

## COMMITTEE REPORT

**Date:** 20 November 2014      **Ward:** Derwent  
**Team:** Major and                      **Parish:** Kexby Parish Council  
Commercial Team

**Reference:** 14/02008/FULM

**Application at:** Ivy House Farm Hull Road Kexby York YO41 5LQ

**For:** Erection of wind turbine (maximum height to blade tip 78 metres) with associated access tracks, crane pad, sub-station building, underground cabling and temporary construction compound

**By:** EDP

**Application Type:** Major Full Application (13 weeks)

**Target Date:** 1 December 2014

**Recommendation:** Refuse

### 1.0 PROPOSAL

1.1 Ivy House Farm comprises a medium sized arable farm holding lying in the Green Belt equidistant between Elvington and Dunnington to the east of the City Centre. Planning permission is sought for the erection of a single 800 kw wind turbine with a maximum height of 78 metres to hub together with ancillary infrastructure. The site lies in a prominent location within the York Green Belt clearly visible from the A1079 to the north and an unclassified road, Dalby Lane to the east running between Dunnington and Elvington. The surrounding landscape is gently rolling with small areas of woodland interspersed with arable fields. A number of residential properties lie to the east along Dalby Lane Elvington.

1.2 The proposal has previously been the subject of a Screening Opinion by the Local Planning Authority and a Screening Direction by the Secretary of State for Communities and Local Government under Schedules 2 and 3 of the 2011 Town and Country Planning (Environmental Impact Assessment) Regulations both of which held that a formal Environmental Impact Assessment would not be required.

### 2.0 POLICY CONTEXT

2.1 Development Plan Allocation:

City Boundary GMS Constraints: York City Boundary 0001

DC Area Teams GMS Constraints: East Area (1) 0003

## 2.2 Policies:

CYGP1 -Design

CYGP5 - Renewable energy

CYNE1 - Trees, woodlands, hedgerows

CYGB1 - Development within the Green Belt

CYNE8 - Green corridors

## 3.0 CONSULTATIONS

### INTERNAL:-

3.1 Environmental Protection Unit raise no objection to the proposal subject to any permission be conditioned to include provision for noise from the turbine to be ameliorated.

3.2 Design, Conservation and Sustainable Development raise no objection in principle to the proposal but express some concern with regard to the impact of the proposal upon the visual character of the surrounding landscape. It is felt that the impact of the proposal upon the habitat of local wildlife would be acceptable.

### EXTERNAL:-

3.3 Murton Parish Council object to the proposal on the grounds of the serious adverse impact it would cause to the open character of the Green Belt together with creating a precedent for the erection of other similar structures in the area.

3.4 The Civil Aviation Authority raise no objection to the proposal.

3.5 The Ministry of Defence object to the proposal on the grounds of its impact upon ground based communication's infrastructure and aircraft mounted radar apparatus giving rise to false signals of approaching aircraft.

3.6 Kexby Parish Council object to the proposal on the grounds of serious adverse impact upon the open character of the Green Belt and the impact upon the habitat of local breeding bird species.

3.7 The National Air Traffic Service(NATS) initially objected to the proposal on the grounds of impact upon ground based communication infrastructure giving rise to false signals of approaching aircraft. They have subsequently withdrawn their objection having undertaken further analysis of its impact upon their ground based infrastructure in the locality.

3.8 Dunnington Parish Council object to the proposal on the grounds of adverse impact upon the residential amenity of properties in Dunnington through noise and ground based vibration, adverse impact upon the habitat of protected species and adverse impact upon the open character and purposes of designation of the York Green Belt.

3.9 Councillor Jenny Brooks objects to the proposal on the grounds that it would cause serious harm to the open character and purposes of designation of the York Green Belt, it would harm the habitat of protected wildlife species, it would harm the residential amenity of neighbouring properties and it would harm the landscape character of a “green corridor” as defined in Policy NE8 of the York Development Control Local Plan(4<sup>th</sup> Set Changes 2005).

3.10 English Heritage object to the proposal on the grounds that insufficient information has been submitted to allow impact upon the setting of Scheduled Ancient Monuments in the locality, notably the moated site at St Lois Farm to be properly assessed concern is also expressed in relation to the comparison of visual impact between the proposed turbine and the existing electricity pylons in the locality.

3.11 Julian Sturdy MP (York Outer) objects to the proposal on the grounds that it would adversely impact upon the setting of local Scheduled Ancient Monuments, it would adversely impact upon the residential amenity of neighbouring residential properties by virtue of noise and shadow flicker, it would adversely impact upon the safe operation of military aviation radar apparatus and the open character and purposes of designation of the York Green Belt.

3.12 51 Letters of representation have been submitted in respect of the proposal. 49 are in objection and two are in support. The following is a summary of the contents of the letters of objection:-

- \* Serious impact upon the residential amenity of neighbouring properties;
- \* Concern in respect of impact upon neighbouring properties caused by noise generated by blade rotation;
- \* Concern in respect of the impact upon sunlight and daylight caused by shadow flicker;
- \* Concern in respect of the impact of the proposal upon local television reception;
- \* Concern in respect of the impact upon local wildlife habitat;
- \* Concern in respect of impact upon the open character and purposes of designation of the York Green Belt;
- \* Concern in respect of the impact of the proposal upon air traffic control infrastructure in the locality;
- \* Concern in respect of the impact of the proposal upon the setting of Kexby Parish Church, a Grade II Listed Building;
- \* Concern in respect of highway safety for vehicles using the A1079 Hull Road.;
- \* Concern in respect of impact upon the setting of York Minster;

\* Concern that the proposal would set a precedent for other similar undesirable proposals.

3.13 The following is a summary of the letters of support:-

\* Support for the provision of renewable energy to lower carbon emissions.

## **4.0 APPRAISAL**

KEY CONSIDERATIONS:-

4.1 KEY CONSIDERATIONS INCLUDE:-

\* Impact upon the open character and purposes of designation of the York Green Belt;

\* The need to generate renewable energy as a means of reducing the impacts of climate change;

\* Impact upon the habitat of protected species;

\* Impact upon the setting of York Minster and Kexby Parish Church;

\* Impact upon the operation of military and civilian air traffic control radar infrastructure;

\* Impact upon local television reception;

\* Impact upon the residential amenity of neighbouring properties;

\* Impact upon the setting of the Scheduled Ancient Monument at St Lois Farm Kexby.

STATUS OF THE YORK DEVELOPMENT CONTROL LOCAL PLAN:-

4.2 The York Development Control Local Plan was approved for Development Control purposes in April 2005; its policies remain material considerations in respect of Development Management decisions although it is considered that their weight is limited except where in accordance with the National Planning Policy Framework.

POLICY CONTEXT:-

4.3 GREEN BELT:- The general extent of the York Green Belt is defined within saved Yorkshire and Humber RSS Policies YH9C and Y1C as such Central Government Policy in respect of Green Belts as outlined in the National Planning Policy Framework applies. Central Government Planning Policy as outlined in paragraph 87 of the National Planning Policy Framework indicates that inappropriate development within the Green Belt is by definition harmful to the Green Belt and should not therefore be approved other than in very special circumstances.

Paragraph 91 specifically addresses renewable energy projects in the Green Belt which are felt to be inappropriate development, the need to supply a case for very special circumstances is emphasised although it is acknowledged that such very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources. Paragraph 88 establishes

the weight to be given to a submitted case to establish "very special circumstances". This clearly argues that when considering a planning application Local Planning Authorities should ensure that substantial weight should be given to any harm to the Green Belt. "Very special circumstances" will not be held to exist unless the potential harm by reason of inappropriateness and any other harm are outweighed by other considerations.

**4.4 GENERATION OF RENEWABLE ENERGY:-** Central Government Planning Policy as outlined in paragraph 93 of the National Planning Policy Framework urges Local Planning Authorities to give significant weight to supporting the delivery of renewable and low carbon energy and associated infrastructure as a key tenet of the presumption in favour of sustainable economic development.

**4.5 SAFEGUARDING OF PROTECTED SPECIES AND HABITATS:-** Central Government Planning Policy in respect of biodiversity as outlined in paragraphs 118 and 119 of the National Planning Policy Framework urges Local Planning Authorities to refuse planning permission for new development which would give rise to significant harm to a rare species and or its habitat which can not be mitigated, avoided or as a last resort compensated for and at the same time it is clearly indicated that the presumption in favour of sustainable economic development does not apply in such cases.

**4.6 IMPACT UPON RESIDENTIAL AMENITY:-** Central Government Planning Policy in respect of amenity as outlined in paragraph 17 of the National Planning Policy Framework "Key Planning Principles" urges Local Planning Authorities to give significant weight to the need to secure a good standard of amenity for all new and existing occupants of land and buildings.

**4.7 IMPACT UPON DESIGNATED HERITAGE ASSETS:-** Central Government Planning Policy in respect of Scheduled Ancient Monuments and other Designated Heritage Assets as outlined in paragraph 132 of the National Planning Policy Framework urges Local Planning Authorities to give great weight in considering the impact of proposed development on the significance of a Designated Heritage Asset to the Asset's conservation.

#### **IMPACT UPON THE OPEN CHARACTER AND PURPOSES OF DESIGNATION OF THE YORK GREEN BELT:-**

**4.8 Policy GB1** of the York Development Control Local Plan sets out a firm policy presumption that planning permission for development within the Green Belt will only be forthcoming where the scale, location and design of such development would not detract from the open character of the Green Belt, it would not conflict with the purposes of including land within the Green Belt and it is for one of a number of purposes identified as being appropriate within the Green Belt including agriculture and forestry. Central Government Policy as outlined in paragraph 79 of

the National Planning Policy Framework establishes their fundamental characteristics as being their openness and permanence.

4.9 Paragraph 91 of the National Planning Policy Framework does explicitly identify renewable energy development of the type applied for as being inappropriate within the Green Belt and this is acknowledged by the applicant. Paragraph 91 further highlights the requirement for a case for very special circumstances which may include the wider environmental benefits associated with increased energy production from renewable sources. A brief argument based upon the environmental benefits of renewable energy has been submitted, however, the current proposal has been justified principally on the basis of the presumption in favour of sustainable development which the NPPF specifically excludes from consideration in respect of the Green Belt and the need to secure the viability of the farm, despite no viability information being submitted and the applicant refusing to submit such information. No information is submitted to justify the location of the proposal as opposed to a less prominent site within the Green Belt or a site outside. No consideration is also given of alternative less prominent means of renewable energy provision such as solar arrays, which Central Government Planning Policy outlined in "Planning Practise Guidance for Renewable and Low Carbon Energy(2013) identify as being of very low impact.

4.10 In terms of the impact of the proposal upon the openness of the Green Belt the application site comprises a gently rolling rural landscape with small copses of mature trees interspersed with arable fields surrounded by mature trees and lengths of hedgerow. The application proposes the erection of a very substantial metal frame structure that would be clearly visible in views across open countryside from the north and north east. The applicant contends that the thin tapering style of pylon would minimise its visual impact. The structure would however be substantially taller than anything else in the surrounding landscape as much as 50% higher and more solid in appearance than the electricity pylons in the local area. A landscape assessment has been submitted with the proposal although its results in terms of visual impact are inconclusive. The applicant has furthermore submitted an appeal decision in respect of the Keighley area of Bradford to support the contention that a similarly designed pylon can be held to be acceptable in the wider landscape. The circumstances of the Bradford case are however materially different in that the proposed turbine was only 32 metres height to the hub and as the determining inspector made clear the turbine was very well sheltered by the steeply sloping local topography. The case can therefore only be afforded limited weight in considering the current proposal. It is felt that in addition to the harm due to inappropriateness, the tall heavily engineered structure of the turbine would give rise to serious adverse harm to the open character of the Green Belt and as such would be unacceptable.

## THE NEED TO GENERATE RENEWABLE ENERGY AS A MEANS OF REDUCING THE IMPACT OF CLIMATE CHANGE:-

4.11 The application envisages the erection of a single 78 metre high wind turbine to generate between 500 and 800 kwh of electricity which is identified as enough power to supply up to 600 homes. Attention is also drawn to the UK's binding commitment to providing a minimum of 15% of its energy needs by renewable means by 2020. No information has however been forthcoming as to the scale of contribution the proposal would make or consideration of alternative less harmful means of generation such as solar arrays. It is however accepted that the proposal would make a small contribution to a lower carbon future in line with Central Government planning policy outlined in paragraph 93 of the National Planning Policy Framework. It is not however felt that this outweighs the serious harm the proposal would cause to the open character of the Green Belt.

## IMPACT UPON THE HABITAT OF PROTECTED SPECIES:-

4.12 Serious concern has been expressed in respect of the impact of the proposal upon the habitat of breeding birds and bats. Two nationally designated nature reserves also exist directly to the east in the Derwent valley. A very detailed ecological survey has however been submitted with the proposal which was undertaken to an accepted methodology. Despite anecdotal indicators of bat and bird of prey activity in the area, the survey clearly indicates that the location and design of the turbine would not give rise to unacceptable impacts upon local wildlife habitat. This does not however outweigh the serious harm the proposal would cause to the open character of the Green Belt.

## IMPACT UPON THE SETTING OF YORK MINSTER AND KEXBY PARISH CHURCH:-

4.13 York Minster and Kexby Parish Church are Listed on account of their significant architectural and townscape merit, indeed the form and presence of York Minster within the skyline of the City is fundamental to the definition of its intrinsic character. Central Government Planning Policy in respect of Planning and the Historic Environment as outlined in paragraph 132 of the National Planning Policy Framework urges Local Planning Authorities to give significant weight to assessing the harm caused to the setting of a Listed Building by virtue of development undertaken within its setting. The applicant has submitted a detailed landscape assessment of the proposal that clearly demonstrates that as a result of local topography to the north and west of Dunnington that the proposal would not materially harm the setting of the Minster and at the same time any harm to the setting of Kexby Parish Church would be minimal by virtue of its location.

## IMPACT UPON THE OPERATION OF LOCAL CIVILIAN AND MILITARY RADAR INFRASTRUCTURE:-

4.14 Strong and detailed objections have been made to the proposal by the MoD on the basis that the operation of the blades of the turbine would set up false signals of aircraft overflying the area to the detriment of safe and effective operation of the equipment and wider air passenger safety. The applicant has not to date been able to come forward with an effective means of mitigating this risk and as such in view of the severe impact upon the safety of aviation in the area which includes Elvington Airfield and RAF Linton on Ouse then it is recommended that planning permission be with held.

## IMPACT UPON LOCAL TELEVISION RECEPTION:-

4.15 Appeal decisions elsewhere have established that the erection of on-shore wind farms can impact upon television reception at residential properties within a wider area in a manner similar to the harm demonstrated in respect of air traffic control radar. Concern has been expressed in relation to the current proposal in this respect and the applicant has not come forward with information to refute or mitigate this as an issue. The nearest residential properties are however in excess of 500 metres away and it is not felt that risk would be significant enough to warrant refusal for this reason alone.

## IMPACT UPON THE RESIDENTIAL AMENITY OF NEIGHBOURING PROPERTIES:-

4.16 Policy GP1 of the York Development Control Local Plan sets out a firm policy presumption in favour of new development proposals which respect or enhance the local environment, are of a scale, mass and design that is compatible with neighbouring buildings, spaces and the character of the area and ensure that residents living nearby are not unduly affected by noise, disturbance or dominated by overbearing structures. The proposed apparatus would be some 78 metres to its highest point and would be clearly visible in open countryside separated from the belt of trees to the east and south east. The nearest residential properties would lie along Hull Road and Dalby Lane to the east and north east at between 5 and 600 metres distance. Significant concern has been expressed in relation to the impact of both noise and shadow flicker on the residential amenity of neighbouring properties quite apart from the significant overbearing visual impact. Detailed noise and shadow flicker assessment have however been submitted with the application, which indicate that the development would be acceptable if conditioned as part of any permission. This does not however detract from the significant impact the proposal would have upon the open character of the Green Belt or the impact upon aviation radar infrastructure of national importance.



## IMPACT UPON THE SETTING OF THE SCHEDULED MONUMENT AT ST LOIS FARM:-

4.17 The submitted Heritage Statement indicates that the significance of a number of Designated Heritage Assets in the locality, primarily Scheduled Ancient Monuments such as the moated site at St Lois Farm is substantially determined by the nature of their setting. The Heritage Statement then indicates that the proposed 78metre high turbine would have a negligible impact upon its setting without substantiating how this conclusion is achieved. The setting of the moated site at St Lois Farm is based upon the relationship of the monument to the gently rolling agricultural landscape surrounding it. The proposed turbine would add a new and entirely alien vertical emphasis that would significantly erode the character of its setting. Without the submission of a detailed justification as required under paragraph 132 of the National Planning Policy Framework for the likely impact then the proposal is felt to be unacceptable.

### **5.0 CONCLUSION**

5.1 The proposal for a single 78 metre high , up to 800 kwh wind turbine on land to the south west of the Ivy House Farm represents inappropriate development within the Green Belt and it is felt that the submitted case for "very special circumstances" fails to pass the test of overcoming Green Belt harm and any other harm as identified by paragraph 88 of the National Planning Policy Framework. It is felt that the structure by virtue of its extreme height and engineered appearance would give rise to significant and unacceptable harm to the open character of the Green Belt.

5.2 In addition to Green Belt concerns, the applicant has failed to demonstrate that the proposal would not harm the operation of both civilian and military air traffic control radar to the detriment of air safety. As such the proposal is felt to be unacceptable in planning terms and it is recommended that planning permission should be refused.

### **6.0 RECOMMENDATION: Refuse**

1 The proposal lies within the general extent of the Green Belt as set out in the saved RSS policies YH9C and Y1C The application has therefore been considered against the policies in the Framework at Section 9 relating to development in the Green Belt. The proposal constitutes inappropriate development within the Green Belt and is therefore by definition harmful to the openness of the Green Belt contrary to paragraph 91 of the National Planning Policy Framework and Policy GB1 of the York Development Control Local Plan(4<sup>th</sup> Set Changes 2005). The other comprising farm viability and the provision of renewable energy do not amount to very special circumstances that would clearly outweigh the harm and any other harm to the Green Belt and therefore in accordance with para 87 of the Framework, the application is refused.

2 The applicant has failed to demonstrate that the operation of the proposed turbine would not materially harm the operation of military ground and air mounted air traffic control radar infrastructure to the detriment of air safety.

3 The proposed turbine would have a significant impact upon the setting of the moated site at St Lois Farm Kexby, a Scheduled Ancient Monument. Insufficient information has been submitted with the proposal to be able to properly assess or justify the degree of impact upon the setting of the Designated Heritage Asset as such the proposal is clearly contrary to the terms of Central Government Planning Policy as outlined in paragraph 132 of the National Planning Policy Framework.

## **7.0 INFORMATIVES:**

### **Notes to Applicant**

#### **1. STATEMENT OF THE COUNCIL`S POSITIVE AND PROACTIVE APPROACH**

In considering the application, the Local Planning Authority has implemented the requirements set out within the National Planning Policy Framework (paragraphs 186 and 187) in seeking solutions to problems identified during the processing of the application. The Local Planning Authority took the following steps in an attempt to achieve a positive outcome:

Clarification of the case for "very special circumstances".

Notwithstanding the above, it was not possible to achieve a positive outcome, resulting in planning permission being refused for the reasons stated.

#### **Contact details:**

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