



Department for  
Communities and  
Local Government

Mrs Faye Scott  
AAH Planning Consultants  
2 Bar Lane  
York  
North Yorkshire YO1 6JU

Our Ref: APP/E2001/A/14/2217703

19 May 2016

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY MR ROGER BRAMHILL  
AT HUMBERSIDE FARMERS LTD, NEWBALD LODGE, NORTH NEWBALD, YORK  
APPLICATION REFERENCE DC/13/03571/PLF/EASTSE**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Andrew Hammond MSc MA CEng MIET MRTPI who made a site visit on 3 March 2015 into your client's appeal against the decision of the East Riding of Yorkshire Council (the Council) to refuse planning permission for the erection of 1 No. 24.6m (hub) high, 34.2m (tip) high wind turbine plus ancillary development on land at Humberside Farmers Ltd, Newbald Lodge, North Newbald, York, in accordance with application reference DC/13/03571/PLF/EASTSE, dated 28 October 2013.
2. On 30 September 2015 the appeal was recovered for the Secretary of State's determination in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it relates to proposals which raise important or novel issues of development control and/or legal difficulties.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal be granted and planning permission be granted subject to conditions. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and recommendation, allows the appeal and grants planning permission subject to conditions. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

**Policy and Statutory Considerations**

4. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

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5. In this case the development plan comprises saved policies of the Joint Structure Plan for Hull and The East Riding (JSP) and of the Beverley Borough Local Plan (LP). The Secretary of State considers that the development plan policies of most relevance to this appeal are those identified by the Inspector at IR3 to 6.
6. The Secretary of State has had regard to his WMS of 18 June 2015. The statement explained that the Secretary of State was setting out new considerations to be applied to proposed wind energy development. Subject to a transitional provision, the statement explained that the new considerations had immediate effect. Given its relevance to this case, the Secretary of State attaches substantial weight to the statement as the most recent expression of government planning policy for onshore wind development.
7. The statement includes a transitional provision to apply where a valid planning application for wind energy development had already been submitted to a local planning authority at the date on which the statement was made and the development plan does not identify suitable sites. In such instances, local planning authorities can find the proposal acceptable if, following consultation, they are satisfied it has addressed the planning impacts identified by affected local communities and therefore has their backing. In applying the transitional provision to this application proposal the Secretary of State has considered the representations reported in the Inspector's Report.
8. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ("the Framework") and the planning guidance published in March 2014; the National Policy Statements (NPS) for Energy (EN-1) and Renewable Energy (EN-3); the Community Infrastructure Levy (CIL) Regulations 2010 as amended and Planning Practice Guidance for Renewable and Low Carbon Energy (2013). The Secretary of State has also taken into account the Written Ministerial Statements on renewable energy published in June 2013 by the Secretaries of State for Energy and Climate Change and for Communities and Local Government and the Written Ministerial Statement on renewable energy published by the Secretary of State for Communities and Local Government in April 2014.

### **Main Issues**

9. The Secretary of State considers that the main issues in this case are those identified by the Inspector at IR31 - 41.

#### *Compliance with the development plan*

10. The Secretary of State agrees with the Inspector's analysis that the Framework is supportive of renewable energy projects and that applications should be approved if impacts are, or can be made, acceptable, and that the emerging East Riding Local Plan mirrors this support in principle. He notes that the Inspector has had due regard to the DCLG Planning Practice Guidance for Renewable and Low Carbon Energy (2013) which emphasises that protecting local amenity is an important consideration which should be given proper weight in planning decisions. He also agrees with the Inspector's conclusion at IR41 that the development would not have a significant effect on the character and visual amenity of the landscape and would therefore not conflict with the key development plan policies in this case which are JSP Policies S4 and S5 or LP Policy In13.

#### *The effect on the landscape character and visual appearance of the area and cumulative impacts*

11. In respect of the scheme's impact on landscape character and appearance, for the reasons given by the Inspector at IR31-35, the Secretary of State agrees that from the majority of

viewpoints the proposed wind turbine would be screened from view by vegetation and the rolling landform, and that it would be substantially smaller in scale than the turbines in the two wind farms at Sancton Hill and Sober Hill and this, combined with the relative locations, would result in the landscape being capable of assimilating an additional, much smaller scale turbine, without undue effect on the landscape or on visual amenity or the character and appearance of the area (IR34). He concurs with the Inspector's view (IR35) that any cumulative effect of the proposed turbine in conjunction with the windfarms, the other, operational, Endurance wind turbine and a further similar small scale wind turbine some distance away at Wrangmandale would be negligible.

12. The Secretary of State agrees that the proposed wind turbine would make a modest but significant contribution to the imperative of a reduction in greenhouse gas emissions and would also result in the enterprise at Newbald Farm being self-reliant on electricity. He also agrees with the Inspector's conclusion that whilst the proposal would add to the already significant number of wind turbines in the immediate area, one additional agricultural scale wind turbine would not introduce a significant change to the character of the landscape and would not result in undue visual impact either individually or cumulatively (IR40).

*Written Ministerial Statement (WMS) of 18 June 2015*

13. Turning to the consistency with the WMS which concerns wind farms, the affected local communities, as represented by the Parish Councils, have raised planning concerns in relation to potential landscape and visual amenity impact and the cumulative impact of any additional wind turbines in the area. The Secretary of State agrees with the Inspector's analysis at IR 31-35 and conclusions at IR40-41 that the development would not have a significant effect on the character and visual amenity of the landscape, nor result in undue cumulative impact, and would not conflict with JSP Policies S4 and S5 (landscape character and design) or LP Policy In13 (renewable energy). As such he agrees with the Inspector that the planning concerns of the Parish Councils, representing the local community, have been addressed in the circumstances of this case. Accordingly, he considers that the transitional provision within the WMS is satisfied.

*Other matters*

14. The Secretary of State notes at IR36 that the Ministry of Defence had objected to the proposal on the basis of potential impact on National Defence Radar at Staxton Wold and that the objection had been withdrawn. He concurs with the view of the Inspector at IR37 that the proposed development would not result in any loss of residential amenity, with regard to noise or outlook, at Paddock House, Newbald Lodge Cottages and Flower Hill Farm.

**Conclusions**

15. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. For the reasons set out at paragraph 10 above, the Secretary of State concludes that the appeal proposal would be in accordance with the development plan.
16. For the reasons given at paragraph 13 above he further concludes that the transitional provision of the WMS is satisfied.
17. The Secretary of State concludes that the proposed wind turbine would make a modest but significant contribution to the imperative of a reduction in greenhouse gas emissions, to which he gives significant weight, and would also result in the enterprise at Newbald Farm being self-reliant on electricity, to which he affords further moderate weight.

18. Having considered the material considerations in this case, the Secretary of State does not consider that the proposal should be determined otherwise than in accordance with the development plan. Given this, the Secretary of State agrees with the Inspector's overall recommendation that the appeal should be allowed.

### **Conditions**

19. The Secretary of State has had regard to the Inspector's remarks on conditions at IR38, the suggested conditions in the Schedule attached to the IR, paragraphs 203 and 206 of the Framework, and the guidance. He is satisfied that the proposed conditions are reasonable and necessary and meet the tests of paragraph 206 of the Framework.

### **Formal Decision**

20. Accordingly, for the reasons given above the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission for the erection of 1 No. 24.6m (hub) high, 34.2m (tip) high wind turbine plus ancillary development at land associated with Humberside Farmers Ltd, Newbald Lodge, North Newbald, York in accordance with application reference DC/13/03571/PLF/EASTSE, dated 28 October 2013, subject to the conditions set out at Annex A to this letter.

21. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

22. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

### **Right to challenge the decision**

23. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within six weeks from the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

24. A copy of this letter has been sent to East Riding of Yorkshire Council. A letter of notification has been sent to all other parties who asked to be informed of the decision.

Yours sincerely

*Phil Barber*

**Phil Barber**

Authorised by Secretary of State to sign in that behalf

## **Annex A**

### **SCHEDULE OF RECOMMENDED CONDITIONS**

1 The development hereby permitted shall begin not later than three years from the date of this decision.

Reason: To comply with the requirements of section 91 of the town and Country Planning act 1990 as amended.

2 The development hereby permitted shall be carried out fully in accordance with the following plans:-

- i. Location Plan, dated 25 October 2013;
- ii. Site Plan, dated 25 October 2013; and
- iii. Elevation Plan Turbine E3120 50kW monopole, submitted 29 October 2013

Reason: In the interest of proper planning and for the avoidance of doubt.

3 Noise emissions from the site (as measured LA90, 10 mins) in free-field conditions, at any noise sensitive premises in existence prior to the development or which have already been given planning permission, shall not exceed 35 dB LA90, 10mins for all wind speeds up to 10m/s 9day and night).

Reason: In the interest of residential amenity.

4 At the reasonable request of, and following a complaint to, the Local Planning Authority, the operator of the development shall measure and assess at its expense the level of noise emissions from the wind turbine generators following the procedures described in "The Assessment and Rating of Noise from Windfarms, ETSU-R-97" published by ETSU for the Department of Trade and Industry. If the noise levels are found to exceed those in Condition 2 a scheme of noise mitigation, including predicted levels following mitigation, shall be submitted to the Local Planning Authority for approval and any remediation measures shall be implemented within a period of 4 months from the written request of the local Planning Authority.

Reason: In the interest of residential amenity.

5 If the turbine hereby approved ceases, for a continuous period of 12 months, to operate (unless due to the turbine being under repair or replacement) then, unless otherwise approved in writing by the Local Planning Authority, a scheme for the decommissioning and removal of the turbine and any ancillary equipment and structures relating solely to the turbine, shall be submitted to and approved in writing by the Local Planning Authority within 3 months of the cessation. The approved scheme shall be implemented within 12 months of the date of its approval by the Local Planning Authority.

Reason: In the interests of visual amenity and to ensure that the turbines produce electricity whilst in situ and that they are removed from the land if they cease to function.

6 Before any development commences the Ministry of Defence shall be informed of the proposed date of the start of construction and the predicted completion date; the maximum height of the construction equipment; and the latitude and longitude of the turbine.

Reason: In the interest of aviation safety.

7 Before any development commences a scheme and programme of archaeological work shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include:-

- i. A programme and methodology of site investigation and recording to provide for the proper identification and evaluation of the extent, character and significance of archaeological remains within the application area.
- ii. An assessment of the impact of the proposed development on the archaeological remains.
- iii. Proposals for the preservation in situ, or for the investigation, recording and recovery of archaeological remains and the publication of the findings, with a presumption in favour of preservation in situ wherever feasible.
- iv. A programme of post investigation of the results of the on-site evaluation.

- v. Provision for analysis of the site investigation and recording, following the post-excavation assessment, where the results justify this.
- vi. Provision for the publication and dissemination of the analysis and records of the site investigation where the results justify this.
- vii. Provision for the archive deposition of the analysis and records of the site investigation.
- viii. Nomination of a competent person or persons to undertake the works set out within the scheme of investigation. Sufficient notification and allowance of time for the nominated archaeological contractors to ensure that the fieldwork proposed in pursuance of i) to iii) above is completed prior to the commencement of the permitted development.
- ix. Notification in writing to the Curatorial Officer of the Humber Archaeology Partnership of the commencement of archaeological works and the opportunity to monitor such works.
- x. No development or demolition shall take place other than in accordance with the approved scheme. No grubbing out of the foundations shall take place without a nominated archaeologist being present during the works and should any archaeological deposits be exposed during the course of the works they should be properly recorded.
- xi. The wind turbine shall not be brought into operation until the site investigation and post investigation assessment has been completed in accordance with the approved scheme and provision made for analysis, publication and dissemination of results and archive deposition has been secured.

Reason: In order to safeguard archaeological features given the proximity of Scheduled Bronze Age remains.

8 Before any development commences a scheme to secure the investigation and mitigation of any electromagnetic interference to TV reception caused by the wind turbine has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include identification of the shadow area; baseline study prior to construction; procedures and timing for investigative surveys following commissioning of the turbine; and details of remedial works and timescales for implementation. All surveys required by the scheme shall be carried out by a qualified engineer.

Reason: In the interest of residential amenity.

END OF SCHEDULE OF RECOMMENDED CONDITIONS

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# Report to the Secretary of State for Communities and Local Government

by Andrew Hammond MSc MA CEng MIET MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 23 November 2015

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**TOWN AND COUNTRY PLANNING ACT 1990**

**APPEAL BY Mr ROGER BRAMHILL**

**against**

**EAST RIDING OF YORKSHIRE COUNCIL**

**in respect of**

**THE ERECTION OF 1 NO. 24.6m (HUB) HIGH, 34.2m (TIP) HIGH WIND  
TURBINE PLUS ANCILLARY DEVELOPMENT**

Site visit made on 3 March 2015

Humberside Farmers Ltd., Newbald Lodge, North Newbald, York.

File Ref(s): APP/E2001/A/14/2217703

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**File Ref: APP/E2001/A/14/2217703**

**Humberside Farmers Ltd., Newbald Lodge, North Newbald, York.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Roger Bramhill against the decision of East Riding of Yorkshire Council.
- The application Ref DC/13/03571/PLF/EASTSE, dated 28 October 2013, was refused by notice dated 1 April 2014.
- The development proposed is the erection of 1 No. 24.6m (hub) high, 34.2m (tip) high wind turbine plus ancillary development.

**Summary of Recommendation: The appeal be allowed, and planning permission granted subject to conditions.**

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**Procedural Matter**

1. By letter dated 8 July 2017, the Planning Inspectorate invited the appellant's agent and the Council to comment on how the Written Ministerial Statement on Local Planning made on 18 June 2015 (HCWS42) and the Department for Communities and Local Government's amended online guidance on renewable and low carbon energy affects the proposed development which is the subject of this appeal. The responses are incorporated in the cases of the parties below.

**Planning Policy**

Local planning policy

2. For the purposes of this appeal the development plan comprises saved policies of the Joint Structure Plan for Hull and The East Riding (JSP) and of the Beverley Borough Local Plan (LP).
3. JSP saved Policy SP4 states that
  - (a) The distinctive character of the Yorkshire Wolds, Jurassic Hills, Vale of York, Holderness, Humber Estuary and Ouse and Trent Levels' Regional Landscape Character Areas should be protected. Development should protect and where necessary enhance or restore distinctive landscape character.
  - (b) Local Development Frameworks will provide landscape guidelines based on local landscape types within each of the Regional Landscape Character Areas. Particular attention should be given to the unique local landscapes of:
    - (i) Goole and Crowle Lowlands;
    - (ii) Lower Derwent Valley;
    - (iii) Spurn; and
    - (iv) Flamborough Head.
4. JSP saved Policy SP5 states that development proposals should achieve a high standard of design that:
  - (i) respects local landscape and settlement character including building styles and materials;
  - (ii) integrates visually and physically with its surroundings;
  - (iii) harnesses local heritage and landscape distinctiveness;
  - (iv) maximises the use of sustainable construction material and techniques;
  - (v) makes it easy and safe for people to move around and through the development;



- (vi) encourages a vibrant mix of uses either on the site or across a wider area; and
  - (vii) facilitates walking, cycling and the use of public transport.
5. LP saved Policy In13 states that proposals for renewable energy development will be allowed provided the development will meet all of the following criteria:
- a) it will not significantly detract from the character, appearance or amenity of the area
  - b) it will not conflict with neighbouring land uses
  - c) it will not significantly affect an area of nature conservation or archaeological importance
  - d) it will not cause significant adverse effect on electro magnetic communications systems. Account will be taken of any mitigating measures included as part of the proposed development.
6. The Inspector's report on the Examination in Public of the East Riding Local Plan (ERLP) has yet to be published and the weight to be attached to policies of the Proposed Submission Strategy Document is currently limited. Draft Policy ENV2 requires that development should be sensitively integrated into the existing landscape; demonstrate an understanding of the intrinsic qualities of the landscape.

#### National Planning Policy

7. The National Planning Policy Framework (NPPF) contains provisions specific to renewable energy developments and other provisions relevant to the application. Paragraph 98 states that an application for a renewable energy project should be approved if its impacts are or can be made acceptable and if material considerations do not indicate otherwise. Paragraph 134 states that where a proposed renewable energy project will lead to less than substantial harm to the significance of a heritage asset this harm should be weighed against the public benefits of the proposal.

#### The Site and Surroundings

8. The appeal site is located within a designated Area of High Landscape Value and in landscape type 13C South Wolds Rolling Farmland as according to the East Riding of Yorkshire Landscape Character Assessment (LCA). The character type is assessed to be of high quality offering a varied rolling landform and extensive views with scattered farmsteads with shelterbelts.
9. Within the landscape there are a significant number of vertical structures. In addition to existing wind turbines, the appeal site is crossed by a series of large 400kV electricity transmission towers.
10. Newbald Farm is part of an arable farming enterprise producing wheat, barley, oilseeds, potatoes and peas. The enterprise uses around 330,000kWh of electricity per annum. There is an existing 50kW Endurance E-3120 wind turbine, of the same design as that proposed, already in operation on the farm and this generates around 240,000kWh of electricity per annum.
11. The site of the proposed wind turbine is close to the existing Endurance machine, some 800m along a farm track which passes the farm buildings, and

around 350m north of the closest public road. The nearest dwelling not associated with Newbald Farm is Flower Hill Farm, some 850m to the south.

12. In addition to the existing Newbald Farm wind turbine, the Sancton Hill Windfarm and the Sober Hill Windfarm are located nearby to the west and north-west with a total of 11 substantially larger wind turbines, each rated at around 2MW, standing approximately 100m to blade tip.
13. The site of the proposed development lies within an area of major archaeological significance. Just to the north of the turbine location is a row of five Bronze Age round barrows, the most southerly of which is a Scheduled Monument (National Monument no. 21146). The turbine has been located to avoid impacting upon these and there are no objections to the scheme subject to appropriate conditions. The scheme would not as a result have any detrimental effects on heritage assets.

### **Planning History**

14. The existing wind turbine at Newbald Farm was approved on 19 April 2013 [Ref. 13/00520/PLF].

### **The Proposal**

15. The proposed wind turbine is of a 3 bladed design with a hub height of 24.6m and a total height to blade tip of 34.2m. The appellant forecasts that it would generate at least 200,000kWh per annum making the farming enterprise self sufficient with regard to electricity consumption.

### **Statutory Requirements**

16. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that, if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, determination must be made in accordance with the plan unless material considerations indicate otherwise.

### **The Case for East Riding of Yorkshire Council**

17. The appeal site is within the landscape character area 13C (Yorkshire Wolds – Open, High, Rolling Farmland) which is sensitive to windfarm development due to openness and attractiveness, with wind turbines potentially viewable from extensive distances adding to existing turbines, communication masts and electricity pylons which already impact on the landscape.
18. Whilst the height of the proposed wind turbine would be modest when compared with those at Sancton Hill and Sober Hill it would still be of medium height with views from many locations within the surrounding landscape.
19. There are locations where a number of wind turbines are viewed collectively in the same visual zone and examples where their cumulative effects have the potential to become significant to the point where they dominate the landscape.
20. The proposed turbine, in conjunction with other wind turbines in the wider area, would create an unacceptable negative cumulative impact on the landscape, particularly taking into account that the farmstead is already served by one turbine.

21. The Council's decision to refuse planning permission was taken in the light of objections from three local Parish Councils, and their ongoing objections demonstrate that the planning impacts identified by local communities have not been addressed and the proposal does not have their backing. It is therefore considered that the appeal should be dismissed in accordance with the Written Ministerial Statement and for the reasons set out in the Notice of Decision, namely that *the scale, design and location of the proposed turbine would have a detrimental impact on the character of the landscape. It is considered that the proposed turbine would have an unacceptable harmful visual impact on landscape and detract from the character and appearance of the area and visual quality of the wider landscape. There are already a number of wind turbines within the immediate area and it is considered that the addition of an additional turbine of the scale proposed would increase the cumulative impact of wind development in the area and would therefore further erode the quality of the landscape. Whilst it is acknowledged that the wind turbine would produce energy from a renewable source, in this case it is considered that the benefits of this are outweighed by the detrimental cumulative harm to the landscape.*
22. *The proposal is therefore considered to be contrary to JSP policies SP4 and SP5 and LP policy IN13.*

### **The Case for the appellant**

23. Having assessed the officer report and the decision notice the appellant concludes that it is clear that the proposal is considered acceptable and in accordance with policy in all aspects save for cumulative landscape and visual impact. However, the Council's Case Officer and the Council's Landscape and Visual Assessment Team had no objection to the scheme with regard to landscape and visual impact, stating that it would not have a significant detrimental impact on the quality of the existing landscape.
24. The proposed wind turbine would be in close proximity to the existing turbine of the same height and design. Where both would be visible in the same close view they would be seen as subservient in scale to the electricity pylons that share that view. It is the Sancton Hill and Sober Hill wind turbines and the pylons crossing the area that dominate views and the existing and proposed turbines at Newbald Lodge are designed as small scale wind turbines serving the needs of the farm. Whilst the proposed turbine would clearly result in a further turbine within the landscape, it would not result in a significant impact given the context of the two windfarms.
25. The Council's assessment of the cumulative visual impact is out of scale with the level of impact generated by a single small scale turbine and the landscape does have the capacity to accommodate an additional wind turbine serving Newbald Lodge as proposed and resulting in the enterprise being self sufficient with regard to electricity generation and reducing carbon emissions by approximately 118 tonnes a year.
26. In response to the Written Ministerial Statement, the application has, through the supporting information, provided sufficient evidence to establish that there would be no significant adverse impacts and that the concerns raised by the local community are suitably addressed. Therefore the guidance outlined in paragraph 98 of the Framework applies and the determination should be to approve the application as its impacts are acceptable.

## Written Representations

27. There were no objections to the application from individual members of the public and no responses were received by the Planning Inspectorate in response to notification of the appeal. However Newbald Parish Council and the adjacent Parish Councils of Sancton and Bishop Burton objected to the application and all three Councils followed through their objections on appeal.
28. Newbald Parish Council consider that the addition of a further wind turbine of the scale proposed would increase the cumulative impact of wind development in the area and further erode the quality of the landscape.
29. Sancton Parish Council consider that there are already sufficient wind turbines in the locality – notably the Sancton Hill and Sober Hill windfarms and that any further turbines would increase the cumulative impact.
30. Bishop Burton Parish Council's objection is also related to the cumulative effect of any additional wind turbines in the area.

## Appraisal

31. Following the accompanied site visit to the appeal site it was possible to undertake an extensive unaccompanied tour of the wider area to conduct a thorough assessment of the potential effect and any cumulative impact of the proposed additional turbine.
32. The existing Endurance E-3120 wind turbine, being in close proximity to the proposed development and of the same size and design, provides clear guidance as to the visibility and impact on the landscape of a second machine.
33. The landscape is assessed by the Council as being of high quality, offering a varied rolling landform with extensive views and scattered farmsteads with shelterbelts. However, the local landscape is characterised by the two windfarms at Sancton Hill and Sober Hill together with the series of electricity transmission towers which cross the appeal site.
34. From the majority of viewpoints the proposed wind turbine would be screened from view by vegetation and the rolling landform. However more locally from the south-east, particularly from the highway, the two Endurance turbines (proposed and existing) would be apparent but visible within the context of the existing windfarms and electricity pylons. These existing features, although prominent in very local views, such as from Beverley Lane, are well assimilated into the landscape. The proposed wind turbine would be substantially smaller in scale than the turbines in the two windfarms and this, combined with the relative locations, would result in the landscape being capable of assimilating an additional, much smaller scale turbine, without undue effect on the landscape or on visual amenity or the character and appearance of the area.
35. The Sancton Hill and Sober Hill turbines are visible over a much wider area than would be the proposed turbine of around a third of their height. Any cumulative effect of the proposed turbine in conjunction with the windfarms, the other, operational, Endurance wind turbine and a further similar small scale wind turbine some distance away at Wrangmandale would be negligible.

## Other Matters

36. Initially the Ministry of Defence objected to the proposal on the basis of potential impact on National Defence Radar at Staxton Wold. That objection has been withdrawn.
37. Other than Newbald Lodge, owned by the appellant, the nearest residential properties are Paddock House, over 500m distant, Newbald Lodge Cottages (780m) and Flower Hill Farm (850m). The proposal would not result in any loss of residential amenity, with regard to noise or outlook, at any of these properties.

## Conditions

38. Recommended conditions are included in a Schedule attached to this report. The reason for each condition appears after the condition. They are in line with conditions proposed by the Council without comment by the appellant.

## Conclusions

39. The National Planning Policy Framework is supportive of renewable energy projects and states that applications should be approved if impacts are, or can be made, acceptable. The emerging East Riding Local Plan mirrors this support in principle. However, the DCLG Planning Practice Guidance for Renewable and Low Carbon Energy (2013) emphasises that protecting local amenity is an important consideration which should be given proper weight in planning decisions.
40. The proposed wind turbine would make a modest but significant contribution to the imperative of a reduction in greenhouse gas emissions and would also result in the enterprise at Newbald Farm being self reliant on electricity. Whilst the proposal would add to the already significant number of wind turbines in the immediate area, one additional agricultural scale wind turbine would not introduce a significant change to the character of the landscape and would not result in undue visual impact either individually or cumulatively.
41. The development would, therefore, not have a significant effect on the character and visual amenity of the landscape and would not conflict with JSP Policies S4 and S5 or LP Policy In13. As such the planning concerns of the Parish Councils, representing the local community, have been addressed.

## Recommendation

42. I recommend that the appeal be allowed and planning permission be granted for the erection of 1 No. 24.6m (hub) high, 34.2m (tip) high wind turbine plus ancillary development at Humberside Farmers Ltd., Newbald Lodge, North Newbald, York subject to conditions set out in a schedule attached to this report.

*Andrew Hammond*

Inspector



### **SCHEDULE OF RECOMMENDED CONDITIONS**

- 1 The development hereby permitted shall begin not later than three years from the date of this decision.

Reason: To comply with the requirements of section 91 of the town and Country Planning act 1990 as amended.

- 2 The development hereby permitted shall be carried out fully in accordance with the following plans: -
  - i. Location Plan, dated 25 October 2013;
  - ii. Site Plan, dated 25 October 2013; and
  - iii. Elevation Plan Turbine E3120 50kW monopole, submitted 29 October 2013

Reason: In the interest of proper planning and for the avoidance of doubt.

- 3 Noise emissions from the site (as measured LA90, 10 mins) in free-field conditions, at any noise sensitive premises in existence prior to the development or which have already been given planning permission, shall not exceed 35 dB LA90, 10mins for all wind speeds up to 10m/s 9day and night).

Reason: In the interest of residential amenity.

- 4 At the reasonable request of, and following a complaint to, the Local Planning Authority, the operator of the development shall measure and assess at its expense the level of noise emissions from the wind turbine generators following the procedures described in "The Assessment and Rating of Noise from Windfarms, ETSU-R-97" published by ETSU for the Department of Trade and Industry. If the noise levels are found to exceed those in Condition 2 a scheme of noise mitigation, including predicted levels following mitigation, shall be submitted to the Local Planning Authority for approval and any remediation measures shall be implemented within a period of 4 months from the written request of the local Planning Authority.

Reason: In the interest of residential amenity.

- 5 If the turbine hereby approved ceases, for a continuous period of 12 months, to operate (unless due to the turbine being under repair or replacement) then, unless otherwise approved in writing by the Local Planning Authority, a scheme for the decommissioning and removal of the turbine and any ancillary equipment and structures relating solely to the turbine, shall be submitted to and approved in writing by the Local Planning Authority within 3 months of the cessation. The approved scheme shall be implemented within 12 months of the date of its approval by the Local Planning Authority.

Reason: In the interests of visual amenity and to ensure that the turbines produce electricity whilst in situ and that they are removed from the land if they cease to function.

- 6 Before any development commences the Ministry of Defence shall be informed of the proposed date of the start of construction and the predicted completion date; the maximum height of the construction equipment; and the latitude and longitude of the turbine.

Reason: In the interest of aviation safety.

- 7 Before any development commences a scheme and programme of archaeological work shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include: -

- i. A programme and methodology of site investigation and recording to provide for the proper identification and evaluation of the extent, character and significance of archaeological remains within the application area.
- ii. An assessment of the impact of the proposed development on the archaeological remains.
- iii. Proposals for the preservation *in situ*, or for the investigation, recording and recovery of archaeological remains and the publication of the findings, with a presumption in favour of preservation *in situ* wherever feasible.
- iv. A programme of post investigation of the results of the on-site evaluation.
- v. Provision for analysis of the site investigation and recording, following the post-excavation assessment, where the results justify this.
- vi. Provision for the publication and dissemination of the analysis and records of the site investigation where the results justify this.
- vii. Provision for the archive deposition of the analysis and records of the site investigation.
- viii. Nomination of a competent person or persons to undertake the works set out within the scheme of investigation. Sufficient notification and allowance of time for the nominated archaeological contractors to ensure that the fieldwork proposed in pursuance of i) to iii) above is completed prior to the commencement of the permitted development.
- ix. Notification in writing to the Curatorial Officer of the Humber Archaeology Partnership of the commencement of archaeological works and the opportunity to monitor such works.
- x. No development or demolition shall take place other than in accordance with the approved scheme. No grubbing out of the foundations shall take place without a nominated archaeologist being present during the works and should any archaeological deposits be exposed during the course of the works they should be properly recorded.
- xi. The wind turbine shall not be brought into operation until the site investigation and post investigation assessment has been completed in accordance with the approved scheme and provision made for analysis, publication and dissemination of results and archive deposition has been secured.

Reason: In order to safeguard archaeological features given the proximity of Scheduled Bronze Age remains.

- 8 Before any development commences a scheme to secure the investigation and mitigation of any electromagnetic interference to TV reception caused by the wind turbine has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include identification of the shadow area; baseline study prior to construction; procedures and timing for investigative surveys following commissioning of the turbine; and details of remedial works and timescales for implementation. All surveys required by the scheme shall be carried out by a qualified engineer.

Reason: In the interest of residential amenity.

**END OF SCHEDULE OF RECOMMENDED CONDITIONS**



## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS**

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the date of the decision.

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### **SECTION 3: AWARDS OF COSTS**

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### **SECTION 4: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.