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For the attention of :
Rt Hon Greg Clark
Secretary of State
Department of Business & Industrial Strategy
1 Victoria Street
LONDON
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Contact: Keith Welford Case Manager
National Infrastructure Consents
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8th December 2018.

Re Ecotricity Heckington Wind Farm Variation of Consent (2018) 4038P0242.

NKDC Application Reference 18/1384/S36. Application to vary S. 36 consent and deemed planning permission to allow for the date by which development must be commenced from 5 years to 10 years, i.e., extended up to 8th February 2023. The previous variation application submitted to the Secretary of State in February 2015 is not being progressed at this time.

Dear Sir,

Heck Off submit the following representation on behalf of our local communities.

1. Introduction.

It is with extreme concern and distress, that our long suffering local communities are subjected to yet another protracted Variation Application by Ecotricity due to their failure to comply with the Planning Inspector's Condition 3; *The Development shall be commenced before the expiration of five years from the date of this consent, or such longer period as the Secretary of State may hereafter direct in writing.*

It is also of considerable concern, that despite our communities substantive representations; comprising of over 700 resident's objections, several submissions from all of the affected Parish Councils, Lincolnshire County Council (LCC), North Kesteven District Council (NKDC), our 2 local Members of Parliament, and on wind turbine noise, appraisal reports by Dr Yelland, in respect of Ecotricity's 2015 Variation Application, attempting to circumvent Condition 4, by seeking to commence ground works without a fully tested and agreed RMS in place and applying to increase the length of the turbine blades. It is appears that **none** of these have been responded to in any meaningful way, by either your Department, or Ecotricity in their Environment Statement (2018), accompanying their 2nd Variation Application.

We respectfully refer you to our letter dated 4th July 2018, in which we sought clarity by requesting that we are provided; "*with the background to and reasons why has no decision been taken regarding the Variation Application submitted in February 2015.*" The fact that this important matter has not been addressed is of significant concern, even more so, now we have confirmation that the 2015 application is not being progressed ("*parked up*") without any justification or reasons why. The July 2018 letter forms part of our submission, and is attached as Appendix 1.

Heck Off also refer to our submission sent your department on 27th June 2017, setting out a clear and unequivocal case as to why Ecotricity's 2015 Variation warranted refusal. In principle nothing has changed, Ecotricity still keep re-running the same unfounded assertions, and again the matters raised therein are material to the 2018 Variation Application and is attached as Appendix 2.

2. Legislative & Policy Representation.

In response to Ecotricity's (2018) ES Chapter 2, Heck Off instructed Richard Buxton Solicitors, (RBS) whose considerable expertise is in Environmental and Planning Law, to review the regulatory case set out by Ecotricity and the grounds on which any potential consent could be granted, to extend the Development Consent for a further 5 years until 8th February 2023.

Our legal representation dated 27th November 2018, has been received and acknowledged by your department.

RBS's submission on behalf of Heck Off, is as follows:

Submission 1.

The power to vary a licence under s.36A of the 1989 Act does not include the power to extend time within which a development must be started.

The application in question is under s.36A of the 1989 Electricity Act but also requires consideration of s.90 TCPA 1990. This is because the granting of the licence under s.36 requires the deemed planning permission under s.90 TCPA 1990. Similarly, the variation of a licence requires the amendment of the conditions relating to the deemed planning permission.

Section 90 TCPA 1990 applies where an application is made to vary a consent under s.36 of the Electricity Act 1989.

Although the application is made under s.36 of the Electricity Act, it is nonetheless an application to amend the conditions that relate to the deemed planning permission under s.90 TCPA.

Whilst there is nothing explicitly stated in s.36A Electricity Act about variations which relate to extensions of time, the part of the application which seeks a variation of the conditions to the deemed planning permission under s.90 TCPA 1990 is subject to s.73 TCPA 1990.

Since s.73(5) TCPA 1990 does not allow for extensions of the time within which a development must be started, it follows that the application to amend the wording of Condition 8(2) of the deemed planning permission must fail.

Submission 2.

Extensions of time of this sort are not contemplated by reference to the corresponding regulations.

This submission (that the regulations and guidance do not contemplate extensions of time) is related to the first submission (that extensions of time are not permitted) and supports the analysis above.

An application for variation under s.36A of the Electricity Act requires compliance with the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013. These provide an indication of the type of application contemplated:

It is clear that the variations that are contemplated are those that relate to construction, extension and operation.

*The variation does not fit within either a) or b). It is **not** “construction or extension of a generating station along different lines” or “the operation of a generating station in a way that is different from that specified in the existing consent”.*

*In summary, the guidance repeatedly provides examples which correspond to changes in design, technology and operation which are consistent with the original application. **There is no suggestion that extensions of time for commencing the construction/development should be covered by this procedure.***

Submission 3.

Blight – generally speaking, the reason why grants of planning permission include time limits for commencing development/complying with conditions is to minimise the impact of any period of uncertainty for those who may be affected by the grant of permission. This submission sets out the reasoning why extensions of time are not permitted.

It is noted that the avoidance of uncertainty for those who may be affected is specifically stated in relation to Condition 8:

Condition 8. The Secretary of State in exercise of the powers conferred upon him by section 90(2) of the Town and Country Planning Act 1990 hereby directs that planning permission for the Development be deemed to be granted subject to the following conditions:

(2) The Development hereby permitted shall be commenced before the expiration of five years from the date of this permission.

Reason: To strike a balance between the time it may take to put in place the necessary pre-construction measures required – for example, tendering, obtaining the necessary funding, micro-siting of the turbines – and minimising the impact of any period of uncertainty for those who may be affected pending the decision to begin construction works.

In this context we also refer to paragraph 296 of the Inspector’s Report:

“The presence of 22 wind turbines would affect both military and civilian radar by ‘painting’ on the radar returns and causing the potential for confusion and reduction in safety. However, the Applicant has been in negotiation with the respective safety bodies and has reached agreement on suitable mitigation for radar. This has been confirmed in writing by the bodies concerned. I am therefore satisfied that these matters do not form an impediment to the grant of consent.

*297. Whilst I note that some residents are concerned that the ‘in principle’ agreements appear to give a long period for the matter to be resolved, this period reflects the usual time available for starting a project of this nature. **There would be no extension of the time set aside for resolving this matter.**”*

In summary, it was clear that the 5 year condition was carefully considered at the time and that it was felt that the 5 year period was a reasonable time limit balancing the competing demands.

Submission 4.

The Radar Mitigation Scheme – the reason that Ecotricity require additional time for the now expired consent is that it has failed to resolve the ongoing difficulties caused by the potential interference by the wind turbines with Ministry of Defence bases. This is not an application for a variation of the type contemplated by the regulations and guidance but has been made because the applicant has failed to resolve a separate issue.

The application is misguided.

Condition 5 states: No development shall commence unless and until a Radar Mitigation Scheme has been submitted to and approved in writing by the Secretary of State, having consulted with the Ministry of Defence and NATS (En Route) plc, to address the impact of the wind farm upon air safety.

A general assertion has been made in the application that:

“progress is being made with a view to agreeing an ongoing mitigation strategy which is aiming to deliver a solution within a 3-5 year timeframe.”

The radar issue was first brought into focus in 2002 when the then Parliamentary Under Secretary of State for Defence and Minister for Veterans stated in the Wind Energy and Aviation Interests Interim Guidelines that the MOD fully supported, and made every effort to assist in achieving, the Government’s renewable energy targets. However, he also stated that the MOD had concerns about the effects of wind turbines on a number of MOD activities including radar and low flying and that whilst efforts must continue to ensure flight safety and optimum radar coverage throughout the United Kingdom, the MoD awaited the results of a number of studies into these problems. 16 years on and these difficulties have not been resolved yet.

Ecotricity are now seeking an extension for another 5 years, i.e., to at least 21 years after the problem first arose. (2002)

*Ecotricity was aware of the radar problem when the application was originally made for development at this site (December 2009). **It took a commercial risk in proceeding while the issue remained unresolved.***

When seen in this context, the misconceived nature of the Variation of Consent Application is clear.

Submission 5.

The Noise Assessment Issue – although distinct from the primary submissions which all relate to whether an application for a variation is intended to relate to applications for extensions of time, we have been asked to point out the application relies upon noise assessments which are contested.

No mention is made in this (2018) application to the criticisms made of the original noise assessment that was submitted by Dr Yelland in response to the first Variation of Consent Application in 2015.

*Dr Yelland concluded that the wind farm design is **not** compliant with ETSU or the IOAGPG and if constructed the wind farm would have produced noise well in excess of government limits. He was particularly critical of the six background noise surveys used by the applicant which in his view do not*

adequately represent the background noise levels in the area. Dr Yelland states that Heckington Fen is a very quiet rural location except for properties close to the A17 and this does not fit comfortably with the background noise levels reported by the applicant.

During the consultation in response to that application, North Kesteven DC, Lincolnshire County Council, all of the local Parish Councils and both local MPs called on DBEIS to commission a new Wind Turbine Noise Impact Assessment as a result of Dr Yelland's report.

Although the first Variation of Consent Application has not been determined yet, we have been asked to make it clear that the criticisms raised by Dr Yelland at that time apply equally to the noise assessment relied upon in this application. Dr Yelland is preparing a detailed response to this latest application.

In summary, it is our submission that this variation application is refused.

3. National Planning Policy Framework (NPPF) - WMS

We refer you to DECC's letter to NKDC dated 19th January 2016, advising of a 2nd round of consultations in consideration of Ecotricity's 2015 Variation Application which stated;

"In determining the Variation Application, the Secretary of State will have regard to any relevant representations received including those from the local community.

The Department of Communities and Local Government Written Statement of 18 June 2015 regarding onshore wind highlights the need to consider and address relevant planning concerns raised by local people as it provides that;

"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."

This letter seeks views on how the concerns raised in the responses to the first consultation have been addressed. In particular, we invite the Developer to respond to the specific concerns raised by Lincolnshire County Council and local people. We also invite any further comments from those persons who responded to the first consultation on the Variation Application and anybody else who may wish to comment on it. Please note that we are seeking comments on the Variation Application rather than on the existing section 36 consent. Any representations about the Variation Application should be supported with appropriate reasons and evidence, as necessary. Comments should be submitted by no later than 10 February 2016".

Heck Off's submission of 27th June 2017, also sets out in detail the background to the Written Ministerial Statement, prior to being incorporated in to the NPPF.

However, Ecotricity state at Appendix 1. Landscape & Visual Statement, Government Statements and National and Regional Policy Page 5-3 -Para 32.

32. The then Secretary of State for Communities and Local Government (Greg Clark) issued a Written Ministerial Statement on 18 June 2015 relating to onshore wind energy development the substance of which is included in the revised NPPF consultation draft (see below).

Draft Revised National Planning Policy Framework 2018

34. A revised NPPF consultation draft was issued in March 2018. The updated NPPF is focussed mainly on planning matters relating to housing development but, amongst other things, incorporates recent government statements including Greg Clark's Written Ministerial Statement of 18 June 2015 regarding onshore wind energy development.

NKDC in their Officers' Report & Recommendation to the Planning Committee update, confirms that an amended NPPF Footnote 49 states:

“Except for applications for the repowering of existing turbines, a proposed wind energy development involving one or more turbines should not be considered acceptable unless it is in an area identified as suitable for wind energy development in the development plan; and, following consultation, it can be demonstrated that the planning impacts identified by the affected local community have been fully addressed and the proposal has their backing.”

It is clear the WMS is now incorporated into the NPPF and is therefore a material matter.

4. Lincolnshire County Council's Statutory Consultation Response.

LCC's letter of 26th October 2018 clearly sets out their objection.

*The variation application is seeking to extend the time limit imposed to implement the development and is not seeking changes to the design or any other physical alteration or difference in the operations of the generating station. The 2013 Act provisions were purposefully introduced to allow amendments to the physical characteristics or elements of a development **and so should not, in our view, be used to simply allow more time to commence a development. It is not possible to vary and extend a time limit to implement a development subject of a normal planning permission by way of Section 73 of the 1990 Act and it is our view that the same should be true for variations to S.36 consents.** Time limits are imposed when granting permission for any development so as to ensure that projects are delivered in a timely manner and also give certainty about what development communities can expect in their area. **If a longer period of time had therefore been considered necessary then this could and should have been granted when the original S.36 consent was issued.***

It is notable that LCC's position concurs with RBS, *"that there is no provision within Section 73 of the 1990 TCPA and therefore, it follows that this should be true to S.36 consents"*.

Indeed Heck Off submits, that a granting of consent to Ecotricity's 2018 Variation of Consent Application, would therefore by definition, establish a completely unacceptable precedent, whereby the intended provisions in setting; *"time limits for commencing development/complying with conditions,"* in the TCPA, *"to minimise the impact of any period of uncertainty for those who may be affected by the grant of permission"*, could be completely undermined - there would be in effect be **no safeguards** preventing Ecotricity, (or indeed any other developer) from submitting variation applications *"ad infinitum"*, to circumvent commensurate planning conditions, i.e., in this case, Condition 8.

Heck Off also considers the significant disquiet expressed in LCC's letter in the procedural manner by which Ecotricity and your department sought to progress and process this application after 8th February 2018, by which date the development consent had already expired, has caused significant concern within our local communities. **We seek clarity on this matter.**

*Notwithstanding the above, having reviewed the current application, it is noted that the applicant submitted this variation application to BEIS on 1 February 2018 - just one week before the original time limit for commencement expired. BEIS wrote to the applicant on 23 February 2018 informing them that the application did not meet the necessary requirements and therefore could not be published until further updated information had been submitted. **This further information was not submitted to BEIS until 11 May 2018.***

It is this Authority's opinion that as BEIS had deemed the further information as necessary to complete the Environmental Statement and therefore allow the publication and proper consideration

of the application, then without this information the application should have been deemed invalid when first received. Although the further information requested was later submitted, this was after the original time limit for commencement date had passed. **As such those consents had already expired and were no longer capable of being amended or varied.**

LCC conclude;

*Given the above, it is County Council's opinion that the **current application is invalid and not capable of being progressed as the consents to which the application is seeking to vary have expired.** Furthermore, the 2013 Act provisions were purposefully introduced to **allow amendments to the physical characteristics or elements of a development and should not, in our view, be used to simply allow more time to commence a development.** This Authority therefore **OBJECTS** to the application and believe **that the development cannot proceed unless a wholly new application for the development is made.***

Heck OFF concur with LCC's position. The Development Consent has expired in conjunction with Ecotricity's 2015 Variation Application, and should Ecotricity wish to continue with the development of the Heckington Fen wind farm a new planning application is required.

5. Radar Mitigation Scheme & 2018 Variation Application.

In response to Chapter 3 **Details of the Variation** Para 3.3

3.3 The proposed variations set out above are necessary for two reasons:

- The implementation of the original consent is conditional (Condition 5) on a Radar Mitigation Scheme (RMS) being agreed with the Ministry of Defence (MOD). **To date, despite best endeavours, the Applicant has not yet been able to agree an RMS with the MOD and therefore has been unable to commence the development.** However, progress is being made with a view to agreeing an ongoing mitigation strategy which is aiming to deliver a solution within a 3-5 year timeframe.*
- A decision on the 2015 Variation of Consent Application, submitted 6th February 2015, has not been forthcoming. The 2015 Variation of Consent Application proposed that the wording on Condition 5 was amended to allow for an RMS to be agreed prior to the installation of the turbines, as opposed to prior to commencement of the development, thereby allowing development to commence while discussions continued with the MOD. As a decision has not yet been made on the 2015 Variation of Consent Application, **the Applicant is currently unable to commence development within the specified timescales set out under Condition 4 of the s.36 Consent.***

Para 3.3 goes to the heart of the matter.

Heck Off submission of 27th June 2017, as set out on page 2, 3 and part of page 4, is our substantive case challenging Ecotricity's 2015 application on the RMS issue.

This submission remains intact and indeed is even more relevant in the light of this application, as it further exposes the speculative nature of Ecotricity's Heckington Wind Farm proposal since inception and submission in December 2009, and in addition the absolute cynical nature of Ecotricity's attempt to circumvent planning conditions, by literally "digging a hole" in an attempt to commence ground works, without any satisfactory RMS in prospect.

Heck Off yet again reiterate the point made in our June 2017 letter;

"We wish to make our point quite clear, the fact is just because MOD have not objected to the amendment of the wording of condition 5, can this in anyway be relied upon by Ecotricity to justify consent of their proposed amendment.

By making this assertion we contest, Ecotricity are misrepresenting MOD's position in order to favour consent. This is inappropriate and we also see this purely and simply as misrepresenting the facts to seek to gain a planning condition advantage and undermine the initial intention of the planning condition, i.e., to protect the local communities from adverse impacts from aborted works, in the event that a tried and tested radar mitigation scheme is not forthcoming, nor can be agreed to the full satisfaction of all parties".

Ecotricity recent statement on their Heck Fen WF website publishing their Radar Mitigation documentation as; "Not part of the application, but for the avoidance of doubt", raises significant disquiet, particularly as NKDC state in their consultation response to this application;

As a matter of fact, the requirements of Condition 5 remain unresolved to this date (December 2018) and the applicant's Radar Position Statement (RPS) (dated October 2018) fails to set out a cogent, unambiguous and reliable scheme and associated timescale to address those requirements. Moreover the applicant by their own admission have not presented the RPS as part of their current variation application leaving a significant uncertainty around its status and their own justification for this proposal.

We have assessed QINETIQ's Heckington Fen Wind Park Military Air Traffic Control Radar Position Statement October 2018, and yet again Ecotricity refer to this statement in the letter from MOD.

However, the MOD has agreed (when consulted by BEIS in March 2015) that the wording of Condition 5 of the Consent could be changed to "No construction of a wind turbine shall commence unless and until a Radar Mitigation Scheme has been submitted and approved", rather than "No development shall commence".

Heck Off's position is, and remains, that commencement of ground works would have **no material impact on MOD aerial operations**, this statement is, and continues to be irrelevant and affords **no weight** in consideration of any decision that may be made..

It is clear from QINETIQ's admission, Ecotricity did not start to pursue a RMS resolution until 2015, 2 years after gaining development consent, is an admission of failure:

*During the course of 2015 – 2017 Ecotricity worked closely with the Ministry of Defence Wind Farm Team and a leading radar consultant/supplier to assess whether any currently available radar mitigation would satisfactorily address the concerns of the MOD. **This work concluded that there were no solutions available at that point in time with a reasonable prospect of addressing the MODs concerns.** Since this work was completed Ecotricity has been continuing to investigate alternative potential solutions which were not assessed during 2015-17.*

Furthermore the admission, "Since **mid-2017** (a mere 7 months before the expiry date of 8th February 2018) Ecotricity has been exploring the potential of 'stealth turbines' with the defence contractor QinetiQ", completely flies in the face of the assurances given to our local communities by Inspector Major at Para 297;

297. Whilst I note that some residents are concerned that the 'in principle' agreements appear to give a long period for the matter to be resolved, this period reflects the usual time available for starting a project of this nature. **There would be no extension of the time set aside for resolving this matter.**"

NKDC's planning committee report, unanimously endorsed by Members of the Council on 29th November 2018, at Para 2.32, and Conclusions Section 3 page 39, raises a significant procedural concern created by the failure to make the Radar Position Statement (RPS) to available to NKDC until the 5th November and was not confirmed to have been published on Ecotricity website, until 19th November 2018.

Of even more concern is that with the apparent agreement of DBEIS, this report was *Scoped Out*. (Para 4.39).

2.32 States *This significant procedural concern is heightened by reference on the applicant's website (accessed on 19th November 2018) which specifically confirms that the RPS does not in fact form part of the application submission. **The rationale set out by the applicant for the variation application is squarely and solely on the basis of a failure to address Condition 5, the radar mitigation strategy, of the original consent and the need to reflect this through a further prolonged, 5 year, implementation period.** Contrary to the DECC guidance note calling for an applicant to give a 'clear and complete picture' of the development that would result from a variation application, in the Officer's view the proposals as initially submitted were wholly absent in detail in relation to the RMS – **and the purpose of (and weight assigned to) the October 2018 RPS document must also be called into question given the statement on the applicant's website.***

Para 2.38 NKDC then question "the weight" DBEIS can even give to the proposed RPS.

then at Para 2.43 *Whilst it is noted that the statutory consultee (MOD) has raised no objection to the proposed variation, the belated submission of the Radar Position Statement **has consequently excluded interested parties from meaningfully engaging in consideration of what is the sole reason for the application.***

As a matter of fact, there is currently no available mitigation strategy and the 4 stage/3-phase programme set out by the applicant, albeit in agreement with the MOD, is not binding and has been described as 'envisaged'.

Heck Off is extremely concerned that there is another failure by Ecotricity to adequately consult with our affected communities. **We submit that this needs to be urgently addressed.**

Furthermore, Heck Off has commissioned a expert review of QinetiQ/Ecotricity position statement on Radar Mitigation referred to by NKDC, see Appendix 3:

The following information has been provided by the lead engineer (now retired) of the then Plessey Radar solid state Watchman transmitter design team. Watchman radar systems are installed at the three RAF stations that would be affected by the proposed Heckington Fen wind turbines.

This review concludes: ***It is unlikely that a solution of the problem created by non-stationary clutter from wind farms will be solved by attending only to the source of the clutter.***

If the radar signal design were allowed to contribute to the solution then the research timescale may be quantifiable. The TWT-based Watchman transmitter designs are however constrained by the TWT specification, which leaves little room for "clever" waveform design. This is unfortunate, as the development of a rack of signal processing circuits would obviously be a shorter and far less costly development project than covering with, or incorporating RAM into the construction of, 22, 125 metre high wind turbines, both towers and blades.

In my opinion the achievement and demonstration of the required challenging level of clutter suppression with no changes in the Watchman radar in the space of four years is a near impossible target.

6. Wind Turbine Noise.

Review of Noise Appendix 5.

Ecotricity's submission @ Para 5.30 *As the baseline remains representative of the area, the assessment of impacts remains as in 2011* is completely unfounded.

It is clear that all Heck Off's and the local communities submissions throughout the 2015 Variation Application have been ignored in the light of the conclusion of Dr Yelland's appraisal of both the NIA submitted in support of Ecotricity's 2011.

Heck Off resubmit Dr Yelland's appraisal and accompanying appendices as these remain valid whilst Ecotricity's 2018 submission do not. See Appendices 4 & 5.

Our MP's letter dated June 2016 to the SoS at DECC Rt Hon Amber Rudd at that time, calling on new background noise surveys submission is also relevant.

Furthermore NKDC's submission states *The Council has already, in 2016, made further representations to the Secretary of State drawing his attention to the third party noise assessment prepared by Dr Yelland and that, in the Council's view there remained sufficient justification for the Secretary of State to seek an independent review of the noise impacts of the proposed development ahead of issuing his decision.*

There remain two conflicting reports submitted in relation to noise impacts; the original noise assessment contained at Chapter 10 of the Heckington Fen Wind Park Environmental Statement in support of the initial S.36 application (as updated through the current variation application) and the third party noise assessment prepared by Dr Yelland. The Council notes the relative absence of any revision to the background noise profile as part of the current variation application, and furthermore the applicant has simply highlighted no 'significant change in road and general infrastructure' in the vicinity of the development such that there would be a significant change to the noise environment (relative to that which existed at the time of the original noise assessment).

Whilst the Council did not object to the original S36 application on noise grounds, and is satisfied with the general methodology applied in the undertaking of the original ETSU-R-97 noise assessment, the Council is not able to assess the reliability of the baseline measurements and therefore agree prevailing background noise levels (including relative to the present day noise environment), both of which formed the basis for the assessment and the determination of site specific noise limits.

Whilst the Council has already highlighted the third party noise assessment undertaken by Dr Yelland and made recommendations to the effect that an independent noise assessment/review should be carried out, as far as the Council is aware, the Secretary of State has yet to commission an independent noise assessment and it remains unclear whether this will follow from the current submission.

RBS submission: *Although the first Variation of Consent Application has not been determined yet, we have been asked to make it clear that the criticisms raised by Dr Yelland at that time apply equally to the noise assessment relied upon in this application. Dr Yelland is preparing a detailed response to this latest application.*

7. Pilgrim Community Special School Amber Hill.

Ecotricity's Miscellaneous ES Appendix May 2018 assessment states;

There are no schools or other facilities which depend on a quiet environment within close proximity to the proposed development site which would further reduce any health effect.

Ecotricity has failed to assess wind turbine noise impacts on Pilgrim School, relocated to Amber Hill from their Sleaford and Boston sites. The school is identified on;

Fig 4 Public Open Space, as No 1. Amber Hill/Toftstead Primary School Recreation Area/ Playing Fields, located 2 km from the nearest Heckington fen wind turbine.

The Pilgrim Community Special School has relocated to Amber Hill for the location's quiet environment and tranquil setting.

Extracts from Pilgrim School's publically accessible website:

Last Day of Term for Sleaford and Boston Bases due to relocation to Amber Hill.

*Pilgrim School is acquiring the site of the old Toftstead Primary School at Amber Hill, Boston. **This will allow the school to vacate temporary accommodation at both the Sleaford and Boston sites. It will mean, for the first time, the school will have a permanent estate footprint in Lincolnshire. This is very exciting for us.***

Introduction

Autism is a lifelong condition but we strongly believe at Pilgrim that, with the right support and mental attitude, it does not need to stop young people being who they want to be. We recognise that pupils need, above all, to learn coping strategies by gradually expanding their comfort zones, and to build positive relationships. This is achieved at Pilgrim via an individual bespoke curriculum that includes social skills learning and training, and work experience. This sits alongside the more traditional school curriculum which allows pupils access to a wide range of GCSE and BTEC qualifications.

Supporting

At Pilgrim we understand that pupils may not have had positive learning experiences in their previous schools. However, we believe that a person's history is not their destiny and that with personalised teaching and support, each child is capable of making outstanding progress. Every pupil is assigned a support member of staff before they even join the school. This person will make arrangements to carry out an initial home visit to meet the family and to get to know the pupil. In addition to the Education, Health and Care Plan (EHC plan) or Statement of Special Needs, a Pilgrim Needs Analysis and sensory profile will be completed so that staff can make appropriate adjustments in preparation for the start in school. Risk assessments will also be carried out where appropriate; all before pupils engage in our school community in order to give them the best chances of success...

LCC references Pilgrim School in their letter of 26th October 2018.

Finally, since consent for the development was first granted Pilgrim School (a Community Special School) has opened a base at Amber Hill Village which is approximately 2km from the wind farm development. The school provides education for pupils who are in need of a special school placement due to medical need. The existence and proximity of this sensitive site appears to have been ignored by the applicant and the school has expressed concerns that the noise arising from the development both during its construction (e.g. piling) and its operation (e.g. infrasound) could have a negative impact due to the vulnerability of the children. It is also my understanding that despite being close to the administrative boundary of Boston Borough Council, the applicant has not consulted this Authority on the proposed variation. It is therefore requested that the applicant be asked to consider any impacts of the development on the Pilgrim School and that the comments of Boston Borough Council be sought.

NKDC's December 2018 consultation response states;

The opening of the Community Special School represents a significant material change in circumstances and one which has not been acknowledged nor examined in any way by the applicant. **The updated Environmental Statement fails to acknowledge the presence of the school as a noise sensitive receptor and as such no reliance can be placed on any of the conclusions contained therein in relation to noise given that impacts have not been assessed.** Furthermore, the specialist nature of the Amber Hill Pilgrim School as Special Educational Needs and Disabilities (SEND) facility also, in our opinion, introduces a requirement to address the potentially heightened sensory perception of operational wind turbines by school pupils including associated with vibration/piling during the construction phase.

8. Ecotricity's Heck Fen Wind Park Ltd Registration Number 08323021

Published Audited Reports for Accounting Year/s ending 30th April 2016 & 30th April 2017.

The sole reasons for this 2018 Variation Application is set out at @ Para 3.3;

3.3 The proposed variations set out above are necessary for two reasons:

- *The implementation of the original consent is conditional (Condition 5) on a Radar Mitigation Scheme (RMS) being agreed with the Ministry of Defence (MOD). **To date, despite best endeavours, the Applicant has not yet been able to agree an RMS with the MOD and therefore has been unable to commence the development.***

*As a decision has not yet been made on the 2015 Variation of Consent Application, the **Applicant is currently unable to commence development within the specified timescales set out under Condition 4 of the s.36 Consent.***

The Heck Fen Wind Park Ltd Profit and Loss Account and Statement of Other Comprehensive Income for the Year Ended 30th April 2016 Page 6, Reports;

*The company has not recognised any income, expenditure, gains or losses for either year **as the wind park is still under construction** and has not commenced trading.*

Likewise for the Profit and Loss Account and Statement of Other Comprehensive Income for the Year Ended 30th April 2017 Page 6, also states;

*The company has not recognised any income, expenditure, gains or losses for either year **as the wind park is still under construction** and has not commenced trading.*

It appears the Ecotricity's Audited Accounting Statements for Yrs ending 2016 & 17 are misleading and in contradiction with the position statement at Para 3.3, that no development has taken place due to the outstanding RMS - you may consider this matter requires further investigation.

In fact the position for Heck Fen Wind Park Ltd, Year Ending 30th April 2018, remains the same in that no construction has been permissible, as the Applicant is still unable to commence development, even more so now the Development Consent expired on 8th February 2018.

9. Summary of Conclusions.

Introduction

9.1 It is apparent that **none** of the substantive and material representations in respect of Ecotricity's 2015 Variation Application have been responded to in any meaningful way, by either your Department, or by Ecotricity in their Environment Statement 2018.

9.1.2 We are still awaiting a response to our letter of 4th July 2018, seeking clarification on the **background and reasons why has no decision been taken regarding the Variation Application submitted in February 2015**. The fact that this important matter has not been addressed is of significant concern, even more so, now we have confirmation that the 2015 application is not being progressed ("*parked up*") without any justification or reasons why. See Appendix 1.

9.1.3 Heck Off consider our submission of **27th June 2017, sets out a clear and unequivocal case as to why Ecotricity's 2015 Variation warranted refusal**, (along with all of our communities numerous submissions). In principle nothing has changed, Ecotricity still keep re-running the same unfounded assertions, and again the matters raised therein are material to the 2018 Variation Application and is attached as Appendix 2.

9.2 Legislative & Policy Representation.

9.2.1 RBS Submission 1.

The power to vary a licence under s.36A of the 1989 Act does not include the power to extend time within which a development must be started.

Whilst there is nothing explicitly stated in s.36A Electricity Act about variations which relate to extensions of time, the part of the application which seeks a variation of the conditions to the deemed planning permission under s.90 TCPA 1990 is subject to s.73 TCPA 1990.

9.2.2 Since s.73(5) TCPA 1990 does not allow for extensions of the time within which a development must be started, it follows that the application to amend the wording of Condition 8(2) of the deemed planning permission must fail.

9.2.3 Heck Off draws your attention to LCC's position which concurs with Heck Off's legal representation RBS, "*that there is no provision within Section 73 of the 1990 TCPA and therefore, it follows that this should be true to S.36 consents*".

9.2.4 RBS Submission 2. Extensions of time of this sort are not contemplated by reference to the corresponding regulations.

An application for variation under s.36A of the Electricity Act requires compliance with the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013. These provide an indication of the type of application contemplated:

It is clear that the variations that are contemplated are those that relate to construction, extension and operation.

9.2.5 In summary, the guidance repeatedly provides examples which correspond to changes in design, technology and operation which are consistent with the original application. **There is no suggestion that extensions of time for commencing the construction/development should be covered by this procedure.**

9.2.6 RBS Submission 3. Blight – generally speaking, the reason why grants of planning permission include time limits for commencing development/complying with conditions is to minimise the impact of any period of uncertainty for those who may be affected by the grant of permission. **This submission sets out the reasoning why extensions of time are not permitted.**

It is noted that the avoidance of uncertainty for those who may be affected is specifically stated in relation to Condition 8:

Condition 8. The Secretary of State in exercise of the powers conferred upon him by section 90(2) of the Town and Country Planning Act 1990 hereby directs that planning permission for the Development be deemed to be granted subject to the following conditions:

(2) The Development hereby permitted shall be commenced before the expiration of five years from the date of this permission.

Reason: To strike a balance between the time it may take to put in place the necessary pre-construction measures required – for example, tendering, obtaining the necessary funding, micro-siting of the turbines – and minimising the impact of any period of uncertainty for those who may be affected pending the decision to begin construction works.

*297. Whilst I note that some residents are concerned that the ‘in principle’ agreements appear to give a long period for the matter to be resolved, this period reflects the usual time available for starting a project of this nature. **There would be no extension of the time set aside for resolving this matter.***

9.2.7 In summary, it was clear that the 5 year condition was carefully considered at the time and that it was felt that the 5 year period was a reasonable time limit balancing the competing demands.

9.2.8 Richard Buxton Solicitors concluding summary is - ***this variation application is refused.***

9.2.9 Furthermore Heck Off submits, that a granting of consent to Ecotricity's 2018 Variation of Consent Application, would therefore by definition, establish a completely unacceptable precedent, whereby the intended provisions in setting; "*time limits for commencing development/complying with conditions,*" in the TCPA, "*to minimise the impact of any period of uncertainty for those who may be affected by the grant of permission*", **could be completely undermined - there would be in effect be no safeguards preventing Ecotricity, (or indeed any other developer) from submitting variation applications "ad infinitum", to circumvent commensurate planning conditions, i.e., in this case, Condition 8.**

9.3 National Planning Policy Framework (NPPF) - WMS.

9.3.1 Heck Off sets out the background to the incorporation of the WMS into the NPPF in our submission of 27th June 2017 (Appendix 2) and the letter from DECC to NKDC of 19th January 2016 advising that this was relevant in opening a 2nd round of consultation to the 2015 Variation.

9.3.2 We refer to NKDC Officers' Report & Recommendation to the Planning Committee update, confirms that an amended NPPF Footnote 49 states:

"Except for applications for the repowering of existing turbines, a proposed wind energy development involving one or more turbines should not be considered acceptable unless it is in an area identified as suitable for wind energy development in the development plan; and, following consultation, it can be demonstrated that the planning impacts identified by the affected local community have been fully addressed and the proposal has their backing."

9.3.3. It is clear the WMS is now incorporated into to the NPPF and is therefore a material matter.

9.4 Lincolnshire County Council's Statutory Consultation Response.

9.4.1 LCC's letter of 26th October 2018 clearly sets out their objection.

9.4.2 Heck Off draws your attention to LCC's position which concurs with Heck Off's legal representation RBS, "*that there is no provision within Section 73 of the 1990 TCPA and therefore, it follows that this should be true to S.36 consents*".

9.4.3 Heck Off also considers the significant disquiet expressed in LCC's letter in the procedural manner by which Ecotricity and your department sought to progress and process this application after 8th February 2018, **by which date the development consent had already expired, has caused significant concern within our local communities. We seek clarity on this matter.**

9.4.4 LCC conclude;

*Given the above, it is County Council's opinion that the **current application is invalid and not capable of being progressed as the consents to which the application is seeking to vary have expired.** Furthermore, the 2013 Act provisions were purposefully introduced to **allow amendments to the physical characteristics or elements of a development and should not, in our view, be used to simply allow more time to commence a development.** This Authority therefore **OBJECTS** to the application and believe **that the development cannot proceed unless a wholly new application for the development is made.***

9.4.5 Heck OFF concur with LCC's position. The Development Consent has expired in conjunction with Ecotricity's 2015 Variation Application, and should Ecotricity wish to continue with the development of the Heckington Fen wind farm, a new planning application is required.

9.4.6 LCC also raise concerns with regards to Pilgrim Community Special School.

9.5 The Radar Mitigation Scheme & Ecotricity's Radar Position Statement (RPS).

9.5.1. **RBS Submission 4. The Radar Mitigation Scheme** – the reason that Ecotricity require additional time for the now expired consent is that it has failed to resolve the ongoing difficulties caused by the potential interference by the wind turbines with Ministry of Defence bases. This is not an application for a variation of the type contemplated by the regulations and guidance but has been made because the applicant has failed to resolve a separate issue.

The application is misguided. It took a commercial risk in proceeding while the issue remained unresolved. When seen in this context, the misconceived nature of the Variation of Consent Application is clear.

9.5.2. Chapter 3 **Details of the application** Para 3.3;

To date, despite best endeavours, the Applicant has not yet been able to agree an RMS with the MOD and therefore has been unable to commence the development. However, progress is being made with a view to agreeing an ongoing mitigation strategy which is aiming to deliver a solution within a 3-5 year timeframe.

As a decision has not yet been made on the 2015 Variation of Consent Application, the Applicant is currently unable to commence development within the specified timescales set out under Condition 4 of the s.36 Consent.... goes to the heart of the matter.

9.5.3. Heck Off submission of 27th June 2017, (Appendix 2) challenging Ecotricity's 2015 application on the RMS issue remains intact and is even more relevant in the light of the 2018 application, as it further exposes the speculative nature of Ecotricity's Heckington Wind Farm proposal since inception and the initial submission in December 2009, and the absolute cynical nature of Ecotricity's attempt to circumvent planning conditions, by literally "digging a hole" in an attempt to commence ground works, without any satisfactory RMS in prospect.

9.5.4. We have assessed QINETIQ's Heckington Fen Wind Park Military Air Traffic Control Radar Position Statement October 2018, and yet again Ecotricity refer to this statement in the letter from MOD.

However, the MOD has agreed (when consulted by BEIS in March 2015) that the wording of Condition 5 of the Consent could be changed to "No construction of a wind turbine shall commence unless and until a Radar Mitigation Scheme has been submitted and approved", rather than "No development shall commence".

Heck Off's position is, and remains, that commencement of ground works would have **no material impact on MOD aerial operations**, this statement is, and continues to be irrelevant and cannot be afforded **any weight** in the determination of the 2018 application

9.5.5 NKDC's planning committee report, Para 2.32, and Conclusions Section 3 page 39, raises a significant procedural concern created by the failure to make the Radar Position Statement (RPS) to available to NKDC until the 5th November and was not confirmed to have been published on Ecotricity website, until 19th November 2018. Which states ; "Not part of the application, but for the avoidance of doubt", raises significant disquiet, particularly as NKDC state in their consultation response to this application;

the requirements of Condition 5 remain unresolved to this date (December 2018) and the applicant's Radar Position Statement (RPS) (dated October 2018) fails to set out a cogent, unambiguous and reliable scheme and associated timescale to address those requirements.

Moreover the applicant by their own admission have not presented the RPS as part of their current variation application leaving a significant uncertainty around its status and their own justification for this proposal. ... the purpose of (and weight assigned to) the October 2018 RPS document must also be called into question given the statement on the applicant's website.

9.5.6 Para 2.38 NKDC then question "the weight" DBEIS can even give to the proposed RPS.

Then at Para 2.43 *Whilst it is noted that the statutory consultee (MOD) has raised no objection to the proposed variation, the belated submission of the Radar Position Statement **has consequently excluded interested parties from meaningfully engaging in consideration of what is the sole reason for the application.***

As a matter of fact, there is currently no available mitigation strategy and the 4 stage/3-phase programme set out by the applicant, albeit in agreement with the MOD, is not binding and has been described as 'envisaged'.

Heck Off is extremely concerned that there is another failure by Ecotricity to adequately consult with our affected communities. **We submit that this needs to be urgently addressed.**

9.5.7 The admission that Ecotricity did not start to pursue a RMS resolution until 2015, 2 years after gaining development consent, and the conclusion that there were no solutions available is a significant admission of failure:

During the course of **2015 – 2017** Ecotricity worked closely with the Ministry of Defence Wind Farm Team and a leading radar consultant/supplier to assess whether any currently available radar mitigation would satisfactorily address the concerns of the MOD. **This work concluded that there were no solutions available at that point in time with a reasonable prospect of addressing the MODs concerns.** Since this work was completed Ecotricity has been continuing to investigate alternative potential solutions which were not assessed during 2015-17.

9.5.8 Furthermore the admission, "Since **mid-2017** (a mere 7 months before the development expiry date of 8th February 2018) Ecotricity has been exploring the potential of 'stealth turbines' with the defence contractor QinetiQ", **completely flies in the face of the assurances given to our local communities by Inspector Major at Para 297;**

297. Whilst I note that some residents are concerned that the 'in principle' agreements appear to give a long period for the matter to be resolved, this period reflects the usual time available for starting a project of this nature. **There would be no extension of the time set aside for resolving this matter.**"

9.5.9 Heck Off has commissioned a expert review of QinetiQ/Ecotricity position statement on Radar Mitigation referred to by NKDC, see Appendix 3:

The following information has been provided by the lead engineer (now retired) of the then Plessey Radar solid state Watchman transmitter design team. Watchman radar systems are installed at the three RAF stations that would be affected by the proposed Heckington Fen wind turbines.

9.5.10. This review concludes: ***It is unlikely that a solution of the problem created by non-stationary clutter from wind farms will be solved by attending only to the source of the clutter.***

9.5.11. ***In my opinion the achievement and demonstration of the required challenging level of clutter suppression with no changes in the Watchman radar in the space of four years is a near impossible target.***

9.6. Wind Turbine Noise

9.6.1 Appendix 5.

Ecotricity's submission @ Para 5.30 *As the baseline remains representative of the area, the assessment of impacts remains as in 2011* is completely unfounded.

9.6.2 It is clear that all Heck Off's and the local communities submissions throughout the 2015 Variation Application have been ignored in the light of the conclusion of Dr Yelland's appraisal of both the NIA submitted in support of Ecotricity's 2011.

9.6.3. NKDC submission is that: *The Council has already, in 2016, made further representations to the Secretary of State drawing his attention to the third party noise assessment prepared by Dr Yelland and that, in the Council's view **there remained sufficient justification for the Secretary of State to seek an independent review of the noise impacts of the proposed development ahead of issuing his decision.***

9.6.4 ... *the Council is **not** able to assess the reliability of the baseline measurements and therefore agree prevailing background noise levels (including relative to the present day noise environment), both of which formed the basis for the assessment and the determination of site specific noise limits.*

9.6.5. *..as far as the Council is aware, the Secretary of State has yet to commission an independent noise assessment and it remains unclear whether this will follow from the current submission.*

9.6.6. **The updated Environmental Statement fails to acknowledge the presence of the school as a noise sensitive receptor and as such no reliance can be placed on any of the conclusions contained therein in relation to noise given that impacts have not been assessed.**

9.6.7 RBS submission: ***Although the first Variation of Consent Application has not been determined yet, we have been asked to make it clear that the criticisms raised by Dr Yelland at that time apply equally to the noise assessment relied upon in this application. Dr Yelland is preparing a detailed response to this latest application.***

9.6.8. Our local communities now have **no** confidence that, Ecotricity is a responsible developer and therefore, cannot have any confidence in their will, or ability to, a) correctly assess noise impacts, b) operate within consented noise conditions, or c) in the event of consent and subsequent complaints, deal with these in a timely manner, or at all.

9.7. Pilgrim Community Special School Amber Hill.

9.7.1 Ecotricity's Miscellaneous ES Appendix May 2018 assessment states;

There are no schools or other facilities which depend on a quiet environment within close proximity to the proposed development site which would further reduce any health effect.

9.7.2 It is clear Ecotricity has failed to acknowledge the existence of, or assess adverse wind turbine noise impacts on Pilgrim Community Special School, relocated to Amber Hill from their Sleaford and Boston sites. Details of The Pilgrim Community Special School are available on their publically accessible website and also in published documents by Amber Hill Parish Council.

Amber Hill Parish Council have raised concerns that the Pilgrim Community Special School which provides education for pupils who are in need of a special school placement due to medical need between the ages of 4 -16, has been permanently relocated into their Parish, precisely because of Amber Hill's rural tranquil environment, positioned further north of away from the daily traffic noise on the A17, yet sited 2 km distance from the nearest Heckington Fen wind turbine.

9.7.3 LCC raise significant concerns: *The existence and proximity of this sensitive site appears to have been ignored by the applicant and the school has expressed concerns that the noise arising from the development both during its construction (e.g. piling) and its operation (e.g. infrasound) could have a negative impact due to the vulnerability of the children.*

9.7.4 NKDC likewise state: **The updated Environmental Statement fails to acknowledge the presence of the school as a noise sensitive receptor and as such no reliance can be placed on any of the conclusions contained therein in relation to noise given that impacts have not been assessed.**

Furthermore, the specialist nature of the Amber Hill Pilgrim School as Special Educational Needs and Disabilities (SEND) facility also, in our opinion, introduces a requirement to address the potentially heightened sensory perception of operational wind turbines by school pupils including associated with vibration/piling during the construction phase.

9.7.5 This significant failure by Ecotricity is also a consequence of their decision, following discussions with BEIS that, "there would be no necessity to seek the views of statutory consultees prior to submission"; 4.4 Following discussions with the BEIS (previously DECC), detailed below, Ecotricity determined that, given that no changes to the development are proposed under this variation application, there would be no necessity to seek the views of statutory consultees prior to submission.

**9.8. Ecotricity's Heck Fen Wind Park Ltd Registration Number 08323021
Published Audited Reports for Accounting Year/s ending 30th April 2016 & 30th April 2017.**

9.8.1 It appears the Ecotricity's Audited Accounting Statements for Yrs ending 2016 & 17 are misleading and in contradiction with the position statement at Para 3.3, that no development has taken place due to the outstanding RMS - you may consider this matter requires further investigation.

9.8. 2 In fact the position for Heck Fen Wind Park Ltd, Year Ending 30th April 2018, remains the same in that no construction has been permissible, as the Applicant is still unable to commence development, even more so now the Development Consent expired on 8th February 2018.

10. Conclusions.

10.1. It appears that **none** of the representations submitted in response to Ecotricity's 2015 Variation Application have been considered in the 2018 Application.

10.1.2. There remains **outstanding** responses to our communities significant concerns seeking clarification on the background and reasons why has no decision been taken regarding the Variation Application submitted in February 2015 and the decision to "park up" this up.

10.1.3. Heck Off consider our submission of **27th June 2017, sets out a clear and unequivocal case as to why Ecotricity's 2015 Variation warranted refusal**, (along with all of our communities numerous submissions). In principle nothing has changed, Ecotricity still keep re-running the same unfounded assertions, and again the matters raised therein, are material to the 2018 Variation Application.

10. 2. Legislative & Policy Representation.

The power to vary a licence under s.36A of the 1989 Act does **not include the power to extend time within which a development must be started.**

10.2.1. Whilst there is nothing explicitly stated in s.36A Electricity Act about variations which relate to extensions of time, the part of the application which seeks a variation of the conditions to the deemed planning permission under s.90 TCPA 1990 is subject to s.73 TCPA 1990.

10.2.2. Since s.73(5) TCPA 1990 does not allow for extensions of the time within which a development must be started, it follows that the application to amend the wording of Condition 8(2) of the deemed planning permission must fail.

10.2.3 We draw your attention to LCC's position, which concurs with Heck Off's legal representation, "*that there is no provision within Section 73 of the 1990 TCPA and therefore, it follows that this should be true to S.36 consents*".

10. 3. National Planning Policy Framework (NPPF) - WMS.

*"Except for applications for the repowering of existing turbines, a proposed wind energy development involving one or more turbines should not be considered acceptable unless it is in an area identified as suitable for wind energy development in the development plan; and, **following consultation, it can be demonstrated that the planning impacts identified by the affected local community have been fully addressed and the proposal has their backing.**"*

10.3.1 It is clear the WMS is now incorporated into to the NPPF and is therefore a material matter.

10.4. Lincolnshire County Council's Statutory Consultation Response.

10.4.1. Heck Off concur with LCC's position and considers the disquiet expressed in LCC's letter in the procedural manner by which Ecotricity and your department sought to progress and process this application after 8th February 2018, **by which date the development consent had already expired, has caused significant concern within our local communities.**

10.4.2. It is also clear that LCC' considers DBEIS is pursuing an invalid application and as the existing Development Consent has expired, Ecotricity should be required to submit a new planning application to our Local Planning Authority, NKDC. **We seek clarification on this matter.**

10.5. The Radar Mitigation Scheme & Ecotricity's Radar Position Statement (RPS)

10.5.1 RBS **Submission 4.** This is not an application for a variation of the type contemplated by the regulations and guidance but has been made because the applicant has failed to resolve a separate issue.

10.5.2. The application is misguided. It took a commercial risk in proceeding while the issue remained unresolved. When seen in this context, the misconceived nature of the Variation of Consent Application is clear.

10.5.3 Ecotricity's failure expressed Para 3.3;

To date, despite best endeavours, the Applicant has not yet been able to agree an RMS with the MOD and therefore has been unable to commence the development. However, progress is being made with a view to agreeing an ongoing mitigation strategy which is aiming to deliver a solution within a 3-5 year timeframe.

*As a decision has not yet been made on the 2015 Variation of Consent Application, the **Applicant is currently unable to commence development within the specified timescales set out under Condition 4 of the s.36 Consent.... goes to the heart of the matter.***

10.5.4. Heck Off (Appendix 2) challenging Ecotricity's 2015 application on the RMS issue remains intact and is even more relevant in the light of the 2018 application.

10.5.5. Heck Off's position is, and remains, that commencement of ground works would have **no material impact on MOD aerial operations**, this statement is, and continues to be irrelevant and cannot be afforded **any weight** in the determination of the 2018 application.

10.5.6. Heck Off draw attention to NKDC's concerns:

*.... the requirements of Condition 5 remain unresolved to this date (December 2018) and the applicant's Radar Position Statement (RPS) (dated October 2018) **fails to set out a cogent, unambiguous and reliable scheme and associated timescale to address those requirements.***

and...

*Moreover the applicant by their own admission have **not** presented the RPS as part of their current variation application leaving a significant uncertainty around its status and their own justification for this proposal. ... the purpose of (and weight assigned to) the October 2018 RPS document must **also be called into question given the statement on the applicant's website.***

then at Para 2.43 the belated submission of the Radar Position Statement *has consequently excluded interested parties from meaningfully engaging in consideration of what is the sole reason for the application.*

10.5.7 Heck Off is extremely concerned that there is another failure by Ecotricity to adequately consult with our affected communities. **We submit that this needs to be urgently addressed.**

10.5.8 The admission that Ecotricity did not start to pursue a RMS resolution until 2015, 2 years after gaining development consent, and the conclusion that there were no solutions available is a significant admission of failure.

10.5.9 Furthermore the admission, "*Since **mid-2017** (a mere 7 months before the development expiry date of 8th February 2018) Ecotricity has been exploring the potential of 'stealth turbines' with the defence contractor QinetiQ*", **completely flies in the face of the assurances given to our local communities by Inspector Major at Para 297;**

297. *Whilst I note that some residents are concerned that the 'in principle' agreements appear to give a long period for the matter to be resolved, this period reflects the usual time available for starting a project of this nature. **There would be no extension of the time set aside for resolving this matter.***"

10.5.10 NKDC conclude; *As a matter of fact, there is currently no available mitigation strategy and the 4 stage/3-phase programme set out by the applicant, **albeit in agreement with the MOD, is not binding and has been described as 'envisaged'.***

10.5.11 Heck Off after an expert review of QinetiQ/Ecotricity position statement on Radar Mitigation referred to by NKDC also concludes:

*It is unlikely that a solution of the problem created by non-stationary clutter from wind farms will be solved by attending only to the source of the clutter. In my opinion the achievement and demonstration of the required challenging level of clutter suppression with no changes in the Watchman radar **in the space of four years is a near impossible target.***

10.6 Wind Turbine Noise

10.6.1. NKDC's statement: ***The updated Environmental Statement fails to acknowledge the presence of the school as a noise sensitive receptor and as such no reliance can be placed on any of the conclusions contained therein in relation to noise given that impacts have not been assessed.***

10.6.2 RBS submission: ***Although the first Variation of Consent Application has not been determined yet, we have been asked to make it clear that the criticisms raised by Dr Yelland at that time apply equally to the noise assessment relied upon in this application. Dr Yelland is preparing a detailed response to this latest application.***

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10.7.1 It is clear Ecotricity has failed to acknowledge the existence of, or assess adverse wind turbine noise impacts on Pilgrim Community Special School.

10.7.2. Amber Hill Parish Council have raised concerns that the Pilgrim Community Special School permanently relocated into their Parish, precisely because of Amber Hill's rural tranquil environment, positioned further north of away from the daily traffic noise on the A17, yet sited 2 km distance from the nearest Heckington Fen wind turbine.

10.7.3. LCC raise significant concerns: *The existence and proximity of this sensitive site appears to have been ignored by the applicant and the school has expressed concerns that the noise arising from the development both during its construction (e.g. piling) and its operation (e.g. infrasound) could have a negative impact due to the vulnerability of the children.*

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10.7.5 This significant failure by Ecotricity is also a consequence of their decision, following discussions with BEIS that, "*there would be no necessity to seek the views of statutory consultees prior to submission*";

10.8. Ecotricity's Heck Fen Wind Park Ltd Registration Number 08323021 Published Audited Reports for Accounting Year/s ending 30th April 2016 & 30th April 2017.

10.8.1 It appears the Ecotricity's Audited Accounting Statements for Yrs ending 2016 & 17 are misleading and in contradiction with the position statement at Para 3.3, that no development has taken place due to the outstanding RMS - you may consider this matter requires further investigation.

Ecotricity's present difficulties at Heckington Fen are entirely of their own making, this proposed wind farm development - submitted in December 2009, precisely 9 years ago, was at the outset a speculative development of which Ecotricity had full knowledge, given that the MOD radar issues were first raised in 2002, and there is now compelling evidence there is **still no solution in sight even before 8th February 2023..**

It is completely unacceptable for this commercial business to keep inflicting their significant failures and misguided applications onto our local communities. Ecotricity are solely responsible for causing immense distress and significant costs on our vulnerable rural communities, who are having to fund our legitimate challenges against their failures.

Our LPA North Kesteven has already spent over £80,000 at the Inquiry held in 2012, plus additional cost dealing with both Ecotricity's Variation Applications.

It is clear that there are no grounds in Planning Regulations that permit extension of Development Consents even more so now this has expired.

They have failed to reassess wind turbine noise impacts and Dr Yelland has demonstrated that the 2013 consent was granted on non compliant Noise Impact Assessments.

We refer you to comments made by the community at Shipdham in Norfolk back in 2012 in response to another of Ecotricity failed wind turbine proposals.

Plans for two giant wind turbines could be approved next week - 10 years they were first refused by councillors.

The application by energy firm Ecotricity for the two 100-metre turbines on agricultural land at Wood Farm, Church Lane, between Bradenham and Shipdham near Dereham, has led to a bitter wrangle with a number of appeals and inquiries and a High Court judicial review.

“The government has said it is committed to localism. One of the key definitions of localism it gives is ‘to empower communities to do things their way by creating rights for people to get involved with, and direct the development of, their communities.’”

Mr Kite added: “We are the community who would be directly and adversely affected by turbines erected too close to our homes. We have no intention of bowing to the tactics of repeated applications exploiting planning law that Ecotricity continues to employ to browbeat us into submission.”

Campaigners celebrate after Ecotricity finally gives up 13-year battle to build wind turbines at Shipdham PUBLISHED: **06:30 17 July 2015**

After four public inquiries Ecotricity has withdrawn its High Court appeal against the refusal of planning permission to build two 100m-high wind turbines at Wood Farm, between Shipdham and Bradenham, near Dereham.

We submit that there is only one option available and that is to refuse consent.

Supporting Documents:

Appendix 1. letter dated 4th July 2018, to DBEIS in which we sought clarity by requesting that we are provided; *"with the background to and reasons why has no decision been taken regarding the Variation Application submitted in February 2015.*

Appendix 2. submission sent to DBEIS on 27th June 2017, setting out a clear and unequivocal case as to why Ecotricity's 2015 Variation warranted refusal.

Appendix 3. Heck Off expert review of QinetiQ/Ecotricity position statement on Radar Mitigation.

Appendix 4. Dr Yelland's June 2016 WTN NIA appraisal- resubmission for the 2018 Variation Application.

Appendix 5. Accompanying Appendix for June 2016 NIA appraisal

Appendix 6. Accompanying Appendix for June 2016 NIA appraisal

