

**Parish: Winton, Stank & Hallikeld**  
Ward: Osmotherley & Swainby

Committee Date : 15 October 2015  
Officer dealing : Mr Peter Jones  
Target Date: 15 October 2015

# 13

**08/04984/DCN**

**Proposed discharge of conditions attached to application 08/04984/FUL - Siting of 4 132m high wind turbines, associated works and a new vehicular access at OS Fields 0058, 6375, 4300 and 0001, land South of A684, Northallerton for Infinis Energy Services Ltd.**

## **1.0 SITE DESCRIPTION AND PROPOSAL**

- 1.1 This application is for the discharge of conditions attached to planning permission 08/04984/FUL, granted on 10 December 2010, for the siting of four wind turbines, associated works and a new vehicular access. The application was granted with a five year commencement period which expires on 10 December 2015.
- 1.2 The decision notice relative to the approval of the scheme included a number of conditions which required details to be submitted to the Local Planning Authority for clearance prior to the commencement of development on the site. The decision notice included a number of other conditions with later trigger points. These included clearance of conditions relating to matters such as aviation radar which required clearance prior to the construction of a wind turbine rather than prior to the commencement of development.
- 1.3 An application submitted to modify conditions attached to the original permission has now been withdrawn and this application submitted to discharge conditions on the existing permission.
- 1.4 Applications for the discharge of conditions are not normally brought to Planning Committee. However, in this instance due to the level of local interest in the project and a request by the Ward Member, the application is being brought to Planning Committee.
- 1.5 It should be noted that unlike most applications before Committee, Members are able to approve or refuse the details submitted under each condition as opposed to making a single overall decision. As such, decision notices can be issued to approve or refuse all, none or some of the submissions. Additionally it should be noted that whilst certain conditions require information to be submitted, this in itself does not discharge the condition which still allows for an element of monitoring or further information to be submitted and implementation of what is approved.
- 1.6 The following conditions require approval of details prior to the commencement of development and are the subject of this application:
  - Condition 6 - Details of the location and design of the connection building
  - Condition 10 - Detection and mitigation of blade icing
  - Condition 11 - Surface water drainage
  - Condition 12 - Archaeology
  - Condition 13 - Soft landscaping
  - Condition 14 - Fuel and chemical storage
  - Condition 19 - Shadow flicker

- Condition 23 - Noise monitoring
- Condition 24 - Habitat management and enhancement plan
- Condition 25 - Ecological Clerk of Works appointment
- Condition 27 - Access construction
- Condition 30 - Prevention of mud on road
- Condition 32. Highway structure survey
- Condition 33 - Site compound and parking
- Condition 34 - Traffic management details

## **2.0 RELEVANT PLANNING AND ENFORCEMENT HISTORY**

- 2.1 08/04984/FUL - siting of 4 132m high wind turbines, associated works and a new vehicular access; Granted 10 December 2010.
- 2.2 15/00678/MRC - variation of conditions 6, 10, 19, 23 & 32 of permission 08/04984/FUL to allow later submission of details and alternative wording of conditions 9 & 14; Withdrawn 3 September 2015.

## **3.0 RELEVANT PLANNING POLICIES**

Core Strategy Policy CP1 - Sustainable development  
 Core Strategy Policy CP4 - Settlement hierarchy  
 Core Strategy Policy CP16 - Protecting and enhancing natural and man-made assets  
 Core Strategy Policy CP17 - Promoting high quality design  
 Core Strategy Policy CP18 - Prudent use of natural resources  
 Core Strategy Policy CP21 - Safe response to natural and other forces  
 Development Policies DP1 - Protecting amenity  
 Development Policies DP9 - Development outside Development Limits  
 Development Policies DP10 - Form and character of settlements  
 Development Policies DP29 - Archaeology  
 Development Policies DP30 - Protecting the character and appearance of the countryside  
 Development Policies DP34 - Sustainable energy  
 Development Policies DP31 - Protecting natural resources: biodiversity/nature conservation  
 Development Policies DP42 - Hazardous and environmentally sensitive operations  
 National Planning Policy Framework - published 27 March 2012

## **4.0 CONSULTATIONS**

- 4.1 An application to discharge conditions is not subject to the same consultation arrangements as an ordinary planning application. Conditions are used to allow the submission of further details following the grant of planning permission and often concern technical requirements requiring input from other agencies. Due to the level of interest in the proposed development the Parish Council has been consulted in addition to technical consultees.
- 4.2 Osmotherley Parish Council - The full conditions to the consent following the Planning meeting which approved the original application are the work of the Planning Officers and not directly of those elected to represent the public at large.

There is still considerable disquiet among the community and in particular those who will be directly affected should these turbines be erected as per the 2010 consent. The

objections listed remain as before and the PC wish to see a fair and open discussion held to ensure that these concerns are listened to and are addressed in a manner which would satisfy those affected. As well as the visual intrusion there are the health issues of some vulnerable residents, the environmental impact and also the need to address shadow flicker and noise as well as the concern over radar mitigation. These last three points in particular can only be determined when the design of the turbine blades has been finalised and current information indicates that the developers have yet to determine what design may be suitable and that they may not even be in a position to give this information until mid-2016 at the earliest following failed trials in the past.

Due to the considerable number of objectors it would appear appropriate that this proposal to discharge the conditions should be heard by the full Planning Committee who should have the opportunity to assess all of these conditions one at a time and that no delegated approval should be considered prior to this meeting and with an open recommendation from Officers to all Members. The conditions were imposed as a consequence of Councillors concerns and it therefore should fall to them to determine that all safeguards have been properly addressed and put in place prior to any commencement of work.

4.3 Environment Agency – comments awaited.

4.4 Environmental Health Officer – I have reviewed the submitted noise monitoring programme and would confirm that it refers to relevant guidance and acknowledges that best practice in the measurement of wind speed has changed since determination of the original permission. I have found no guidance or information which would support requiring the permitted noise levels (determined by reference to measured wind speed at 10m) to be compared with levels attributable to wind speeds measured at hub height and standardised to 10m. As such, whilst it must be acknowledged that best practice is not being used and this is likely to have an impact on the determination of noise levels, the noise monitoring programme submitted would allow discharge of condition 23.

4.5 Natural England - You should apply our Standing Advice to this application as it is a material consideration in the determination of applications in the same way as any individual response received from Natural England following consultation. The Standing Advice should not be treated as giving any indication or providing any assurance in respect of European Protected Species (EPS) that the proposed development is unlikely to affect the EPS present on the site; nor should it be interpreted as meaning that Natural England has reached any views as to whether a licence may be granted. Natural England currently has no further comment.

## **5.0 OBSERVATIONS**

5.1 The application is to discharge conditions attached to consent 08/04984/FUL. The conditions are dealt with in turn as set out below including the wording for each condition, followed by a commentary on the submission.

5.2 Whilst the wider concerns about the project articulated by the Parish Council are noted, it is important to note that the application is limited to the consideration of details required by conditions, not the desirability of the development overall or even the appropriateness of the condition in question. As noted when application 15/00678/MRC was under consideration, advances in the available technology and understanding of the planning issues might suggest that different conditions would be imposed now; however, there is no opportunity to revisit the 2010 decision and

approval of the submitted details should only be withheld if they are not considered to adequately fulfil the purpose of the relevant condition imposed then.

- 5.3 **Condition 6** - *Prior to the commencement of development, the applicant will provide full details of the location and design of the connection building and any other associated works, including details of external surface coverings and roofing materials, for the written approval of the local planning authority. The connection building shall be constructed in accordance with these approved details.*
- 5.4 Plans for the location and appearance of the connection building have been submitted. This is a relatively basic utility building, proposed to be finished in stone with tiled roof and located centrally within the site. The proposed building measures 21m in length by 7m in width and 7m in height. The design of the building is relatively basic in form in the idiom of a traditional agricultural building with utilitarian openings.
- 5.5 The design, form and materials proposed are considered to be acceptable in the context of the proposed development and the wider rural character of the area. The proposed building is not considered to be harmful to the landscape character of the area and the submitted details are therefore considered acceptable.
- 5.6 **Condition 10** - *Before the development hereby approved is commenced, details of a scheme for the detection and mitigation of blade icing shall be submitted to and approved in writing by the local planning authority. The measures set out in the approved scheme shall be followed at all times.*
- 5.7 This condition is to ensure that ice forming on the blades of the turbines is not flung off with associated risk to life. A third party consultant has been engaged by the Local Planning Authority in order to assess the submitted Blade Icing Assessment. The consultant advises that the proposed mitigation measures are in line with industry standards and will adequately address the safety issues raised by potential blade icing. The submitted details are therefore considered satisfactory.
- 5.8 **Condition 11** - *No development approved by this permission shall be commenced until a scheme for the provision of a surface water drainage system, including a means of attenuation to no more than existing discharge rates, has been approved by the local planning authority. The scheme shall include details of how surface water run off shall be prevented from entering the highway and long term management responsibilities. The scheme shall be implemented before the construction of impermeable surfaces which are to drain into the approved drainage system unless otherwise agreed in writing by the local planning authority.*
- 5.9 The advice of the Environment Agency is awaited and will be reported to the meeting.
- 5.10 **Condition 12** - *Prior to the commencement of the development hereby approved, a phased programme of archaeological work shall be implemented in accordance with a written scheme of investigation submitted to and approved in writing by the local planning authority. Where important archaeological remains exist provision should be made for their preservation in situ unless otherwise approved in writing by the local planning authority.*
- 5.11 The County Archaeologist has assessed the submitted written scheme of investigation and has advised that it meets the required standards for the proposed development. The submitted details are therefore considered satisfactory.

- 5.12 **Condition 13** - *Notwithstanding details hereby approved and prior to the commencement of works on site a scheme of soft landscaping shall be submitted to and approved in writing by the local planning authority. The scheme shall provide details including the species, numbers and locations of planting, timescales for implementation and a maintenance schedule. The development shall be carried out in accordance with the approved scheme unless otherwise approved in writing by the local planning authority.*
- 5.13 The applicant has submitted Landscape Management Plan (LMP) which sets out the details of the proposed soft landscaping, including plant species, their number and the method of planting that would be implemented. The LMP also sets out measures for maintenance and aftercare of the planting scheme and management measures for grassland enhancement. The Report is accompanied by a Landscape Planting and Management Plan which shows areas of planting and areas where management measures would be implemented. The LMP should be read in conjunction with the Bullamoor Wind Farm Ecological Management Plan (EMP).
- 5.14 The LMP notes that sections of hedges that need to be removed during the construction phase to allow access will be re-instated on completion of development. New species rich hedging will be established on site in accordance with the LMP technical appendix A6, which identifies existing hedge mixes on the site and seeks to replicate those mixes in order to protect the character of the area and provide a diverse habitat from hedges with nut and fruit bearing species which would provide a food source for birds, small mammals and invertebrates. In total 470 linear metres of new hedging would be created, up to 346m of new hedge planting to fill gaps in the existing hedges will be undertaken and 14 new hedge trees of various sizes planted.
- 5.15 Proposed grassland enhancement would allow the establishment of a tussock grass habitat which is low maintenance and can form a good habitat for insects, small mammals, birds, amphibians and reptiles.
- 5.16 The LMP sets out a method statement for the establishment and maintenance of the proposed elements of soft landscaping for the site. It is considered to fulfil the requirements of the condition in terms of providing a suitable landscaping scheme and the submitted details are therefore considered satisfactory.
- 5.17 **Condition 14** - *Any facilities for the storage of oils, fuels or chemicals shall be operated in accordance with current Environment Agency guidance. Prior to the commencement of development details of the location and design of such storage facilities shall be submitted to and approved in writing by the local planning authority, and shall thereafter be operated in accordance with the approved details.*
- 5.18 The applicant has submitted a statement and plans detailing pollution controls for the development. It is important to note that the condition only requires submission of details of the location and design of the storage facilities, not their operation, which is determined by EA guidance. The submitted details indicate that storage would be within a centrally located compound approximately 750m south of Winton Manor Farm and approximately 100m from the nearest watercourse, which is considered appropriate in conjunction with proper observation of EA guidance as the condition requires. The submitted details are therefore considered satisfactory.
- 5.19 **Condition 19** - *Prior to the commencement of the development hereby permitted, a scheme to satisfactorily alleviate the incidence of 'shadow flicker' at any affected premises shall be submitted to and approved by the local planning authority. That scheme shall include details of the siting of photocells and the measures to control, re-*

*orientate or shut down particular turbines during the conditions when shadow flicker could occur. Unless otherwise approved in writing, any turbine producing 'shadow flicker effects' at any dwelling shall be shut down and the blades remain stationary until the conditions causing those 'shadow flicker effects' have passed. The scheme shall be implemented as approved.*

- 5.20 An expert consultant in the field of shadow flicker has been engaged to assess the submitted report and mitigation strategy. Following discussions about the specifics of the mitigation measures proposed a revised strategy has been submitted, which the consultant advises is satisfactory. In essence, the mitigation strategy seeks to shut down turbines at any time of day in conditions when shadow flicker is likely to occur. This would be additionally safeguarded by a review and improve mechanism should the mitigation strategy become outdated as technology advances. This mechanism essentially allows for any issues with shadow flicker to be addressed by altering the times that turbines which cause nuisance through flicker are switched off. The submitted details are therefore considered satisfactory on the basis of the consultant's advice.
- 5.21 **Condition 23** - *Prior to the development commencing, a noise monitoring programme shall be submitted to and approved in writing by the local planning authority. The noise monitoring programme shall cover the operation of the development to verify that the noise criteria in condition 20 are being met. This programme shall specify the locations, from which noise will be measured, the frequency of monitoring, the equipment details and the sampling techniques/methodology. The results of any monitoring carried out in accordance with the programme shall be made available to the local planning authority immediately following its completion. Should the results indicate that further monitoring or a revision of the approved noise monitoring programme is required, the wind farm operator shall undertake to carry this out.*
- 5.22 The Environmental Health Officer has advised that whilst the submitted details are not best practice, the submitted noise monitoring programme is adequate. The submitted details are therefore considered satisfactory.
- 5.23 **Condition 24** - *Notwithstanding details hereby approved, no development shall begin until a detailed habitat management and enhancement plan, complete with a programme of implementation, has been drafted in consultation with Natural England and submitted to and approved in writing by the local planning authority. The habitat management and enhancement plan will consider the following issues:*
- *great crested newt monitoring and enhancement measures;*
  - *pre-construction badger surveys;*
  - *provision for bat roost tree surveys if tree removal is unavoidable;*
  - *hedgerow enhancement and re-instatement within the site;*
  - *safeguarding of breeding birds during construction and decommissioning; and*
  - *minimisation of impacts to valuable habitats.*

*Thereafter, the approved scheme shall be implemented to the satisfaction of the local planning authority.*

- 5.24 The applicant has identified protected species from the Environmental Statement and carried out additional survey work in 2014 to identify any changes to the habitats and species distributions found. Natural England has been consulted on this condition and has referred to its published Standing Advice on protected species. The submitted details are therefore considered satisfactory on the basis of Natural England's advice.

- 5.25 The applicant has also highlighted areas where a licence will be required from Natural England to carry out the proposed works. The licence regime is separate from planning but provides additional assurance that the ecological impact of the development will be satisfactorily managed.
- 5.26 **Condition 25** - *Prior to development commencing the applicant will appoint an independent ecological clerk of works/environmental manager, approved by the local planning authority. The terms of this appointment should be submitted for the approval of the local planning authority and shall include that the appointment shall be for the period of the wind farm construction and for the subsequent restoration of the site after construction, and again from the commencement of decommissioning until the completion of the restoration of those parts of the site to be restored in accordance with the conditions of this consent; and that she or he will have sufficient authority on and off-site to oversee and identify action, including any temporary stoppage of works, to ensure natural heritage interests are safeguarded.*
- 5.27 The applicant has advised that Arcus Consultancy Services will provide Ecological Clerk of Works (ECoW) support for the proposed development throughout the period of wind farm construction and for subsequent restoration of the site after construction. All of Arcus' ecologists are members of the Chartered Institute of Ecology and Environmental Management and hold relevant survey licences and have ECoW experience. Based on current Arcus staffing, Dr Mike Gray, Principal Ecologist, will oversee the ECoW projects and support Arcus' ECoW with their on-site role, as well as attending site (as required) when ECoW work is taking place. Dr Gray has provided ECoW services for small and large-scale wind energy developments as well as other major developments (road, construction, mining restoration) and is therefore suitably qualified to oversee the work
- 5.28 This appointment will continue through to decommissioning and completion of restoration. However, as that is some considerable time into the future, should for any reason the ECoW need to be changed the operator agrees to notify the Council of any change that occurs at the relevant time. The terms of the condition allow for the LPA to assess whether or not the change is acceptable. The submitted details are therefore considered satisfactory.
- 5.29 **Condition 27** - *Notwithstanding the submitted details included in the application there shall be full location and construction details of the proposed accesses submitted to the local planning authority. Such details shall be approved and shall then be implemented in accordance with the approved details before any work commences on the proposed turbine project. Before the development is first brought into use the highway verge shall be fully reinstated in accordance with the scheme approved in writing by the local planning authority. Once the construction phase of the project has been completed the accesses shall be returned to their original condition unless otherwise agreed with the local planning authority.*
- 5.30 The applicant has submitted a statement and plans showing site access widths and visibility splays. The Highway Authority has been consulted and its advice will be reported to the meeting.
- 5.31 **Condition 30** - *There shall be no access or egress by any vehicles between the highway and the application site until details of the precautions to be taken to prevent the deposit of mud, grit and dirt on public highways by vehicles travelling to and from the site have been submitted to and approved in writing by the local planning authority. These facilities shall include the provision of wheel washing facilities where considered*

*necessary by the local planning authority. These precautions shall be made available before any excavation or depositing of material in connection with the construction commences on the site and be kept available and in full working order and used until such time as the local planning authority agrees in writing to their withdrawal.*

5.32 The Highway Authority has been consulted and its advice will be reported to the meeting.

5.33 **Condition 31** - *Unless otherwise approved in writing by the local planning authority, there shall be no HCVs brought onto the site until a survey recording the condition of the existing highway has been carried out in a manner approved in writing by the local planning authority. Details shall be submitted to the local planning authority to ensure that any damage that is caused by the vehicles associated with the project is rectified at the expense of the developer within a reasonable timescale prescribed by the local planning authority. Once the details are agreed they shall be adhered to during the construction phase of the project, and*

**Condition 32** - *Before the development commences a highway structure survey shall be undertaken to ensure that any highway structures (bridges, culverts etc.), any structures belonging to other bodies or any buried services will not be adversely affected by the abnormal loads that will be required to service the development. The survey shall record the current condition of any highway structures under the construction route. The survey and any measures that are required to protect any structures or services shall be submitted to and agreed with the local planning authority. Any measures that are required shall be implemented before the development commences.*

5.34 The applicant has submitted an engineering statement detailing survey details of highway condition and underground services. The Highway Authority has been consulted and its advice will be reported to the meeting.

5.35 **Condition 33** - *Unless approved otherwise in writing by the local planning authority there shall be no establishment of a site compound, site clearance, demolition, excavation or depositing of material in connection with the construction on the site until proposals have been submitted to and approved in writing by the local planning authority for the provision of:*

- (i) On-site parking capable of accommodating all staff, visitors and sub-contractors vehicles clear of the public highway*
- (ii) On-site materials storage area capable of accommodating all materials required for the operation of the site.*
- (iii) The approved areas shall be kept available for their intended use at all times that construction works are in operation. No vehicles associated with on-site construction works shall be parked on the public highway or outside the application site.*

5.36 The proposed details are set out in the engineering statement and the Highway Authority's advice on this will be reported to the meeting.

5.37 **Condition 34** - *Unless otherwise approved in writing by the local planning authority, there shall be no establishment of a site compound, site clearance, demolition, excavation or depositing of material in connection with the construction on the site until details of the routes and all necessary traffic management measures to be used by the abnormal loads and the HCV construction traffic have been submitted to, and*



*approved in writing by, the local planning authority. Thereafter the approved routes shall be used by all vehicles connected with construction on the site.*

- 5.38 A Traffic Management Plan has been submitted and the Highway Authority's advice on this will be reported to the meeting.

## **6.0 SUMMARY AND RECOMMENDATIONS**

- 6.1 As indicated, the consideration of this application is not a simple matter of an approval or refusal as a whole, because the information provided for each condition must be taken on its merit and a decision made on that particular condition.

- 6.2 In respect of the following conditions where appropriate consultee and expert advice has been received:

- 6 (location and design of the connection building and any other associated works);
- 10 (detection and mitigation of blade icing);
- 12 (programme of archaeological work);
- 13 (soft landscaping);
- 14 (location and design of oils, fuels or chemicals storage facilities);
- 19 (alleviation of shadow flicker);
- 23 (noise monitoring programme);
- 24 (habitat management and enhancement plan); and
- 25 (ecological clerk of works/environmental manager)

It is recommended that the submitted details are **APPROVED**

- 6.2 In respect of condition 11 (surface water drainage system) it is recommended that the submitted details are **APPROVED** subject to the receipt of the Environment Agency's favourable advice.

- 6.3 In respect of the following conditions:

- 27 (construction details of the proposed accesses);
- 30 (precautions to prevent the deposit of mud, grit and dirt on public highways);
- 31 (survey recording the condition of the existing highway);
- 32 (highway structure survey);
- 33 (on-site parking and materials storage areas); and
- 34 (routes and traffic management measures for abnormal loads and HCV construction traffic)

It is recommended that the submitted details are **APPROVED** subject to the receipt of the Highway Authority's favourable advice.