

# PLANNING COMMITTEE

14 September 2011

## Schedule of Committee Updates/Additional Representations

**Note: The following schedule represents a summary of the additional representations received following the publication of the agenda and received up to midday on the day before the Committee meeting where they raise new and relevant material planning considerations.**

**DCNW2008/1289/F - Proposed erection and operation of 4 Wind Turbines and associated access tracks, hardstanding and sub station building at Reeves Hill, Reeves Lane, Near Knighton, Herefordshire.**

**FOR: Mr Corker per Mr Michael Phillips, Unit 1 Dyfi Eco Park, Machynlleth, Powys, SY20 8AX**

### ADDITIONAL REPRESENTATIONS

A letter has been received from Richard Buxton Solicitors, on behalf of the Stonewall Hill Conservation Group stating in consideration of noise issues, in relationship to wind turbine development, consideration be given to the attachment of a condition with regards to 'amplitude modulation' (AM), to any approval notice issued.

Officer's sought advice with regards to whether the request for such a condition is reasonable, in consideration of the conditions as attached to the Committee report, should members be mindful to support the application.

Enviros, (commissioned by the Council), have responded to the concerns as raised by Mr. Buxton concluding that they consider that conditions as proposed by Officers are fit for purpose and covers issues of concern in relationship to AM and that there is no compelling need to add an additional condition that specifically attempts to set limits on excess AM.

The applicants' noise specialists Hayes McKenzie Partnership Ltd have also made comment in respect of concerns as raised by Mr. Buxton on AM, concluding that the planning condition as proposed by Mr. Buxton has no scientific basis. Their response states that the DEFRA report entitled 'Wind Farm Noise Statutory Nuisance Complaint Methodology' referred to by Mr. Buxton, is aimed at helping Local Planning Authorities deal with wind farm noise complaints, should they arise using statutory nuisance powers and that this guidance does not replace any planning guidance as suggested by Mr. Buxton.

The Council's Environmental Health Manager has responded stating in his view the DEFRA report referred to above, by Mr. Buxton, gives advice purely on how complaints might be investigated should they arise.

## **OFFICER COMMENTS**

It is considered the issue with regards to AM is adequately addressed in the report to Committee. Condition number 36 attached to the report refers to a noise management plan, which represents an appropriate and reasonable control mechanism which allows for the management and monitoring of AM.

## **ADDITIONAL REPRESENTATIONS**

A further letter has been received from Richard Buxton Solicitors on behalf of the Stonewall Hill Conservation Group raising concerns that a 'significant portion' of the development site is within Powys and therefore falls within the jurisdiction of Powys County Council and that this includes the adjacent public highway which requires significant widening for access purposes and therefore a planning application needs to be submitted to Powys County Council for planning determination, which would need to be subject to an Environmental Impact Assessment under EIA Regulations.

## **OFFICER COMMENTS**

The application site in accordance with information submitted in support of the application is on land within Herefordshire Council's administrative area, and involves access into the site at two separate points from land directly within Powys County Council's administrative area. (The western boundary of the site being adjacent to a public highway situated within Powys).

The applicants as part of their application submitted a detailed construction traffic management plan which indicates necessary public highway improvements, which does not include detail for significant highway widening adjacent to the application site. Furthermore a letter dated 15<sup>th</sup> June 2011 from Mr. S. Packer, Specialist Services Manager, Powys County Council to the applicants indicates that the necessary highway improvements do not need to be subject to an Environmental Impact Assessment. Powys County Council Highways Authority Development Control Manager has indicated satisfaction with suggested public highway conditions to be attached to any approval notice issued. (See later in this update report).

## **ADDITIONAL REPRESENTATIONS**

A letter dated 5th September 2011 has been received from Mr. Rod Greenough, (Noise expert), raising concerns and questions that background noise data as submitted by the applicants is wholly inadequate in consideration of surrounding residents to the application site. Concerns are also raised about Amplitude Modulated Noise, (AM), in that it cannot be 'simply ignored'.

## **OFFICER COMMENTS**

Issues as raised by Mr. Greenough have been considered as part of the evaluation of noise issues in relationship to the proposed development. Appropriate conditions in relationship to noise issues are attached to the Committee report. Herefordshire Council's Environmental Health Manager considers issues as raised by Mr. Greenough have been adequately considered.

## **ADDITIONAL REPRESENTATIONS**

A letter dated 12 August 2011 was received from Mr. S. Packer, on behalf of Powys County Council. The letter required clarification on land ownership issues in relationship to noise impacts on 'properties' within Powys.

Concerns were also raised about public highway access implications to the site and the letter stated that he has advised the applicants to withdraw their current application currently registered with Powys County Council for public highway improvements on land within Powys leading to the site in order to re-

submit a revised application to include the requirement for the two turbines access points into the site from the adjacent public highway.

The letter also makes comment that in his opinion it would be good practice if the wind farm application registered with Herefordshire Council and the access proposals subject to a separate application to Powys County Council were finally considered by the respective Planning Committees at the same time.

## **OFFICER COMMENTS**

Officers' are not aware of any changes in land ownership in relationship to the proposed wind turbines or their supporting infrastructure. Noise monitoring results at the selected sites within Powys concluded that background noise met with the requirements of ETSU-R-97 (as recognised by PPS22), and the more recently published Institute of Acoustics Bulletin, both recognised guidelines on noise monitoring requirements, at all dwellings selected whether in the applicants control or not. Furthermore Powys Environmental Health have responded raising no objections on noise issues,

Matters with regards to access to the site, on land within Powys County Council's control are issues to be considered by Powys County Council. The principle of the proposed access details have been discussed between representatives of both Powys and Herefordshire Council's Transportation Sections, and it is considered that the issues with regards to public highway access can be processed by the respective Council's. Attached to the Committee report is a Heads of Terms in relationship to a Planning Obligation under Section 106 of the Town and Country Planning Act 1990. This gives consideration to public highway issues ensuring no development is commenced on site until the public highway issues have been fully resolved.

The application for the proposed wind farm development is on land within Herefordshire, and the proposed access improvements on land within Powys, and therefore although closely linked, they are two separate proposals on land in their respective sole Council's planning control and as such are not considered joint applications that require Committee consideration at the same time.

## **ADDITIONAL REPRESENTATIONS**

A further letter dated 31st August 2011 was received from Mr. S. Packer, Powys County Council, raising concerns about noise issues at a property known as Black Bach and concerns about land ownership in respect of public highway access to the proposed development site.

## **OFFICER COMMENTS**

Herefordshire Council and Powys County Council Environmental Health Officers' raise no objections in relationship to noise issues at the property known as Black Bach. (Property located on land within Powys County Council's administrative area).

The land ownership issue refers to two access points into the site from the adjacent public highway in Powys County Council's control. This issue has been discussed between representatives of both Powys and Herefordshire Council's Transportation/Highways teams and both have concluded that any issues that may arise can be resolved between the two separate Councils. Conditions recommended as attached to the report have been considered by Powys County Council's Transportation Officers' and are copied out in full below for Member consideration.

## **ADDITIONAL REPRESENTATIONS**

In consideration of the close proximity of the application site to Powys and potential cross border issues in respect of public highway issues, with regards to suggested conditions as attached to the report on public highway issues in relationship to access points, off the adjacent public highway in Powys County

Council's control, further clarification has been sought from Powys County Council Highways in respect of suitable worded conditions that are acceptable to each Authority on highway issues.

Both Herefordshire and Powys Council's Transportation/Highway teams have confirmed that the conditions below are acceptable to each of their respective transportation specifications.

The conditions and informatives' as attached to the Committee report are printed out below in full for clarification purposes, with one additional condition with regards to implementation of suitable access into the site on completion of the development and cessation of abnormal load movements to the development site.

*19. H03 Before any other works hereby approved are commenced, visibility splays shall be provided from a point 0.6 metres above ground level at the centre of the access to the application site and 2.4 metres back from the nearside edge of the adjoining carriageway (measured perpendicularly) for a distance of 60 metres in each direction along the nearside edge of the adjoining carriageway. Nothing shall be planted, erected and/or allowed to grow on the triangular area of land so formed which would obstruct the visibility described above.*

*Reason: In the interests of highway safety and to conform with the requirements of Policy DR3 of Herefordshire Unitary Development Plan.*

*20 H05 Any new access gates/doors shall be set back 15 metres from the adjoining carriageway edge and shall be made to open inwards only, and the development hereby permitted shall not be brought into operational use until a scheme and specification has been submitted and approved in writing by the local planning authority for the alteration of the accesses serving the development site to minimise the width of access and set back the gate 5m from the edge of the adjoining carriageway.*

*Reason: In the interests of highway safety and to conform with the requirements of Policy DR3 of Herefordshire Unitary Development Plan.*

*21 The approved scheme and specification referred to in condition number 20 above shall be fully implemented to the written satisfaction of the local planning authority within one month from the first operational use of the wind farm.*

*Reason: In the interests of highway safety and to conform to the requirements of Policy DR3 of the Herefordshire Unitary Development Plan.*

*22.H06 Before any other works hereby approved are commenced, the construction of the vehicular access shall be carried out in accordance with a specification to be submitted to and approved in writing by Herefordshire and Powys County Councils as Local Planning Authorities, at a gradient not steeper than 1 in 12.*

*Reason: In the interests of highway safety and to conform with the requirements of Policy DR3 of Herefordshire Unitary Development Plan.*

*23. H13 The development hereby permitted shall not be brought into use until the access, turning area and parking facilities shown on the approved plan have been properly consolidated, surfaced, drained and otherwise constructed in accordance with details to be submitted to and approved in writing by the local planning authority and these areas shall thereafter be retained and kept available for those uses at all times.*

*Reason: In the interests of highway safety and to ensure the free flow of traffic using the adjoining highway and to conform with the requirements of Policy T11 of Herefordshire Unitary Development Plan.*

24. H21 Development shall not begin until wheel cleaning apparatus has been provided in accordance with details to be submitted to and approved in writing by the local planning authority, and which shall be operated and maintained during construction of the development hereby approved.

*Reason: To ensure that the wheels of vehicles are cleaned before leaving the site in the interests of highway safety and to conform with the requirements of Policy DR3 of Herefordshire Unitary Development Plan.*

25 H27 Development shall not begin until parking for site operatives and visitors has been provided within the application site in accordance with details to be submitted to and approved by the local planning authority and such provision shall be retained and kept available during construction of the development.

*Reason: To prevent indiscriminate parking in the interests of highway safety and to conform with the requirements of Policy DR3 of Herefordshire Unitary Development Plan.*

26. H30 Prior to the commencement of the development a Travel Plan which contains measures to promote alternative sustainable means of transport for staff and visitors with respect to the development hereby permitted shall be submitted to and be approved in writing by the Local Planning Authority. The Travel Plan shall be implemented, in accordance with the approved details, on the first occupation of the development. A detailed written record shall be kept of the measures undertaken to promote sustainable transport initiatives and a review of the Travel Plan shall be undertaken annually. All relevant documentation shall be made available for inspection by the local planning authority upon reasonable request.

*Reason: In order to ensure that the development is carried out in combination with a scheme aimed at promoting the use of a range of sustainable transport initiatives and to conform with the requirements of Policy DR3 of Herefordshire Unitary Development Plan.*

*Informatives:*

2. HN01 It is an offence under Section 148 of the Highways Act 1980 to allow mud or other debris to be transmitted onto the public highway. The attention of the applicant is drawn to the need to keep the highway free from any mud or other material emanating from the application site or any works pertaining thereto.

3. HN04 This permission does not authorise the laying of private apparatus within the confines of the public highway. The applicant should apply to Amey Herefordshire (Managing Agent for Herefordshire Council) Highways Services, Unit 3 Thorn Business Park, Rotherwas, Hereford HR2 6JT, (Tel: 04132 845900), for consent under the New Roads and Streetworks Act 1991 to install private apparatus within the confines of the public highway. Precise details of all works within the public highway must be agreed on site with the Highway Authority. A minimum of 4 weeks notification will be required (or 3 months if a road closure is involved).

Under the Traffic Management Act 2004, Herefordshire Council operate a notice scheme to coordinate Streetworks. Early discussions with the Highways Services Team are advised as a minimum of 4 weeks to 3 months notification is required (dictated by type of works and the impact that it may have on the travelling public). Please note that the timescale between notification and you being able to commence your works may be longer depending on other planned works in the area and the traffic sensitivity of the site. The Highway Service can be contacted on Tel: 01432 845900.

4. HN05 This planning permission does not authorise the applicant to carry out works within the publicly maintained highway and Amey Herefordshire (Managing Agent for Herefordshire Council) Highways Services, Unit 3 Thorn Business Park, Rotherwas, Hereford, HR2 6JT (Tel: 01432 845900), shall be given at least 28 days' notice of the applicant's intention to commence any works

*affecting the public highway so that the applicant can be provided with an approved specification, and supervision arranged for the works.*

*Under the Traffic Management Act 2004, Herefordshire Council operate a notice scheme to co-ordinate Streetworks. Early discussions with the Highways Services Team are advised as a minimum of 4 weeks to 3 months notification is required (dictated by type of works and the impact that it may have on the travelling public). Please note that the timescale between notification and you being able to commence your works may be longer depending on other planned works in the area and the traffic sensitivity of the site. The Highway Service can be contacted on Tel: 01432 845900.*

*5. HN07 No work on the site should commence until engineering details of the improvements to the public highway have been approved by the Highway Authority and an agreement under Section 278 of the Highways Act 1980 entered into. Please contact the Senior Engineer, PO Box 236, Plough Lane, Hereford HR4 0WZ to progress the agreement.*

*6. HN10 Drainage arrangements shall be provided to ensure that surface water from the driveway and/or vehicular turning area does not discharge onto the public highway. No drainage or effluent from the proposed development shall be allowed to discharge into any highway drain or over any part of the public highway.*

*7. HN24 It is the responsibility of the developer to arrange for a suitable outfall or discharge point. It cannot be assumed that the highway drainage system can be used for such purposes.*

*8 HN25 In connection with Condition number 26 the applicant is advised that advice on its formulation and content can be obtained from the Sustainable Travel Officer, Herefordshire Council Transportation Unit, PO Box 236, Plough Lane, Hereford HR4 0WZ*

*9. HN28 The applicant's attention is drawn to the requirement for design to conform to Herefordshire Council's 'Highways Design Guide for New Developments' and 'Highways Specification for New Developments'.*

*11 The applicants or successors in title are reminded that permission is required from Powys County Council with regards to the shared access from the adjacent public highway to turbine numbers 1 and 2 and the access from the public highway to turbine number 4 as indicated on the 'Proposed red line boundary map.*

## **OFFICER COMMENTS**

Clarification on suitably worded public highway conditions in respect of the separate Council's Highways/Transportation sections is welcome, as it confirms that in the event of development on site in relation to cross border issues, that both the respective Councils' agree to the wording of the recommended conditions from a public highway perspective.

## **ADDITIONAL REPRESENTATIONS**

- Additional clarification from the Environment Agency was sought on publication of the Committee report, in consideration of the wording of condition number 13(e), attached to the Committee report. The advice given was that this section of the condition be revised to read as follows:

*'the arrangements for undertaking sampling measurement and analysis of private water supplies, before, during and following construction (a period of up to 6 months, or as otherwise agreed as part of the Private Water Supply Protection Plan').*

## **OFFICER COMMENTS**

It is recommended that condition number 13(e) is reworded in accordance with the advice as given by the Environment Agency.

### **ADDITIONAL REPRESENTATIONS**

An additional letter has been received from Herefordshire Branch of the Campaign to Protect Rural England. The letter raises concerns about the previous report to Committee on 12<sup>th</sup> February 2009, in that it did not give sufficient weight to the quality of the surrounding landscape. The letter makes comment that the site is within close proximity to the Shropshire Area of Outstanding Natural Beauty, (AONB), and that the site is in an area known as Mortimer Country and that this is a stunningly beautiful landscape, that is home to several historic parks of national importance. Comment is also made that weight be given to the energy benefits of wind farms now seems to be a lot less than in 2009.

### **OFFICER COMMENTS**

Whilst it is acknowledged that the application site is situated within an area known as Mortimer Country, and this landscape is appreciated as a landscape of significant value, the fact is that this has no recognised landscape designation and Officers consider that the previous report to Committee did give sufficient consideration to the surrounding landscape in which the application site is situated in, in consideration of national and local designations.

### **ADDITIONAL REPRESENTATIONS**

A letter has been received from Charlie Hopkins, Planning and Environmental Consultant acting on behalf of Stonewall Hill Conservation Group. The letter raises concerns about boundary issues in relationship to the application site, in relationship to public highway access issues. Concerns are also raised about the planning fee and area of land subject to the planning fee paid to the Council in respect of the application.

### **OFFICER COMMENTS**

The public highway access to the site is proposed via a road within Powys County Council's administrative control from the A4113 public highway. Public highway issues are subject to a Section 106 agreement under the Town and Country Planning Act 1990 drawn up between representatives of Shropshire, Powys and Herefordshire Council, who will be signatories to this agreement with the applicants, who have confirmed agreement to its contents. (The key issues subject to the agreement form part of the Heads of Terms attached to the Committee report). Paragraph 3 of the Heads of Terms makes reference to suitable access to the site prior to any development on site to the satisfaction of Powys County Council. Powys County Council Highways Authority have confirmed that the suggested public highway conditions forming part of this update to Committee are acceptable.

It is understood that the applicants have an application registered with Powys County Council for public highway improvements, and the issue as to whether the current application is amended to include public highway access into the application site or whether it is withdrawn and a revised application submitted is a matter between the applicants and Powys County Council.

The Council has reviewed the concerns about the planning fee paid to the Council in relationship to the proposed development, which includes allowance for micro- siting and are satisfied with the planning fee paid and area of land in relationship to the proposed development, it refers to.

## **ADDITIONAL REPRESENTATIONS**

A letter has been received from Geoffrey Sinclair, Environmental Information Services, on behalf of Stonewall Hill Conservation Group. The letter raises concerns that his submission on behalf of the Conservation Group is not referred to in the Committee report.

## **OFFICER COMMENTS**

The report by Mr. Sinclair was submitted prior to the application being referred to Committee on 12<sup>th</sup> February 2009. It is acknowledged the report was submitted on behalf of the Action Group, and this Group are referred to in the report, being one of many representations received and therefore Officers are of the opinion that issues as raised by Mr. Sinclair were addressed. No response from Mr. Sinclair has been received in consideration of the public consultation to the additional information received subject to the Regulation 19 request under EIA Regulations.

## **ADDITIONAL REPRESENTATIONS**

A letter has been received from Dr. Hugh-Jones on behalf of Stonewall Hill Conservation Group who acknowledges that members of the Group have read the report to Committee and that they seek clarification with regards to the separate planning application to Powys County Council for highway improvements.

The letter also makes comment with regards to visual radii with regards to their opinion that no assessment has been made in respect of individual properties and that their Solicitors (Richard Buxton), requested a condition with regards to amplitude modulation, (AM), in consideration of current best practice.

Comment is made about the wording of condition numbers 8, 13(e) and 32 as attached to the report.

Comment is also made in respect of the Draft Heads of Terms and who are the intended signatories and that there is no mention of the total height of the turbines indicating that even taller ones could be installed on site.

## **OFFICER COMMENTS**

A planning application is presently registered with Powys County Council for highway improvements in consideration of the requirement for abnormal loads to be transported to the site.

The Construction Traffic Management Plan in support of the application details necessary highway improvements to the site such as a stretch of new road way on land within Powys County Council's administrative area as well as highway improvements to the existing public highway nearer to the application site.

It is a planning matter between the applicants and Powys County Council on how to resolve the public highway issues with regards to land within Powys County Council's administrative area, and whether the applicants withdraw the current application and re-submit a revised application to include access in to the site off the adjacent public highway or amend the existing application.

The visual impact of the proposal from residential dwellings was reported at paragraph 6.35 of the original Committee report as being significant. Consideration to the information originally provided in respect of Visual impact and visual radii and the additional information received as a result of the Regulation 19 request conclude that information on this issue as provided by the applicants is acceptable.



The issue with regards to AM has been addressed earlier in this update in respect of communication received from Richard Buxton, that condition number 36, noise management report adequately addressed issues in respect of AM.

The wording of condition number 8 is considered acceptable as allowances need to be made for micro-siting.

It is acknowledged that the wording of condition number 13 (e), is confusing and as indicated earlier not considered necessary and therefore recommended for re-phrasing.

Clarification is required in relationship to rating value as indicated in condition number 32; however this appears to be a typing error that can be easily rectified.

The intended signatories in respect of the Draft Heads of Terms and the Section 106 agreement are the persons who have interests in the land, as well as the relevant Councils.

The original report to Committee, (attached as appendix one), in paragraph 1.8 refers to the total height of the proposed turbines and condition number one attached to the report refers to plans that the proposed development refers to.

## **ADDITIONAL REPRESENTATIONS**

75 additional letters of objections have been received from members of the public. Some of these letters are from the same households. Many are from dwellings in Wales as well as throughout England. Issues raised are various and cover concerns about the principle of the proposed development, as well as commenting upon the additional information received, as a result of the Council's EIA Regulation 19 request to the applicants.

Key concerns raised that are considered not to have been considered subject to the Committee report are as follows:

- Economics of wind power and the requirements for other sources of energy to back up power generated by wind energy.
- Concerns about the validity of the proposed Landscape Enhancement Fund.
- Consultations with Powys County Council.
- Procedure at the previous planning Committee in relationship to this application.

## **OFFICER COMMENTS**

- It remains Government policy to encourage different forms of renewable energy and this includes wind energy. Planning Policy Statement 22 clearly states that small scale projects can provide a limited but valuable contribution to overall outputs of renewable energy and to meeting energy needs both locally and nationally and that Planning Authorities should not therefore reject planning applications simply because the level of output is small.
- The Landscape Enhancement Fund is proposed in consideration of advice as given by Natural England in consideration of landscape/biodiversity enhancement/mitigation as set out in the draft Heads of Terms attached to this report. The proposed landscape fund was not at the request of the Council but offered by the applicants in consideration of comments made by Natural England. The principle of the fund is considered reasonable, as it offers landscape/biodiversity enhancement/mitigation that is considered a planning consideration.
- The Council has engaged in consultation with Powys County Council as well as Shropshire County Council whose administrative boundary is also located near to the proposed development site. Many of these issues have been subject to the information received as a result of the Council's Regulation 19 request under EIA Regulations, to which Powys have not made comment, other than a response from their Environmental Health Section indicating no objections on noise issues.

- The Council considers the procedure at the previous Committee meeting on 12<sup>th</sup> February 2009 in respect of this application was in accordance with Council policy on presentation of applications to Committee, with consideration also given to the Article 14 Direction issued to the Council by the Secretary of State, who requested time to consider the application in-light of concerns raised by the public.

## **NO CHANGE TO RECOMMENDATION**

However in consideration of potential cross border issues, it is recommended that the following condition is attached to any approval notice in respect of highway safety issues.

- **The approved scheme and specification referred to in condition number 20 above shall be fully implemented to the written satisfaction of the local planning authority within one month from the first operational use of the wind farm.**

**Reason: In the interests of highway safety and to conform with the requirements of Policy DR3 of the Herefordshire Unitary Development Plan.**

- **Condition number 13 (e) is re-worded to state: *'the arrangements for undertaking sampling measurement and analysis of private water supplies, before, during and following construction (a period of up to 6 months, or as otherwise agreed as part of the Private Water Supply Protection Plan')*.**