

COMMITTEE REPORT

Date: 19 February 2015 **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.

1.3 The application was deferred from consideration at the November Committee in order for concerns in respect of the impact of the proposal upon the setting of Designated Heritage Assets in the locality to be addressed. This has now been done through the medium of a revised Heritage Statement and English Heritage now indicates that previous concerns have been resolved. A further clarification of the case for "Very Special Circumstances" which was indicated by the applicant at the November Committee has been submitted together with a short report which deals with the possibility of the generation of low spectrum noise or infra-noise generation by the proposed turbine.

2.0 POLICY CONTEXT

Application Reference Number: 14/02008/FULM

Item No: 4a

2.1 Draft Development Plan Allocation:

City Boundary GMS Constraints: York City Boundary 0001

2.2 Draft Development Control Local (4th set of Changes) 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 raises no objection to the proposal.

3.5 The Ministry of Defence objected 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. They have subsequently withdrawn their objection and instead request that any permission be conditioned to require that any impact arising from the turbine be adequately mitigated.

3.6 Kexby Parish Council objects 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 (4th Set Changes 2005).

3.10 English Heritage initially objected to the proposal on the grounds of a lack of information in respect of the impact of the proposal upon the setting of designated Heritage Assets in the locality. A revised Heritage Statement has subsequently been submitted which addresses those concerns and the objection has subsequently been withdrawn.

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. He has further objected to the revised Heritage Assessment which he feels is too narrowly defined in respect of its judgement of impact upon the setting of Designated Heritage sites specifically the Battle Field at Stamford Bridge.

3.12 75 Letters of representation have been submitted in respect of the proposal. 71 of objection and four 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 including rare wading birds and bat species resident in the Lower Derwent Valley;
- * 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:
- * Concern that the proposal would impact upon the setting of a range of Designated Heritage Assets including the Scheduled Roman Town of Derwentio, Old Kexby Bridge and the Registered Battle Field at Stamford Bridge;
- * Concern in respect of the impact caused by ground vibration arising from the turbine.

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 Designated Heritage Assets;
- * 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.

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. Electricity pylons also provide a static but visually permeable structure which has the effect of minimising their visual impact. The proposed turbine is by contrast solid in appearance and designed to rotate thereby heightening the perception of an engineered urban structure in an otherwise open rural environment. 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 idea 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 CASE FOR “VERY SPECIAL CIRCUMSTANCES”

4.11 Since the proposal was previously considered a further clarification has been submitted in relation to the case for “very special circumstances”. This centres on the content of the 2010 ‘Renewable energy Strategic viability study for York’ Report by AEA and formed part of the early evidence base for the former Core Strategy and subsequent emerging Local Plan. This identifies a need to provide some 759,842 MWh of electricity to supply the City on an annual basis over the Plan period. At that time 9MWh of generating capacity was committed and the study estimated the need for a further 30MWh as required over the Plan period to reach renewable energy targets then prevailing. This would result in the construction of 12 “large” and 30 “medium” height turbines mostly if not solely within the Green Belt. The document did not however afford any weight at all to the strong National Planning Policy presumption in favour of safeguarding the openness of the Green Belt. The report has subsequently been superseded by two further reports (Managing Landscape Change:-Renewable Low Carbon Energy Developments a Sensitivity Framework for North Yorkshire and York 2012 and the York Renewable Energy Study 2014) which advocate a more mixed approach incorporating a greater role for solar power and the creation of “areas of search” focussed on locations which would cause lesser harm to the openness of the Green Belt and the visual quality of the wider landscape.

4.12 The case for “very special circumstances” further contends that as the proposed structure would be only “modest” in scale it would not harm the purposes of including the land within the Green Belt specifically safeguarding open countryside from encroachment. It is felt that the structure, which would be significantly higher than any other building or fixed item of plant and machinery

would fundamentally alter the character of the surrounding countryside and whilst it is acknowledged that there would be no direct impact upon the setting of York Minster the wider setting of the historic City and its skyline would be harmed contrary to paragraph 80 of the National Planning Policy Framework. It is further contended that the proposed structure would be no more harmful than the electricity pylons within the surrounding area. However, the pylons are significantly lower with a maximum height of 50 metres, they are also visually permeable being light weight open structures and the proposed turbine has a moving rotary head of a maximum diameter of 28 metres which provides a clear visual point of focus.

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

4.14 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

4.15 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. The City's Ecologist endorses this view. 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 DESIGNATED HERITAGE ASSETS

4.16 The proposal by virtue of its height and location would clearly impact upon the setting of a number of Designated Heritage Assets including Kexby Parish Church, York Minster itself, Brockfield Hall at Warthill and a number of Scheduled Ancient Monuments. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 imposes a statutory duty on the Council to "have special regard to the desirability of preserving the building or its setting or any features of special

architectural or historic interest which it possesses." As this is a statutory duty it must be given considerable importance and weight in determining the planning application. Where harm is identified to a Heritage Asset there will be a strong presumption against the grant of permission. This duty extends to Scheduled Ancient Monuments where their character in whole or in part is formed by their visual setting.

4.17 The applicant has since the matter was previously considered submitted a supplementary Heritage Report which examines in detail the relationship of the proposal to the setting of a number of Designated Heritage Assets in the locality. These include the Church of St Mary at Gate Helmsley, Brockfield Hall at Warthill, All Saints Church at Low Catton, St Lois Farm Moated Site and the Registered Battle Field at Stamford Bridge. The applicant has identified a potential for a moderate degree of harm to the setting of each of these Designated Heritage Assets. However, it is felt that the degree of distance from the application site combined with the local topography and pattern of vegetation would ensure that any impact would be limited to an acceptable degree. English Heritage concurs with this view.

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

4.18 Strong and detailed objections had previously been made to the proposal by the MoD and NATS 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. They are now satisfied that providing adequate mitigation measures are required by condition as part of any planning permission then the scheme is acceptable.

IMPACT UPON LOCAL TELEVISION RECEPTION

4.19 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

4.20 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. Concern has at the same time been expressed in relation to the impacts of ground vibration arising from the proposal. The distances involved to neighbouring residential properties are such that this is not likely to be a significant cause of harm. A report has also subsequently been submitted which examines the potential for the occurrence of low frequency or infra-noise which can cause significant discomfort and distress to those who are vulnerable. The report does however demonstrate that the proposal would not give rise to such a problem. This does not however detract from the significant impact the proposal would have upon the open character of the Green Belt.

5.0 CONCLUSION

5.1 The proposal represents inappropriate development within the Green Belt and it is considered 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. As such the proposal would be unacceptable in planning terms and it is recommended that planning permission should be refused.

6.0 RECOMMENDATION: Refuse

1. 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. It would furthermore cause serious harm to the purposes of including land within the Green Belt specifically the safeguarding of the setting of the historic City and the prevention of encroachment upon open countryside by virtue of its extreme height and solid engineered urbanised appearance.

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.

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