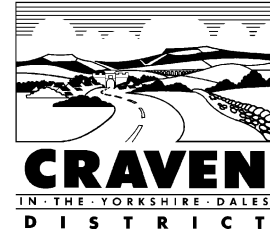


**Planning Committee – 24th November
2015**



**ERECTION OF UNAUTHORISED WIND
TURBINE AT WEST THORNER,
WIGGLESWORTH, SKIPTON, BD23
4RS**

Report of the Strategic Manager of Planning and Regeneration

Lead Member: Not applicable

Ward affected: Settle and Ribble Banks

1. **Purpose of Report** – To seek a resolution on whether it is expedient to take formal enforcement action in respect of a wind turbine erected at coordinate E380855 N454502, West Thornber, Wigglesworth.
2. **Recommendation** – Members are recommended: -
 - 2.1 **To resolve to take formal enforcement action to require the removal of the unauthorised second wind turbine at West Thornber Farm, Wigglesworth.**
3. **Planning History**
 - 3.1 36/2011/11860. Screening opinion for the installation of 1no. 50Kw wind turbine. Environmental Assessment not required 7th July 2011.
 - 3.2 36/2011/12044. Wind turbine with a hub height of 30m and additional 15m to tip of the rotor (overall height of 45m). Approved September 2012. **Officer Note:** This approved turbine has been erected.
 - 3.3 36/2013/13063. Discharge of condition 5 of previous approval 36/2011/12044. Approved November 2012.
 - 3.4 36/2014/14272. Screening opinion for the installation of an additional 1no. 50Kw wind turbine. Environmental Assessment not required February 2014.
 - 3.5 36/2014/14934. Installation of an additional 1 no. WTN 250KW wind turbine with a tip height of 45m including underground cabling and temp access. Conditional Approval 18/02/15.
4. **The Unauthorised Development**

- 4.1 The wind turbine approved under planning ref. 36/2014/14934 has been erected in the wrong location. The approved plans state two slightly different (but similar) approved locations for the turbine. These are as set out below: -

MOON 001	E380825 N454456
MOON 002	E380809 N454437

The wind turbine that has actually been erected is at (approximate) coordinates E380855 N454502. The wind turbine has therefore been erected either 79 metres away from its approved location or 54 metres (depending on whether drawing no. MOON 001 or 002 is considered to be correct). To the best of Officer's knowledge the design and height of the unauthorised turbine is as previously approved. A plan indicating the location of the unauthorised development is included at Appendix A.

- 4.2 The applicant has been advised that Officers consider that the second wind turbine is unauthorised. They have been invited to submit a retrospective planning application to retain the turbine and advised that if no application was received the Council would consider the expediency of taking formal enforcement. Discussions with the applicant's solicitors have been ongoing and correspondence exchanged, but ultimately no planning application to retain the turbine has been made.

5. The expediency of taking formal enforcement action

- 5.1 In July 2015 as no retrospective planning application had been submitted by the developer Officers carried out consultation to seek views on the merits of the unauthorised turbine by writing to:-

- the statutory consultees who had been previously consulted for planning application 36/2014/14934 and
- All properties within 1km of the unauthorised wind turbine.

Officer Note: In the Council's consultation / notification letter dated 16/07/15 the stated coordinates referred to as being the approved location was incorrectly specified. However, a plan was attached to the correspondence that indicated the approximate difference between the location of the approved turbine and the location that it had been erected at.

Consultation responses on the unauthorised location of the second turbine.

- 5.2 **JRC (31/07/15)** does not foresee any potential problems based on known interference scenarios and the data provided.
- 5.3 **Yorkshire Dales National Park (04/08/15)** have no comments in respect of the unauthorised turbine, however, should the turbine approved under 36/2014/14934 also be erected at the site then the expediency of this enforcement case should be reviewed, this is because the collective presence of another turbine on the land may raise other impacts on which we would like to assess.
- 5.4 **North Yorkshire County Council Highways (20/07/15)** has no objections to the relocated turbine.

- 5.5 **NAT/NERL (17/07/15):** The proposed development has been examined from a technical safeguarding aspect and does not conflict with our safeguarding criteria. Accordingly, NATS (En Route) Public Limited Company ("NERL") has no safeguarding objection to the proposal.
- 5.6 **RSPB:** No response.
- 5.7 **Pendle Borough Council:** No response.
- 5.8 **The Ramblers Association:** No response.
- 5.9 **AONB:** No response.
- 5.10 **Ribble Valley Borough Council:** No response.
- 5.11 **Ribble Banks Parish Council (05/08/15):** The Parish Council has been contacted by a number of parishioners with serious concerns.

The unauthorised siting of the second turbine in its new position has significantly increased the expected negative visual and audio impact on the two houses at North and East Thornber. At Planning Committee, the applicant and his agent stated that the second turbine would not be seen from East Thornber because it would be situated behind the wood. If the turbine had been correctly sited, this would have been correct, however, the unauthorised location of the turbine means that it is now clearly visible as it is not shielded by the wood.

The occupiers of both properties are also experiencing considerably more noise, if the wind is in the west, or the north-west, from the wrongly sited second turbine as the wood should act as a partial buffer.

There has been an increase in negative visual impact at Hyles Moor Farm as it no longer has the benefit of the wood behind it.

In its unauthorised position, the second wind turbine is further away from the farm buildings at West Thornber Farm. This removes any spatial relationship between the turbine and the buildings it serves and has the effect of making the area look like a wind farm, rather than two farm turbines.

Regarding the visual impact from the Forest Becks-Wigglesworth and Wigglesworth-Paythorne Roads, its unauthorised position means the visual impact of the turbine is greatly increased and clearly more evident when viewed from these roads. The isolation of its position is the more striking for the second turbine being sited further to the north-east rather than its correct position.

There is local concern that if the unauthorised turbine is permitted to be retained in its current position, then a further wind turbine in the originally authorised position may also be erected. This would not be acceptable to the local community, who fear a wind farm by stealth.

- 5.12 **Campaign to Protect Rural England (04/08/15):** Consider that enforcement proceedings should be taken by the Council as it is an offence under the Removal of Surface Soil Act 1953 to remove surface soil, which constitutes development, from agricultural land without planning permission. (**Officer Note:** A prosecution for this offence would not be brought by the Council).

The breach has increased the impact on the neighbouring property and the amenity of residents and there can be no acceptable justification for such a change of location without prior discussion with the planning authority.

The submission also draws attention to Paragraph 207 of the NPPF and Paragraph 013 of Planning Practice Guidance regarding effective enforcement. Furthermore the submission refers to the Ministerial Statement dated 18th June 2015.

Letters of representation.

- 5.13 There have also been 4 letters of representation from people who live within 1km of the turbine (2 letters on behalf of Hyles Moor Farm and 2 letters from East Thornber), the following is a summary of those concerns:-

- The unauthorised position of the second turbine has a more damaging visual effect on the residents of Hyles Moor Farm and East Thornber. The approved location (36/2014/14934) was screened by a wood but the unauthorised location is not screened.
- The unauthorised siting of the second turbine has moved it further away from the farm buildings it is meant to serve and there is now no spatial relationship between the buildings and the turbine.
- There is concern that there is the possibility of a third turbine being erected in accordance with approval 36/2014/14934.
- The cost implications for the applicant of moving the unauthorised second turbine to its approved location should not be a reason not to require it.

The relevant planning policy

- 5.14 Relevant planning policy comprises:

- The National Planning Policy Framework (NPPF).
- National Planning Policy Guidance (NPPG).
- Written Ministerial Statement 18th June 2015.

Summary of the principle planning issues

- 5.15 The key planning issues comprise:

- Principle of Development.
- Visual impact of the development.
- Impact on the setting & significance of heritage assets.
- Impact of the development on the amenities of neighbouring properties.

- Impact of the development on Ecology.
- Highway Safety.
- Telecommunications.
- The Fall-back Position.

Principle of development

- 5.16 There are no Saved Local Plan policies of relevance. The National Planning Policy Framework (NPPF) therefore provides specific national planning policy on renewable energy. The NPPF outlines several core land-use planning principles at paragraph 17 that should underpin both plan-making and decision-taking. One of these core principles is that planning should support the transition to a low carbon future in a changing climate and encourage the use of renewable resources (for example, by the development of renewable energy). Paragraph 98 of the NPPF also states that applications for renewable energy generation should be approved if the impacts are (or can be made) acceptable.
- 5.17 Of direct relevance to the current application is paragraph 93, section 10 of the NPPF 'Meeting the challenge of climate change, flooding and coastal change'. This states "Planning plays a key role in helping shape places to secure radical reductions in greenhouse gas emissions, minimising vulnerability and providing resilience to the impacts of climate change, and supporting the delivery of renewable and low carbon energy and associated infrastructure. This is central to the economic, social and environmental dimensions of sustainable development". Paragraphs 96 to 98 then sets out requirements for local planning authorities when determining planning applications for the use and supply of renewable and low carbon energy developments.
- 5.18 Also relevant to the current proposal is Section 11 'Conserving and enhancing the natural environment' and Section 12, 'Conserving and enhancing the historic environment' that requires consideration of the impact of development on the significance of designated heritage assets.
- 5.19 Due regard must also now be given to the recent Ministerial Statement on Local Planning made by Greg Clark MP on 18 June 2015 (HCWS42). This statement has been brought into the Planning Practice Guidance on Renewable and Low Carbon Energy (Chapter 5, paragraph 33) that states:

"The Written Ministerial Statement made on 18 June 2015 is quite clear that when considering applications for wind energy development; local planning authorities should (subject to the transitional arrangement) only grant planning permission if:

- *The development site is in an area identified as suitable for wind energy development in a Local or Neighbourhood Plan; and*
- *Following consultation, it can be demonstrated that the planning impacts identified by affected local communities have been fully addressed and therefore the proposal has their backing.*

Whether the proposal has the backing of the affected local community is a planning judgement for the local planning authority.”

- 5.20 The ministerial statement advises that it should be taken into account in planning decisions. The provisions referred to in paragraph 33 of Chapter 5 of the PPG are a material consideration in the assessment of this application. They suggest that the Local Planning Authority should only grant planning permission if planning impacts resulting from new turbine development that are identified by local communities have been fully addressed and the development therefore has the backing of the local community.
- 5.21 It is clear from both the letters of representation and the Parish comments received objecting to the unauthorised turbine that the development does not have the backing of the affected local community (the Parish Council are the body elected by the Local Community to represent them). Concerns have been raised about the increased visual harm of the wind turbine in this unauthorised location, the increased noise issues it causes, and the concern that a wind farm is being erected by stealth of which they have concerns about the cumulative impact and the resulting visual harm caused by the scale of the turbines.

Visual impact of the unauthorised wind turbine

- 5.22 Representations have been received from residents and the Parish Council who consider that the unauthorised siting is detrimental to visual amenity.
- 5.23 If the second turbine had been erected in its approved location it would have been located to the west of the existing turbine lower down a sloping field rather than to the north-west in a more raised location as it is now. Representations from East Thornber state that its approved location was more screened by woodland than its current position. Using the Council's mapping system, the approved location was approximately 774 metres away from East and North Thornber and the actual location is approximately 747 metres away from East and North Thornber.
- 5.24 Officers have taken photographs of the unauthorised turbine from the same locations as many of the viewpoints submitted with the montage for planning application 36/2014/14934 (these will be included in the presentation at Planning Committee).
- 5.25 It is the opinion of Council Officers, that the visual impact of the unauthorised second location does not have a significantly worse detrimental impact on the amenity of any neighbouring property, or on the landscape in general, to justify taking formal enforcement action.
- 5.26 However, whilst the visual impact is considered to be acceptable, of greater concern to Officers is the fact that because the second turbine is unauthorised, there are no conditions requiring the wind turbine to be removed and the land restored either within 25 years or sooner if it ceases to produce electricity. Without these conditions the turbine can be retained on a permanent basis even if it is no longer operational. The conditions therefore safeguard the long term landscape setting of the site and the general character and amenities of the area should the environmental benefits of the development cease. The ability to ensure the

removal of the turbine in the future is a matter that could be overcome by conditions imposed on a retrospective application, but in the absence of such an application the planning harm caused by the potential permanent retention of the second turbine beyond its lifetime is a reason to take formal enforcement action.

Impact on the setting & significance of heritage assets

- 5.27 With respect of heritage assets, Lane Side Farmhouse is a Grade II listed building situated approximately 600m to the North West of the application site. The second turbine is sited on the brow of the agricultural field and is visible from this building and as such falls within its setting. However, given the separation distances involved combined with the changes in topography the additional turbine would simply be a peripheral part of the setting of the heritage asset. Therefore, it is not considered that the unauthorised turbine erodes the understanding or appreciation of its significance. It is acknowledged that located to the north and north east of the unauthorised turbine are a number of additional listed buildings with the nearest being identified as Deep Head Dale, however, given the separation distances, topography and intervening planting the unauthorised turbine would not have a negative impact on these listed buildings, their setting or their significance. It is therefore considered that the alternative location of the turbine does not have a harmful impact on the setting of these listed buildings.

Impact of the development on the amenities of neighbouring properties

- 5.28 The representation from East Thornber states that the unauthorised second turbine results in increased turbine noise when the wind comes from behind the turbines towards East Thornber.
- 5.29 With regards to the noise nuisance being caused by the second turbine, the Council's Environmental Protection Team made comments during the consultation period for planning application 36/2014/14934 and as a result condition 7 was attached to the decision (see Appendix B). Had planning approval 36/2014/14934 been implemented, information was required to be submitted (in the form of a discharge of condition application for condition 7) prior to erection to prevent noise nuisance. An application (36/2014/15589) was submitted to discharge condition 7 of planning approval 36/2014/14934 but it was refused as insufficient details were submitted.
- 5.30 During the Council Officer's visit on 13th October 2015, there was no obvious noise nuisance but it was verbally explained by objectors that when experienced, the noise was similar to a heavy item going round in a tumble dryer, a systematic thudding. To date there has been no submission providing adequate information about how noise nuisance will be prevented from the second wind turbine and this remains an area of concern to Officers.
- 5.31 In conclusion, Officers cannot support the retention of the second turbine in its current location as the potential planning harm that has been raised by the affected local community has not been properly addressed through the planning process. This is a matter that could potentially be overcome by conditions imposed on a retrospective application, but no such application has been submitted. This is

therefore a factor to be taken into account in determining whether formal enforcement action should be taken.

Impact of the development on ecology

- 5.32 An assessment was made of the approved position of the second turbine but no information has been submitted to make a similar assessment with regards to its actual position. It is anticipated that the revised location results in little difference in ecological terms, but this has not been confirmed.

Highway safety

- 5.33 NYCC has been consulted and has raised no objection to the second turbine. Therefore it is considered acceptable in terms of highway safety.

Telecommunications

- 5.34 Wind turbines have the potential to affect electromagnetic transmissions, including TV and radio signals and telecommunications. In this instance JRC does not foresee any potential problems based on known interference scenarios and the data that has been provided. This is based on the second turbine being the WTN 250KW with a tip height of 45m, the height and model has not been confirmed.

The ability to erect a third turbine

- 5.35 As the turbine has not been erected in the position approved by Planning Ref. 36/2014/14934 this planning permission for a second turbine has not been implemented. It is therefore possible that the developer could erect a third wind turbine at the site at the approved location for Planning Ref. 36/2014/14934. Such an outcome would not be acceptable.
- 5.36 Council Officers invited the applicant to submit a retrospective planning application to retain the unauthorised wind turbine. It was suggested that the application should be accompanied by a formal commitment (possibly achieved by a S106 Legal Agreement) that the developers would:-
- not oppose/seek compensation for the revocation of the existing planning permission 36/2014/14934 (to avoid 3 turbines being erected on site).
 - pay the Council's reasonable legal costs for revoking planning permission 36/2014/14934, and
 - agree to and comply with the planning conditions previously imposed
- 5.37 A retrospective application accompanied by such a commitment has not however been made. Therefore it is not possible for the Local Planning Authority to prevent the implementation of 36/2014/14934 and prevent the erection of a third turbine (without risking claims for compensation for revoking the permission). This is a matter that could potentially be overcome by a S.106 attached to a retrospective application, but no such application has been submitted. This is therefore a factor to be taken into account in determining whether formal enforcement action should be taken.

Conclusions

- 5.38 Paragraph 14 of the NPPF sets out that at the heart of the National Planning Policy Framework is a presumption in favour of sustainable development. It advises that where the development plan is absent or silent (as is the case here) that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the framework taken as a whole.
- 5.39 In this instance the benefits of the development proposal is principally the benefit of renewable energy development and helping to support the transition to a low carbon future. This is an important consideration in the assessment of the application and significant weight should be attached to it.
- 5.40 However there are numerous dis-benefits. Firstly, whilst in Officers view the visual impact on the landscape is acceptable it could only be made acceptable by the imposition of planning conditions that would ensure the removal of the turbine at the end of its lifespan or should it no longer be required for electricity generating purposes. In the absence of a retrospective planning application enforcement action is considered necessary to resolve this matter.
- 5.41 Secondly, the applicant is still entitled to implement the turbine approved by planning ref. 36/2014/14934. The establishment of a third turbine on the site would in Officers view have an unacceptable impact on the landscape. This existing permission cannot be revoked without the Council risking a claim for compensation against it and therefore in the interests of protecting the landscape enforcement action is considered necessary to ensure that 3 turbines are not established in the landscape.
- 5.42 Thirdly, the potential noise nuisance impacts and ecological impacts are not properly addressed and cannot be addressed without the imposition of planning conditions. Therefore in absence of a retrospective planning application enforcement action is considered necessary to resolve these matters.
- 5.43 Finally, the Planning Practice Guidance and ministerial statement from 18 June 2015 need to be considered. These suggest that the Local Planning Authority should only grant planning permission if planning impacts resulting from new turbine development that are identified by local communities have been fully addressed and the development therefore has the backing of the local community. In this case the consultation undertaken suggests that the proposal does not have the backing of the local community. The local community has in fact raised wider issues of concern than Council Officers, it is not the case that the issues of concern that have been raised have been fully addressed, and therefore it cannot be concluded that the development has the backing of the local community. The Planning Practice Guidance and ministerial statement from 18 June 2015 therefore very clearly suggest that the unauthorised turbine should not be accepted and consequently enforcement action should be taken to secure its removal.
- 5.44 It is therefore considered that having regard to Paragraph 14 of the NPPF that the adverse impacts of the unauthorised development significantly and demonstrably

outweigh the benefits. It is therefore considered necessary to take enforcement action to require the removal of the turbine.

The fall-back position

- 5.45 Having reached the conclusion that the unauthorised turbine is unacceptable, and that enforcement action should be taken, it is also necessary to consider the fall-back position. The fall-back position is essentially the works that the applicant can do anyway. In this instance the fall-back position is that even if the Council was to take enforcement action to require the removal of the unauthorised turbine the applicant could implement the scheme approved by 36/2014/14934 anyway.
- 5.46 The fall-back position is a material consideration in the decision of whether or not to take enforcement action. The Local Planning Authority should ask itself the question of whether enforcement action is necessary given the rights the developer has to erect a wind turbine in a very similar location anyway. Would enforcement action achieve anything of great benefit?
- 5.47 The weight to be attached to the fall-back position in the decision making process is influenced by whether the fall-back position is a realistic possibility. If the likelihood of the fall-back position occurring is small then little weight should be given to the fall-back position in the decision making process. In this instance the likelihood of the fall-back position occurring is high. An existing permission is in place for a turbine, and the turbine is already on site in the general vicinity of where it should be erected. It therefore seems very likely that if enforcement action is taken that the turbine will be re-sited rather than removed from the site entirely. The fall-back position is therefore an important consideration.
- 5.48 However, even taking the fall-back position into account it is still considered that enforcement action is necessary. Without taking formal enforcement action it is not possible to control or address a number of important matters that rely on formal action being taken (such as preventing 3 turbines being present on site and, ensuring the removal of the turbine once it has reached the end of its useful lifespan, and ensuring the recently introduced need to ensure that the development has the backing of the Local Community is complied with).
- 5.49 It is therefore recommended that Members resolve to consider that it is expedient to take formal enforcement action and that an Enforcement Notice is served on the applicant requiring the second turbine to be removed and the land reinstated to its original condition within three months from the date that the notice takes effect.

6. Implications

- 6.1 **Financial and Value for Money (vfm) Implications** – As is always the case with such matters should an enforcement notice be served an appeal against the notice may be made. Financial costs would be incurred defending the Council's case. Such costs are normally small and can be accommodated by the existing budget provision for Planning Services, however there is a risk that higher additional costs could be incurred and these would require a supplementary estimate to be approved by the Policy Committee.

- 6.2 **Legal Implications** – None other than those indicated elsewhere in the report.
- 6.3 **Contribution to Council Priorities** – N/A
- 6.4 **Risk Management** – N/A
- 6.5 **Equality Impact Assessment** – N/A
7. **Consultations with Others** – Financial Services, Legal Services, and other external consultees as included at section 5.2 to 5.12 of this report.
8. **Access to Information : Background Documents** – Planning application file ref. 36/2014/14934
9. **Author of the Report** – Cathy Dakin, Planning Enforcement Team Leader, telephone 01756 706447, e-mail: cdakin@cravenc.gov.uk

Note: Members are invited to contact the author in advance of the meeting with any detailed queries or questions.

10. **Appendices**

Appendix A – Plan indicating the approved locations of the turbine under Planning Ref. 36/2014/14934, the location of the unauthorised turbine, and the location of the turbine previously erected and approved under planning ref. 36/2011/12044.

Appendix B – The Decision Notice for Planning Ref. 36/2014/14934.