ES is required. Under Regulation 8 (2) where the environmental information before a local planning authority (submitted with an original application) is adequate to assess the environmental effects of the development, that information shall be taken into consideration in the determination of a subsequent application. The original ES has therefore been taken into account and considered in the assessment of this AOC application, the officer recommendation and therefore the determination.

Conclusion

On the basis of the information as outlined above, the application is considered in accordance with NPPF policy 11 and policy 13(l) of the CSS and is recommended for approval.

Background Papers

Title of Document:

Date:

Contact Officer:

Rebecca Collins, Senior Development Officer on 01536 534316

Previous Reports/Minutes

Ref:

Date: