Form PP8

Electricity Act 1989
Notification

North Kesteven DISTRICT COUNCIL

Name and address of applicant

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Name and address of agent (if any)

Notice of decision

Application number:	**15/0416/S36**
Proposal:	**S.36C of the Electricity Act 1989 and S. 90(2ZA) of the Town and Country Planning Act 1990. Application to vary S. 36 consent and deemed permission for the Heckington Fen Wind Park, Heckington Fen, near East Heckington.**
Location:	**Land at Six Hundred Farm Six Hundred Drove East Heckington Sleaford Lincolnshire**

Following a meeting of the North Kesteven District Council Planning Committee on 29th November 2018, it was unanimously resolved that the Council raise **significant concerns** to the Secretary of State for Business, Energy and Industrial Strategy (BEIS) in relation to the three areas specified below, in relation to the S.36C Electricity Act 1989 and S.90(2ZA) Town and Country Planning Act 1990 applications to extend the date by which development must be commenced at Heckington Fen Wind Park from 5 years to 10 years (ie. no later than 8 February 2023).

Matter 1 - Noise

The Council notes that the current application does not seek to amend the turbine design, siting, numbers or conditions relating to the original permission, however there remains significant concern and objection from a third party regarding the accuracy of the information which supports the submission. The applicant has reviewed the 2011 Environmental Statement and considers that ETSU-R-97 remains the relevant methodology and although a number of new dwellings have been identified, the noise assessment locations previously considered remain representative of the properties neighbouring the development. The applicant also adds that there has been no significant change to the road and general infrastructure in the vicinity, and that although traffic levels are likely to have increased since 2011, the previous measurements are likely to still be representative. However, the Council notes that these conclusions have only been briefly justified.

Date: 6 December 2018

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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.

Furthermore it has been brought to the Council's attention that the Pilgrim School has recently opened a new special educational needs and disabilities (SEND) facility at the former primary school in Amber Hill, around 2km from the site. The Council understands that the school is a Community Special School which provides education for pupils who are in need of a special school placement due to medical need and that it caters for pupils between the ages of 4 - 16.

The opening of the Community Special School represents a significant material change in circumstances and one which has not been acknowledge 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.

Mindful of the brief nature of the update on noise in support of the S36 variation application, the absence of any supporting data to justify the applicant's conclusions on subsequent changes to the background noise environment, and the failure to consider the Amber Hill Pilgrim School as a noise sensitive receptor (with potentially heightened sensitivity) the Council raises significant concern to BEIS and continues to recommend independent review/arbitration on the matter of noise, including with regard to the conclusions drawn in the report provided by Dr Yelland.

The issue of the robustness of the noise assessment and associated mitigation becomes a critical factor for the District Council as part of its statutory responsibility to enforce planning conditions, should you be mindful to issue consent for the Variation. So in this respect we believe it is imperative that you satisfy yourself that no ambiguity exists.

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Matter 2 - Aviation/Radar Mitigation Strategy

The S36C application, if approved, would wholly contradict and undermine the commitment given by the Inspector appointed by the Secretary of State to determine the original application in relation to aviation safety matters. The rationale behind the S.36C variation application rests solely on the applicant's inability to address the previous requirements in relation to the military aviation impacts of the proposed wind farm - specifically the negatively worded Condition 5 of the Consent which prevents the commencement of development unless and until a Radar Mitigation Scheme has been submitted to and approved in writing by the Secretary of State.

Paragraph 297 of the Inspector's Report confirms that the applicant had been in negotiation with the respective aviation safety bodies and had reached an agreement on suitable mitigation for radar which was confirmed in writing by the bodies concerned. The Council has never seen such written confirmation. The Inspector concluded that he was 'therefore satisfied that these matters do not form an impediment to the grant of consent'.

The Inspector also gave a commitment in paragraph 297 that, in order to respond to local resident concerns regarding the potential extended time period (for the requirements of Condition 5) to be addressed, 'there would be no extension of the time set aside for resolving the matter'.

As a matter of fact, the requirements of Condition 5 remain unresolved to this date 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.

Beyond the issue of its status, there are two specific concerns in relation to this matter - firstly the RPS was only received by the District Council on 5th November, triggered as a result of a proactive approach from the Council to Defence Estates (on behalf of the Ministry of Defence) and subsequently to BEIS directly. The Radar Position Statement has not, as far as the Council is aware, been more widely publicised or made publicly available by the applicant or BEIS which creates a significant area of procedural concern.

Secondly, paragraph 35 of the DECC guidance note 'Varying consents granted under section 36 of the Electricity Act 1989 for generating stations in England and Wales' (July 2013) states that it is 'essential that the application documents give a clear and complete picture of what development would result if the variation is granted and the varied consent is then implemented in accordance with its terms'.

The Council notes the reference within the RPS which states that during 2015-17 the applicant had worked closely with the MOD Wind Farm Team and a leading radar consultant/supplier to identify whether there were any currently available radar mitigation solutions which would fully satisfy the MOD's concerns however that no solutions were available at that point in time. The applicant states that they have continued to work to investigate any potential solutions not previously identified. The S36 consent was issued in February 2013 and as such the applicant appears to concede that there has been no attempt to address the RMS requirement for at least a 2 year period post-approval.

Whilst the applicant points to the ongoing exploring of the potential for 'stealth turbines' with the defence contractor QinetiQ, in the period since mid-2017, this solution has yet to be agreed with the approval bodies. The Council notes that the applicant's four-phase test programme is predicated on a number of conditional' factors, including:

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- The completion of modelling parameters and performance criteria for 'stealth' turbines (phase 1 feasibility) and,
- The consideration of other technologies used in combination with 'stealth' turbines (phase 1 feasibility)
- Further initial trials to minimise the risk and cost of full scale trial/s
- Full scale testing of 'stealth' blades on a surrogate site or incrementally at Heckington Fen.

However, the applicant has supplied no information to confirm which operational 'surrogate' windfarm offers the same locational and military aviation characteristics as Heckington Fen for the purpose of trial testing, and the current consent precludes any turbine being constructed for 'test' purposes at Heckington.

Paragraph 154 (b) and footnote 49 of the NPPF and policy LP19 'Renewable Energy Proposals' of the Central Lincolnshire Local Plan (CLLP) impose specific restrictions in this regard to the extent that consent is very unlikely to be granted for any on-site testing (without prejudice).

The applicant's RPS estimates a minimum of at least 3.5 years' worth of what appears to be essentially experimental testing before they expect the MOD to formally verify and approve the RMS and be in position to recommend the discharge of Condition 5 of the original consent. This should be set against a 2 year hiatus post-decision in 2013 when the applicant has been unable to point to any progression of a strategy.

Further uncertainty on the timely resolution of Condition 5 stems from the military air traffic control contract awarded to Aquila - and specifically the MOD's 'Project Marshall' component. The RPS quotes directly from a February 2017 Windfarm Scoping Study prepared by Aquila which notes that 'there are currently no solutions available prior to the replacement of the Primary Surveillance Radar systems at RAFs Waddington, Cranwell and Coningsby which could meet the 'no derogation of performance' requirement' and that 'at the present time there are no enduring solutions available that will fully mitigate the effects of onshore windfarms as well as meeting Project Marshall requirements'. The need to robustly address the RMS is heightened by the potential future expansion of RAF Cranwell and RAF Coningsby and which, in the case of the latter (as the Secretary of State will be aware) performs a critical defence role as one of two RAF Quick Reaction Alert (QRA) Stations which protect UK airspace.

The Council therefore raises significant doubt that the requirements of Condition 5 can, and should, be accommodated through the current variation application - in particular mindful of the previous Inspector's very clear statement at paragraph 297 of their Report that no further time extensions would be entertained. The Council wholly endorses that approach and, from its review of the RPS and the number of caveated and conditional experimental tests, is far from convinced that the requirements of Condition 5 can reasonably be addressed during this extended period.

Bearing in mind the terms of the application, which seeks commencement of development no later than 8th February 2023, and the estimated timescale to complete the four-phase trials, there is now very limited scope for any slippage in the applicant's programme. At the time of this response, there would be only approximately 4 years and 2 months remaining to commence development, set against the 3.5 year trial and testing process advocated by the applicant's RPS – before they expect to be in a positon whereby the MOD could formally verify and approve the RMS.

It is a matter of fact that no RMS exists at present - nor, from the information presented - is one foreseeable. Contrary to the still operative DECC guidance, the current submission fails to provide a 'clear and complete' picture of the project and on the contrary points to further considerable uncertainty, being wholly detrimental to the welfare of those District residents within the surrounding communities affected by these proposals.

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Matter 3 - Procedural Concerns

The Department of Energy and Climate Change (DECC) guidance (dated July 2013) on varying consents granted under section 36 of the Electricity Act 1989, identifies a number of scenarios and circumstances whereby variations to the original consent may be forthcoming; including the example of installing more efficient technology thereby generating more power without radically changing the physical dimensions of the buildings and/or structures.

Paragraph 15 of the DECC guidance note states that one of the purposes for introducing the variation procedure is to allow designs initially approved, but not implemented, to be modified, with paragraph 22 then referring to a further purpose, namely 'to enable development that is inconsistent with the original section 36 consent' - i.e. flexibility to enable a revised development along 'different lines from those set out in the existing consent'.

The sole purpose of the current variation application is to extend the time limit of the original consent. No other physical alterations are proposed - this has been confirmed by the applicant. Whilst each s.36c application must be considered on its own merits, in the Council's view the outcome sought by the applicant is significantly removed from the general ethos of the DECC guidance. Furthermore, the RPS document submitted by the applicant in October 2018 does not, at their own admission, form part of the supporting documents. The Council would therefore respectfully submit that notwithstanding the Council's significant concerns regarding the likelihood of securing the timely agreement of the RMS (given the number of embedded caveats and conditions), the RPS document should not be afforded weight in BEIS consideration of the s.36c application, and the scope and purpose of the RPS is therefore fundamentally questioned.

Even if BEIS are minded to consider the document, the Council has significant concerns about the robustness and inclusivity of the consultation process given the date of its submission and the response timescales set by BEIS - and ergo the ability of consultees and the public to make meaningful and timely comments.