18/1384/S36
Land at Six Hundred Farm
Six Hundred Drove
East Heckington

districtnk
100 flourishing communities
North Kesteven District Council

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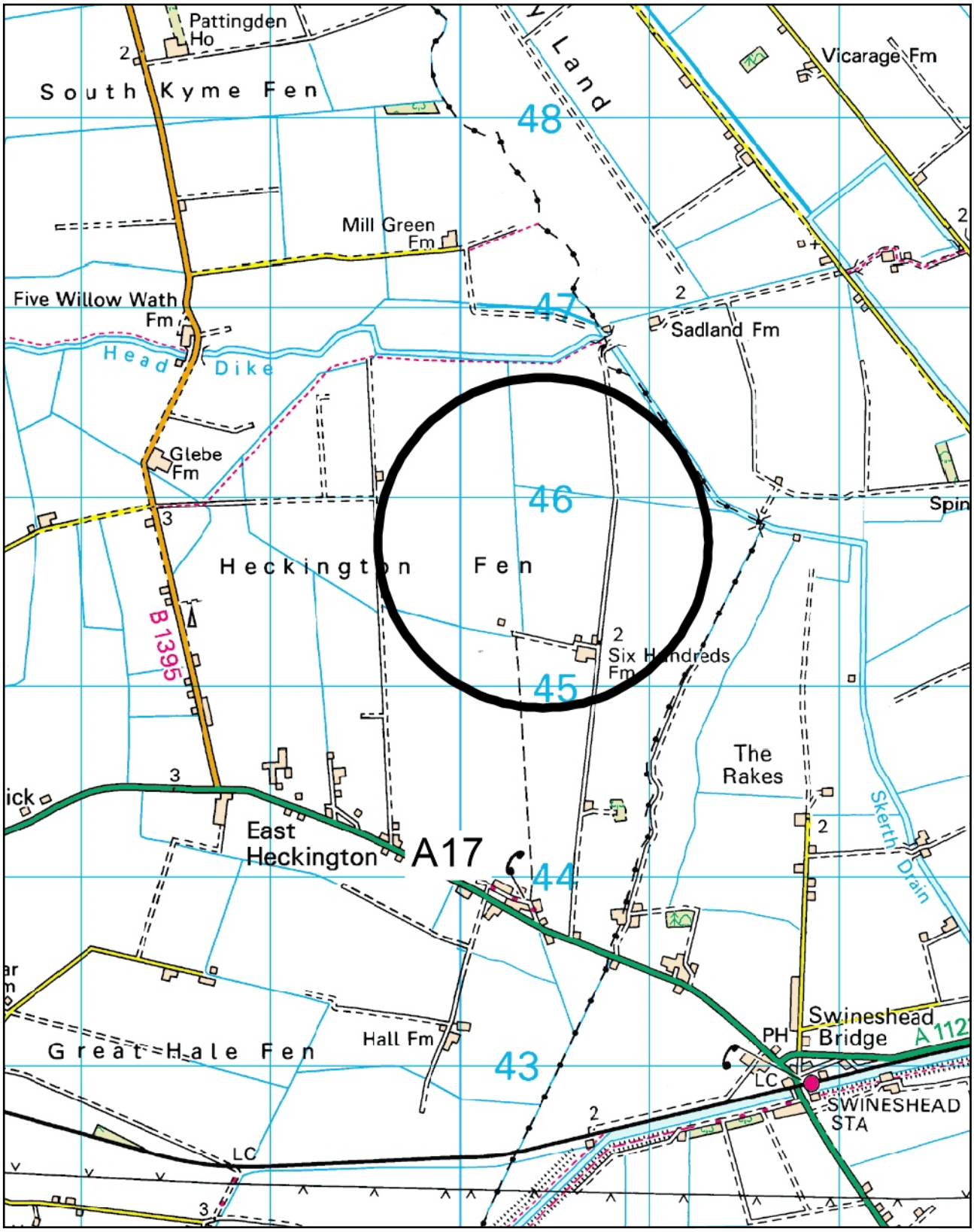

Committee:	**Full Planning Committee**
Meeting Date:	**29 November 2018**
Proposal details	
Planning Online link:	http://planningonline.n-kesteven.gov.uk/online-applications (enter the planning application number in the search box)
Application No and Type: **Reason for consideration at Committee:**	**18/1384/S36 S36 - Electricity Act 1989 Notification** **Referral by Officers on the grounds of the proposals being of significant public interest and likely to be widely controversial**
Terminal Date:	**8 December 2018**
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 planning permission for the Heckington Fen Wind Park, Heckington Fen, near East Heckington to allow for the date by which development must be commenced from 5 years to 10 years.**
Location:	**Land at Six Hundred Farm Six Hundred Drove East Heckington**
Ward Member(s):	**Councillor S D Ogden** **Councillor Mrs Sally Tarry**
Applicant details	
Applicant:	**Laura White of Ecotricity**

A. Key Issues

The key determining issues that serve to influence the Council's approach to its response to this consultation relate to:

1. The relevant process and procedures for the variation of a s.36 Consent under the Electricity Act 1989 (as amended), taking in to account that, in the event that the Secretary of State considers the proposed variation to be acceptable a deemed planning permission will also be issued;

2. The s.36 Consent and deemed planning permission issued in 2013 (after the public inquiry in summer 2012) in terms of a further assessment of the considerations relevant to the proposal, the site, the surroundings and the updated Environmental Statement, insofar as there has been any material change in circumstances that are relevant for the Secretary of State in making his further decision on the proposal to extend time for implementation to 10 (ten) years;

3. The primary policy issues relating to the National Policy Statements for Energy Infrastructure and the relationship with national and local planning policy, which serve as secondary policy considerations in this case (this is not an application for planning permission where such considerations would be the ordinarily primary considerations);

4. The relevant guidance (issued by the now defunct Department for Energy and Climate Change or DECC) pertaining to variation applications in terms of content, evidence, explanation and completeness;

5. The competing and divergent views being expressed on the noise impact of the development, specifically that of the applicant against that of 'Heck Off', and the position that the Council has taken and can realistically take on the divergence of specialist views on noise recognising our absence of objection at the public inquiry in 2012 and the fact that the Council has not commissioned its own noise assessment.

6. The issue of aviation and in particular the stated singular reason for the further variation application being on the basis that the applicant has been unable to secure the Secretary of State's approval to discharge condition 5 of the S36 Consent pertaining to the need for a Radar Mitigation Scheme to be first agreed before development commences.

B. Background

Introduction

1.1 The proposal, which is the subject of this consultation with the Council, has a relatively long and involved history that is relevant to the consideration of this matter. Therefore this report is written to ensure that all Members have a detailed understanding of the proposals, and as part of this, it is important to set out the site history and the procedure against which this proposal is being considered. The report is, as a result, lengthy and detailed.

1.2 At the outset it is important to stress that this is not a planning application that Members are considering, but an application for a Consent under the provisions of the Electricity Act. Whether or not to consent the proposal is a matter for the Secretary of State for Business, Energy and Industrial Strategy (BEIS).

Site History – 2009 s.36 Application

1.3 At the Planning Committee on 30th January 2012, the District Council considered an application for consent under S.36 of the Electricity Act (NK ref: 09/1067/S36) for the erection of 22 wind turbines with associated infrastructure and new vehicular access from the A17 at Six Hundred Farm, Six Hundred Drove, East Heckington.

1.4 The development comprised:
- Erection of up to 22 wind turbines (maximum tip height 125m)
- Access tracks, crane pad area and underground cables within the site
- Temporary construction compound
- Electrical substation
- New vehicular access from the A17

1.5 It should be noted that whilst the application was for up to 22 turbines, the proposals were caveated as the exact number could decrease down to 18 turbines depending on which of the models were used, as each model has a different generating capacity. The three models highlighted were:

Manufacturer:	Enercon	Vestas	Nordex
Model:	E-82	V90	N90LS
Rated capacity:	2.3MW	3.0MW	2.5MW
Hub height (to centre):	79m	80m	80m
Rotor diameter:	82m	90m	90m
Overall tip height:	120m	125m	125m

1.6 The Environmental Impact Assessment submitted with the 2009 s.36 application was therefore based on the maximum dimensions (i.e. 80m hub height, 90m rotor diameter and 125m to the overall tip). Depending on the chosen model, the development could therefore have comprised one of the following:

	Scenario 1	Scenario 2	Scenario 3
Manufacturer:	Enercon	Vestas	Nordex
Model:	E-82	V90	N90LS
No of turbines:	22	18	21
Total rated capacity:	50.6MW	54MW	52.5MW

1.7 The application was therefore assessed on the 'worst case' case scenario of 22 turbines, with a maximum tip height of 125m and maximum rated capacity of 3.0MW giving a total rated capacity of 54MW.

1.8 The application site lies within the open countryside and is located on agricultural land within a 604ha holding comprised mainly of agricultural crops with some limited grazing. Farmland is generally delineated by ditches and drains with occasional remnant native species, hedgerows and a few small woodland blocks. Within the holding there are agricultural buildings and a vacant pair of semi-detached houses. The land is flat, lying between 0m-3m AOD. It can currently be accessed along Six Hundred Drove from the A17. The site lies completely within North Kesteven but Boston Borough Council administers the land immediately to the east.

1.9 The land holding is bounded to the south by the A17, to the east by Holland Dike, to the north by Head Dike and to the west by Sidebar Lane. The settlement of East Heckington is located 1km from the nearest proposed turbine, with Heckington 5.2km to the west, South Kyme 4km to the north and Swineshead (Boston BC) 5km to the south east. In addition there are individual and small groupings of dwellings around the periphery of the holding (principally along the A17 and Sidebar Lane), the nearest of which to a turbine would be Home Farm at East Heckington (approximately 998m). A Definitive Right of Way crosses the holding to the north but would be around 350m from the nearest turbine.

1.10 As the generating capacity of the development exceeded 50MW, the proposals were determined under Section 36 of the Electricity Act 1989, by the Secretary of State for Business, Enterprise and Regulatory Reform, with the application handled by the Department of Energy and Climate Change (DECC) Electricity Development Consents Team. The Electricity Development Consents team received representations and assessed applications on behalf of the Secretary of State, and the District Council therefore acted in its role as a consultee rather than determining the application. Since abolition, the DECC responsibility has transferred to BEIS.

1.11 For the avoidance of repetition a copy of the application and Report to the Planning Committee can be viewed via planning online using the application reference 09/1067/S36.

1.12 Members resolved to object to the 2009 s.36 application on the basis of its significant harmful visual impact to the fen land landscape, the full reason was as follows:

In the opinion of the District Planning Authority, the development of up to 22 wind turbines of height of 125 metres would introduce features of an excessively dominating and incongruous scale, mass and height, which will have a significant harmful visual impact on the character and appearance of this locality and its setting within the important fenland landscape. Such harm would be further exacerbated as a result of the cumulative impact arising from the relative close proximity of the proposed development with the Bicker Fen Wind Farm to the south. In the opinion of the District Planning Authority, the benefits of the scheme in generating renewable energy would not, in this instance, outweigh the harmful impacts that the development would have in terms of visual impact on the character and appearance of the fenland landscape.

Accordingly it is considered that the proposal fails to accord with saved Policies C2, C17 and LW1 of the North Kesteven Local Plan, Policies 1, 26, 31 and 40 of RSS8, and the provisions of PPS1, PPS7, PPS22 and policies EN-1 and EN-3 of the National Policy Statement of Energy Infrastructure.

Informatives:

1. *That Members of the Planning Committee request that the Secretary of State takes fully into account the highway safety concerns raised by the Parish Council and local residents, and that he fully satisfies himself that the proposed vehicular movements associated with the construction of the development would not give rise to highway danger.*

1.13 It is important to reflect that the Council's grounds for objection were on the sole grounds of a significant landscape impact. Nevertheless the Council's objection to the 2009 s36 application (as the relevant planning authority) resulted in a Public Inquiry being held in July/August 2012 and a copy of the Report to the Secretary of State for Energy and Climate Change by the Planning Inspector can also be viewed via planning online.

1.14 Subsequent to the Public Inquiry, the Inspector issued a report to the Secretary of State for Energy and Climate Change on 1st November 2012 recommending the grant of consent under s.36 of the Electricity Act (1989). The Inspector did not support the Council's contention that there was significant landscape harm. To summarise, the key conclusions of the Inspector were:

- That there would be a degree of harm in landscape and visual terms, but this would not be at a high level overall.
- That there would be some acknowledged impact on the visual amenity enjoyed by residents, in some cases at a high level.
- But there were no impacts which would be serious enough to harm the living conditions of residents to the extent that their dwellings would become unacceptable places to live.
- That these impacts must be set against the benefits of the proposal including the contribution to meeting objectives of achieving a secure and reliable supply of electricity.
- That there is substantial support from national policy and objectives for the development of renewable energy in order to reduce greenhouse glass emissions and address the effects of climate change.
- That the failure to meet all technology renewable energy objectives to date strengthens the need to provide new development as soon as possible.
- That appropriate mitigation relating to the impact of the proposed development on air traffic control radar systems at RAF Coningsby and other neighbouring RAF radar sites had been formulated and agreed with the Ministry of Defence. This would be secured by way of a condition. There would be no unacceptable residual effects on military radar systems.

- That noise outputs associated with the operation of the wind farm would not harm the living conditions of nearby residential premises and could be mitigated through conditions.
- That the proposal accorded with the Policies set out within the National Planning Statements, the National Planning Policy Framework and the Development Plan.

1.15 The overall conclusion was that:

"the considerations which support the proposal, dealing with the imperative of addressing climate change and the need to achieve a secure and reliable supply of electricity are compelling. They clearly outweigh the moderate levels of harm to the landscape and visual amenity which I have identified. There are no other conclusions which have been raised by any other party which would alter the balance of these conclusions."

1.16 A copy of the Secretary of State's consent under Section 36 of the Electricity Act and a direction under Section 90(2) of the Town and Country Planning Act 1990 can be viewed via planning online.

1.17 Condition 4 of the S36 Consent and condition 2 of the deemed planning permission require development to commence before the expiration of five years from the date of the associated consent/permission – i.e. by 8th February 2018.

Site History – 2015 Variation (undetermined)

1.18 In 2015, an application (ref: 15/0416/S36) was submitted to amend the approved scheme. Section 20 of the Growth and Infrastructure Act 2013, among other things, amended the Electricity Act (by inserting a new Section 36C) to provide for the Secretary of State to be able to vary section 36 consents which he has already granted. Section 21 of the Growth and Infrastructure Act also amended the Town and Country Planning Act 1990 to enable, among other things, variations to deemed planning permission to be made. Again the Local Planning Authority was a consultee on the following amendments:

- Amend the turbine rotor diameter from 90m to a maximum rotor diameter of up to 103m with a 10m radius micro-siting allowance around each turbine location. (The maximum tip height remained at 125m).
- Amend the position of two sections of access track within the site boundary.
- Relocate and increase the footprint of the substation.
- Relocate the temporary construction compound.
- Amend the wording of condition 5 of the consent under Section 36 of the Electricity Act to prohibit the construction of a wind turbine until a radar mitigation scheme (RMS) has been submitted and approved by the Secretary of State (the S36 consent prohibited 'any development' until such time, and the revised proposals would therefore enable the construction of various groundworks and access tracks whilst an RMS was being developed).

1.19 The 2015 Variation scheme also proposed different models of turbines such that the revised 'worst case' scenario presented was of 22 turbines with a maximum tip height of 125m, rotor diameter of 103m and a maximum rated capacity of 3.05MW equating to a total rated capacity of 54.9MW.

1.20 At the meeting of 2 June 2015, Members of the Planning Committee – Lafford, resolved, after a lengthy debate, to raise no objections notwithstanding their evident reservations. To reflect the debate and the reservations expressed, the Council's response to DECC did advise of the concerns Members expressed during the lengthy debate in relation to matters of landscape character impact and commencement of works in advance of the approval of the

RMS. This application remains undetermined and the Council has continued correspondence with the Secretary of State and latterly the Energy Minister at BEIS to further identify and clarify our concerns.

Current Proposed Variation Application (the 2018 Variation)

1.21 An application has now been submitted to the Secretary of State for Business, Energy and Industrial Strategy (BEIS) pursuant to section 36C of the Electricity Act 1989 to vary both the consent granted on 8 February 2013 under Section 36 of the Electricity Act 1989 and the associated direction under section 90(2) of the Town and Country Planning Act 1990.

1.22 The application is as follows:

- Amend the wording of condition 4 of the s36 consent granted under the Electricity Act and condition 8(2) of the deemed planning permission to extend the date before which the development shall be commenced, from 5 years to 10 years.

1.23 The previous 2015 Variation application submitted to the Secretary of State in February 2015 is not being progressed at this time. The purpose of the 2018 Variation application is to determine whether the development, as originally consented can commence in the period up to 8th February 2023.

1.24 The applicants' reasons for wishing to vary the consent/deemed planning permission are set out within their letter to BEIS dated 1st February 2018:

- *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 and a Radar Position Statement will be provided shortly (subject to approval from various involved parties, including the MOD) which will set out details of both the work undertaken since consent was granted in 2013 and the ongoing mitigation strategy which is aiming to deliver a solution within a 3-5 year timeframe.*

- *A decision on the original variation of Consent Application, submitted 6th February 2015, has not been forthcoming. The existing Variation of Consent Application proposed that the wording of 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. In a letter of 20th May 2015, the Ministry of Defence confirmed that it had no objection to this proposed variation to Condition 5. As a decision has not yet been made on the original Variation of Consent Application, the Applicant is currently unable to commence development within the timescale set out under Condition 4 of the Consent.*

1.25 No other modifications to the scheme are proposed and it should be noted that whilst the District Council do not receive a fee for the application, as we do not determine it, we would be expected to discharge and enforce the relevant planning conditions attached to the deemed planning permission under s.90 of the TCPA should the development be consented by the Secretary of State under the provisions of the Electricity Act.

Constraints:	Open Countryside Flood Zone MOD Safeguarding National High Pressure Gas Main Environmental Impact Assessment

C. Planning Policies

National Planning Guidance

National Planning Policy Framework (July 2018)
Overarching National Policy Statement for Energy (EN-1) - Planning for new energy infrastructure (July 2011)
National Policy Statement for Renewable Energy Infrastructure (EN-3) (July 2011)

Central Lincolnshire Local Plan (Adopted April 2017)

LP1 - A Presumption in Favour of Sustainable Development
LP2 - The Spatial Strategy and Settlement Hierarchy
LP13 - Accessibility and Transport
LP14 - Managing Water Resources and Flood Risk
LP17 - Landscape, Townscape and Views
LP19 - Renewable Energy Proposals
LP21 - Biodiversity and Geodiversity
LP25 - The Historic Environment
LP26 - Design and Amenity

D. Planning History

15/0416/S36	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.	No objections (application undetermined)	05/06/15
09/1067/S36	Application for consent to construct and operate a wind energy electricity generating station.	Objections S.36 Consent Granted	08/02/12 08/03/13
09/0628/FUL	Installation of a 70m high wind monitoring mast for a temporary period of 18 months	Approved	15/10/09

E. Summary of Local Representations

1.1 As part of the application process the applicant is required to advertise the application and invite any comments to be sent to the Secretary of State (SofS) for Business, Energy and Industrial Strategy (BEIS). This has been done through advertisements in the London Gazette and for two successive weeks in the Sleaford Standard. These required any representations to be made to the SofS no later than 2nd November 2018 in accordance with the 28 day consultation period set out within the relevant regulations.

1.2 The District Council is not by statute required to undertake any consultations. However, consistent with earlier practice on previous proposals relating to this matter, the Council has undertaken its own additional public consultation exercise comprising the placing of site notices immediately adjacent to the site, and within the villages of South Kyme, East Heckington, Heckington and Great Hale. Individual letters have also been sent to adjacent properties and those who commented on the previous applications. This consultation advises representations to be made directly to the SofS in accordance with the timescales set out within the statutory consultation undertaken by the applicant. These periods are governed by the relevant legislation and consequently the District Council is not able to extend them, with any late representations potentially not being considered. The site notices and individual letters sent out by the District Council are therefore considered an appropriate mechanism to ensure the wider community is informed of the application.

1.3 It should be noted that the notification of neighbours within the adjacent Boston Borough is the responsibility of the applicants and the neighbouring authority through their own procedures.

1.4 Whilst some residents have sent copies of their representations to the District Council these are not summarised within this report given that these have already been redirected to the SofS.

F. Summary of Consultee Representations

Heckington Parish Council	No comments received
Great Hale Parish Council	Do not wish to submit any comments or objections.
South Kyme Parish Council	No comments received
Lincolnshire County Council	Comments will be submitted directly to BEIS
Boston Borough Council	Comments will be submitted directly to BEIS
East Lindsey District Council	Comments will be submitted directly to BEIS
National Air Traffic Services (NATS)	Comments already submitted directly to BEIS - raise no safeguarding objection.

Ministry of Defence	Comments already submitted directly to BEIS - raise no objection to the proposed amendment and advise that the Heckington Fen Wind Park Military Air Traffic Control Radar Position Statement dated October 2018 has been received by their colleagues in Defence Equipment and Support (DE&S) who are satisfied with the content presented.
Civil Aviation Authority	Comments will be submitted directly to BEIS
East Midlands Airport	Comments already submitted directly to BEIS - the aerodrome safeguarding authority for the airport requests that any permission be subject to a condition requiring the developer to liaise with them to ensure there are no negative impacts upon flight safety and that they be notified prior to the commencement of works.
Humberside Airport	No comments received
Robin Hood Airport	No comments received
RAF Waddington	No comments received
RAF Cranwell	No comments received
RAF Coningsby	No comments received
RAF Digby	No comments received
RSPB	No comments received
Natural England	Comments will be submitted directly to BEIS
Lincolnshire Wildlife Trust	No comments received
Bat Conservation Trust	No comments received
Consultant Ecologist (AECOM)	The Council's consultant ecologist can identify no ecological grounds to object to amendment of the wording of condition 4. However, they consider that it would be desirable to revisit requirements for ecological enhancement and monitoring to ensure meaningful and proportionate net gain for biodiversity.
NKDC Environmental Health	No objection raised, however advises that the information provided with the application states that traffic levels are likely to have increased, and that background noise levels at several properties was strongly influenced by road traffic. No quantitative data is provided to indicate whether or not background noise levels have changed. Consideration should therefore be given to a re-evaluation of background levels, and the effect of any increase in background level may have on the assessment of construction and operational noise impacts. According to the information provided with the application, several new dwellings were identified during a review by Ecotricity. The locations of these dwellings are not identified, and the information

	states that previous assessment locations are considered representative. The locations of those new dwellings should be identified and reviewed to determine whether previous assessment locations are representative, or whether further measurement and assessment of construction and operational noise impacts is required in relation to new sensitive receptors. Understand that since the original decision in 2013, the Council has been provided a copy of a report authored by a Dr Yelland, instructed by a local campaign group ('Heck Off'). Understand the report conflicts with the report provided on behalf of the applicant, raising concerns about the original noise survey, and compliance/enforceability issues relating to relevant planning conditions. Understand the Council has previously corresponded with the Secretary of State highlighting the need for this report to be considered, and therefore suggest it would be appropriate for both reports to be independently reviewed before determining the application. Shadow flicker and other impacts associated with the construction phase[s] were considered in detail as part of the previous application, but might also need review in the context of any new sensitive receptors introduced in to the area since the 2013 decision.
Historic England	Comments will be submitted directly to BEIS
NKDC Conservation Officer	No objection
Planning Archaeologist	No comments received
CPRE Lincolnshire Branch	No comments received
LCC Highways	No objection
Highways England	Comments will be submitted directly to BEIS
Environment Agency	Comments will be submitted directly to BEIS
Black Sluice IDB	Advise that whilst the proposals will not affect the Board as such, the applicant should be reminded by the Planning Authority of the requirement to obtain the prior written consent of the Board regarding any proposals which may affect any watercourse, or the drainage of land affected by the development, under the remit of the Land Drainage Act 1991.
NKDC Sustainability Officer	No comments received
OFCOM	Comments will be submitted directly to BEIS
Western Power	No comments received

G. Human Rights Implications

The application has been considered with due regard to planning legislation and the Human Rights Act 1998.

H. Assessment

1. Legislative Context

1.1 Section 36 of the Electricity Act 1989 applies to proposals for the construction, extension or operation of an onshore generating station whose capacity (or, when extended, will exceed) 50MW. Where it is proposed to construct a generating station or ancillary development (such as a substation) within the territory of a local planning authority, planning permission under the Town and Country Planning Act 1990 is also required for any works which are 'development' as defined within the Act. However where a section 36 consent is granted by the Secretary of State, it is possible for a direction under section 90 of the 1990 Act to be given, that planning permission should be deemed to be granted. Where a section 90 direction is given, it has been the usual practice of the SofS to include the majority of the conditions which apply to the construction/extension of the proposed generating station in a section 90 direction, where they are enforceable by the local planning authority, rather than in the section 36 consent itself. The Heckington Fen wind farm having a generating capacity in excess of 50MW was consented on this basis on 8th February 2013.

1.2 On 1st March 2010, a new regime for consenting major energy infrastructure projects in England and Wales came into force through the Planning Act 2008. Projects which would previously have been the subject of section 36 consents and section 90 directions, but for which applications for section 36 consent were not submitted before that date, now need development consent under the 2008 Act, which is granted by means of a development consent order. The Heckington Fen wind farm application was submitted in 2009 and therefore pre-dates the Act, and was therefore subject to a section 36 consent and section 90 direction.

1.3 Since the 2008 Act regime came into force, it has not been possible or necessary to apply for section 36 consent in respect of onshore generating stations. However, as at 1st March 2010, there were a significant number of section 36 consent applications either remaining to be determined by the SofS, granted but not yet implemented or had been implemented but remained part of the regulatory framework governing operating generating stations. The Heckington Fen wind farm application was undetermined at 1st March 2010, with consent granted on appeal in February 2013 but currently remains unimplemented.

1.4 Central Government has recognised that since generating station development consents are often not implemented until some years after they are granted, there may be changes in technology or industry practices which may require alterations to the scheme. These may be required to make the scheme feasible.

1.5 The 2008 Planning Act recognises this and allows developers to apply to have changes made to development consent orders. However there is no such provision made under the 1989 Electricity Act and it has also not been possible to grant a fresh section 36 consent since 1st March 2010 when the 2008 Planning Act came into force. Since that date, if a developer wanted to construct a scheme which was not consistent with the terms of the section 36 consent, its only option was generally to apply to the Planning Inspectorate for a development consent order under the 2008 Act for a revised scheme, starting from scratch.

The Government considered this approach to be disproportionate in relation to authorising minor changes.

1.6 The Growth and Infrastructure Act 2013 sought to address this by inserting a new section 36c into the 1989 Electricity Act to enable section 36 consents to be modified. It also allows the SofS when granting such a variation to also vary a section 90 direction under the 1990 Planning Act by inserting a new section 90 into this Act. The 2013 DECC guidance note states that "the aim of the variation process is to reduce the time that might otherwise be taken to authorise development which is not consistent with an existing section 36 consent. It is not intended to relax the standard to which a consent must conform."

1.7 The Department of Energy and Climate Change (DECC) issued guidance (dated July 2013) on varying consents granted under section 36 of the Electricity Act 1989, within which it 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' (emphasis added). Paragraph 24 of the guidance requires an applicant to justify their proposals with reference to the National Policy Statements for energy.

1.8 Paragraph 35 of the DECC guidance sets out that an applicant must be able to describe the whole of the development that is proposed to be authorised by the variation procedure and that the applicant must be able to give a 'clear and complete picture' of the development that would result if the variation is granted and implemented.

1.9 Finally, it should be noted that in 2016 onshore wind farm schemes of over 50MW were removed from the Nationally Significant Infrastructure Projects regime introduced by the 2008 Planning Act. All new proposals for onshore wind farm developments are subject to the need for planning permission granted under the Town and Country Planning Act 1990 from the relevant local planning authority.

Policy Context

1.10 During consideration of the original application, the Inspector noted that as that application had been made under section 36 of the Electricity Act, the primacy of the development plan did not apply but that the policies of the development plan were material to the proposal. Given the nationally significant nature of the application, it was agreed that the primary policy vehicle against which the proposal should be considered was the suite of National Policy Statements (NPS) on Energy, namely the Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for Renewable Energy (EN-3). The hierarchy of policy considerations then cascades to the National Planning Policy Framework (NPPF), then the development plan (Central Lincolnshire Local Plan) and any other material considerations.

Primary Policy:

National Policy Statements for Energy Infrastructure (July 2011).

1.11 The six statements set out national policy against which proposals for major energy projects should be assessed. The National Policy Statements, remain the primary consideration for the variation application. EN-1 sets out the need for new infrastructure and how this can be

achieved, including the assessment principles against which applications should be assessed. EN-3 should be read in conjunction with this and sets out the elements to be considered in assessing a project.

1.12 EN-1 (the Overarching National Policy Statement for Energy) identifies that renewable energy projects are urgently needed if the UK is to meet its commitments to renewable energy generation. Development of renewable energy will help to tackle climate change, reduce CO_2 emissions and, deliver jobs and assist in securing supply by reducing the reliance on fossil fuels. Onshore wind is identified as the most well established and economically viable source of renewable energy. The Statement acknowledges that much new capacity is likely to come from onshore and offshore wind energy in the short to medium term.

1.13 EN-1 indicates that the starting point should be a presumption in favour of granting consent unless more specific and relevant policies set out within the NPSs clearly indicate that consent should be refused.

1.14 EN-3 (the National Policy Statement for Renewable Energy Infrastructure) relates more specifically to the technologies available and those factors to be considered in assessing any scheme. EN-3 notes that any adverse impacts of a proposal would need to be weighed against the benefits. Section 5.4 of EN-3 gives generic guidance on how to assess the impacts of renewable energy infrastructure on aviation interests, with paragraph 5.4.18 noting that 'where a proposed energy infrastructure development would significantly impede or compromise the safe and effective use of civil or military aviation or defence assets and or significantly limit military training, the IPC may consider the use of 'Grampian, or other forms of condition which relate to the use of future technological solutions, to mitigate impacts'. The same paragraph notes that 'where technological solutions have not yet been developed or proven, the IPC will need to consider the likelihood of a solution becoming available within the time limit for implementation of the development consent. In this context, where new technologies to mitigate the adverse effects of wind farms on radar are concerned, the IPC should have regard to any Government guidance which emerges from the joint Government/Industry Aviation Plan'.

1.15 The National Policy Statements were adopted in July 2011 and therefore considered by the Inspector in reaching his recommendation to the Secretary of State on the original s.36 application.

Secondary Policy:

National Planning Policy Framework (July 2018)

1.16 The recently published NPPF replaces the original version of March 2012 which was considered by the Inspector. The three dimensions to sustainable development are now referred to as objectives (paragraph 8) and it is confirmed that they are not criteria against which decisions can or should be judged. Economic, social and environmental gains are no longer to be sought 'jointly and simultaneously', instead, the objectives are to be pursued in 'mutually supportive ways (so that objectives can be taken to secure net gains across each of the different objectives)'. The Environmental objective includes mitigating and adapting to climate change, including moving to a low carbon economy.

1.17 Paragraph 11 continues to state a presumption in favour of sustainable development with applications for development proposals which accord with an up-to-date development plan approved without delay.

1.18 The core planning principles have now been deleted, although their content has largely been re-assigned to the relevant chapters. Chapter 14 relates to meeting the challenge of climate change, flooding and coastal change. Paragraph 148 states:

"The planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure."

1.19 At paragraph 151 it states that:

To help increase the use and supply of renewable and low carbon energy and heat, plans should:

a) provide a positive strategy for energy from these sources, that maximises the potential for suitable development, while ensuring that adverse impacts are addressed satisfactorily (including cumulative landscape and visual impacts)
b) consider identifying suitable areas for renewable and low carbon energy sources, and supporting infrastructure, where this would help secure their development…

1.20 In determining applications, the Framework states at paragraph 154, LPA's should:

a) Not require applicants to demonstrate the overall need for renewable or low carbon energy, and recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions; and
b) Approve the application if its impacts are (or can be made) acceptable[49]. Once suitable areas for renewable energy and low carbon energy have been identified in plans, local planning authorities should expect subsequent applications for commercial scale projects outside these areas to demonstrate that the proposed location meets the criteria used in identifying suitable areas.

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."*

1.21 The Planning Practice Guidance on renewable and low carbon energy which accompanies the NPPF was last updated on 18th June 2015 although much of the guidance pre-dates this. It provides further guidance on the assessment of such applications with the latest update referencing the Written Ministerial Statement of 18th June 2015 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.

Central Lincolnshire Local Plan

1.22 The most relevant policies are LP1 ('a presumption in favour of sustainable development'), LP2 ('the spatial strategy and hierarchy'), LP13 ('accessibility and transport'), LP17 ('landscape, townscape and views'), LP19 ('renewable energy proposals'), LP21 ('biodiversity and geodiversity'), LP25 ('historic environment') and LP26 ('design and amenity').

1.23 The site lies within the countryside (tier 8) of the settlement hierarchy set out within Policy LP2 where renewable energy generation is listed as being acceptable in principle. Policy LP19 relates to renewable energy proposals with the first section specifically referencing those for wind energy. It states:

This Local Plan does not identify areas which are suitable for wind energy development.

As such, proposals for wind energy development will only be permitted if:

- *The proposal is in an area that has been identified as suitable for wind energy development in an adopted 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.*

Conclusions on the principle of development

1.24 As detailed in the legislative context section above, the scale of the windfarm (greater than 50MW) is such that it was considered under section 36 of the Electricity Act 1989 by virtue of being submitted pre-1st April 2010. It is important to note that this gives rise to fundamental differences to those applications submitted to and considered by North Kesteven District Council under the Town and Country Planning Act 1990. The windfarm application was considered by the Secretary of State for Business, Enterprise and Regulatory Reform, with the application handled by the Department of Energy and Climate Change (DECC) Electricity Development Consents Team. In accordance with section 90 the 1990 Act the SofS also issued a direction that deemed planning permission be granted.

1.25 Further legislative changes under the Growth and Infrastructure Act 2013 have introduced the ability to vary such consents/permissions. However it is fundamental to the consideration of this proposal to appreciate that applications under section 36 and 36c of the Electricity Act 1989 are just that, they are not 'planning applications'. Whilst a section 36 application also results in the 'deemed' grant of planning permission, it is primarily an application under the Electricity Act 1989 and they are not governed by the Town and Country Planning Act 1990 or policies relevant to determination under this.

1.26 Consequently primary consideration must be given to the National Policy Statements and these were both adopted prior to the consideration of the original submission at public inquiry in 2012 and therefore remain unchanged. Subsequent to this variation application the Written Material Statement of 18th June 2015 was issued which states that except for applications for the repowering of existing turbines, a proposed wind development should not be considered acceptable unless it is either within an area identified for such in the development plan or, if following consultation, it can be demonstrated that the planning impacts identified by the local community have been fully addressed and the proposal has their backing. This is reflected in the subsequent change to the national planning practice guidance accompanying

the NPPF (which was revised in July 2018) and also within Policy LP19 of the CLLP. Whilst the previous and current applications have given rise to objections by the local community, with a local action group 'Heck Off' formed, legal advice obtained from Counsel is such:

> *"…I do not consider that a decision-maker determining an application under the EA Act 1989 would fall into legal error by failing to consider the WMS. Additionally, the WMS on its own terms is aimed at "planning applications" and decisions by "local planning authorities". Applications under s.36 and 36C of the EA Act 1989 are just that, they are not 'planning applications'. Whilst s.36 applications may result in the grant of planning permission, they are primarily applications under the EA Act 1989 and are not governed by the TCPA 1990 or policies relevant to determinations under the TCPA 1990."*

1.27 As noted above, in this instance, the applicant is seeking to apply the provisions of s.36c of the Electricity Act (1989) in seeking to vary the terms of the original s.36 consent to extend the date before which development can commence on site from 5 years, to 10 years. The same wording revision is also sought in relation to the associated deemed planning permission under s.90 of the Town and Country Planning Act (1990). Chapter 3 of the applicant's 'variation of consent' supporting document confirms that the proposed variation is necessary to enable an additional period of negotiation with the Ministry of Defence (MOD) in relation to the RMS required by condition 5 of the original consent. The applicant has advised that, despite best endeavours, they have not been able to agree the RMS with the MOD and ergo this has prevented development commencing to date. The applicant suggests within paragraph 3.3 of their 'variation of consent' supporting document that progress is being made with the MOD with a view to agreeing the RMS, aiming to deliver a solution within a 3-5 year timeframe.

1.28 Mindful that no 'physical' alterations are proposed to the scheme as initially consented, the remainder of the report focusses on the assessment of associated impacts stemming from the proposed 5 year extension of the date by which development can commence. In particular, the report addresses the circumstances and information highlighted by the applicant in seeking to justify the proposed time extension, namely the dialogue with the MOD in seeking to develop an agreed RMS. The report sets out whether in Officer's view (given the stage of those discussions, the certainty of securing a resolution on the matter, and the previous consideration of this issue by the Inspector and SofS) it would be procedurally reasonable of BEIS to sanction such an extension through the provisions of s.36c of the Electricity Act (1989).

2. Assessment of associated impacts

2.1 EN-3 sets out a range of impact assessment principles to be considered in connection with large scale wind generation schemes. These include biodiversity and geological conservation, historic environment, landscape and visual, noise and vibration, shadow flicker and traffic and transport, although these are not meant to be exhaustive and the NPS advises that the decision maker should therefore consider any impacts which it determines are relevant and important to its decision. The applicant has submitted an update to the 2011 Environmental Statement which accompanied their original 2009 submission. For reasons of consistency it is proposed to cover the potential impacts in the same order as on the Committee Report relating to the original submission (09/1067/S36).

Landscape and visual impact

2.2 In his assessment, the Planning Inspector found that "it is my judgement that the impact of the proposed development would be moderate to minor and adverse in terms of landscape character, minor to major (major in a few locations) and adverse in terms of visual impact, but of no material impact in relation to cultural assets. The host landscaping is capable of

accepting a development of this nature. In this case the design of the scheme mitigates adverse impact to a degree which leads to an overall conclusion that the wind farm would be acceptable in landscape terms."

2.3 The submission identifies that save for small scale farm buildings and minor growth of trees/hedges there has been no significant change to the landscape baseline since 2011 and this is considered to be accurate. Given that the number, size and siting of the turbines, including their relationship to the Bicker Fen windfarm, remains unchanged it is therefore considered that the Inspectors assessment remains valid and there are no grounds, notwithstanding the Council's original opposition to the scheme on landscape grounds, to revisit this matter. Officers consider that the proposal to extend the time limit for the implementation of development from 5 to 10 years does not alter the landscape and visual impacts of development.

Cultural heritage

2.4 As detailed above, the Inspector did not consider that the proposal would adversely impact upon cultural assets. The baseline remains primarily unchanged, although the submission notes the listing of 5 additional buildings within 10km of the centre of the site since 2011.Only 1 of these is within 5km on the boundary and consequently the impact upon heritage assets remains unchanged. The Conservation Officer has raised no objections. Historic England as a statutory consultee will respond directly to BEIS but it should be noted that they raised no objections to the original submission. Officers consider that the proposal to extend the time limit for the implementation of development from 5 to 10 years does not alter the impacts of development on the historic environment.

Residential amenity - outlooks

2.5 In his assessment of the original application, the Inspector noted that whilst an individual does not have a right to a view, it is crucial that a private property should not be made an unattractive place to live by being subject to overwhelming, dominating or overbearing impacts such that it would cease to be reasonable to expect anyone to live there comfortably. There are residential properties on all sides of the site but all are 1km or more away with varying views by virtue of orientation, intervening vegetation and property layout. Some properties (such as Mill Green Farm to the north) would have clear views of the whole windfarm from their principal windows whilst others will have views of both Heckington Fen and Bicker Fen windfarms. However, the Inspector stated that he was mindful of the separation distances and that the windfarm would be visually permeable, with properties and/ or their gardens having elements where some relief could be gained. Ultimately he concluded that despite a significant number of dwellings being affected, the impact would not be such that living conditions would be reduced or harmed to an unacceptable degree.

2.6 The proposed extension of time does not alter the number, siting or proportions of the turbines or their relationship to residential properties. Post-2012, NKDC has granted planning permission for the creation of one additional dwelling at Chapel House, Sidebar Lane, but this is immediately adjacent to an existing residential property and the closest residential property in the District remains 1-4 New Cottage, Sidebar Lane (1090m from turbine T3) and Mill Green Farm (1023m north of turbine T1). As such the conclusions of the Inspector on this matter remain valid and Officers consider that that the proposal to extend the time limit for the implementation of development from 5 to 10 years does not alter the impacts of development on residential outlooks.

Residential amenity – noise and human health

2.7 Noise from wind turbines consists principally of the sound produced by the blades turning and from the gear box, generator and hydraulic systems within the nacelle. The appropriate tool for assessing the impact remains ETSU-97 'The Assessment and Rating of Noise from Wind Turbines' as it was at the time of the original submission. In his assessment the Inspector found that the predictions of noise emission to the receptors (dwellings) around the site are such that it is expected that the noise limit recommendations set out within ETSU-R-97 would be 'comfortably' met but as a noise prediction is not an exact science, a condition (no. 24) restricting overall noise levels at certain residential properties was applied to protect residential amenity.

2.8 Subsequent to the Local Planning Authority providing comments to DECC on the first Variation of Consent application in June 2015, the Council received a copy of a Wind Turbine Noise Impact Assessment Appraisal undertaken by a Dr John Yelland. This was funded by 'Heck Off' and questions the original Noise Impact Assessment within the Environmental Statement submitted in July 2010. This meant that the Secretary of State now had two conflicting noise reports before him; one for the applicant, Ecotricity Group Ltd, and one for the opposition group, Heck Off. The District Council wrote to the SofS in July 2016 advising the following:

> *"Without prejudice to either party, there must be a degree of doubt over the potential noise impacts of the development given the opposing expert opinions provided. You will appreciate that whilst there is no proposal before you as part of this variation request relating to the noise condition imposed, in our view noise impact is nevertheless material to your decision owing to the fact that the amended turbines proposed in the variation request will each have a different noise profile due to their different design, engineering, height and sweep of the blades to those originally proposed.*
>
> *Bearing in mind the differing expert opinions and amended designs of the turbines, this Council would ask you to carefully consider noise issues as part of this variation request. We believe that with the differing expert opinions before you on noise impact, there is sufficient justification for you to seek an independent review of the noise impacts of the proposed development ahead of issuing your decision on the variation request. 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."*

2.9 The applicant subsequently provided a response to Dr Yelland's Report in May 2017 and it is understood that Dr Yelland is currently preparing a further report on behalf of Heck Off in response to the current variation submission.

2.10 As set out earlier, the current variation application does not seek to amend the turbine design, siting, numbers or conditions relating to the original permission, but as set out above there remains significant concern/objection from a third party regarding the accuracy of the information which supports this 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 assessment locations previously considered remain representative of the properties neighbouring the development. They add that there has also been no significant change to the road and general infrastructure in the vicinity, and although traffic levels are likely to have increased since 2011, the previous measurements are likely to still be representative. These conclusions have only been briefly justified.

2.11 The District Council is therefore in a position where it is not the determining authority on this application but where there are two conflicting reports submitted in relation to noise impacts. The absence of a revision to the background noise profile following the undertaking of the initial ETSU noise assessment has only been briefly justified by the applicant. Instead, the applicant has also 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). The assessment of noise data in relation to wind farm developments is a particular specialist field requiring the input of those with detailed knowledge of the requirements of ETSU-R-97.

2.12 It would therefore require the appointment of independent consultants to undertake an independent review and the very limited timeframes (2 months) available for the local planning authority to make comments to BEIS, preclude this. Members should also be aware that noise impacts were not raised as a reason for objection by the District Council on the original application, which is identical in form to that under current consideration through the s.36c variation procedure. The Council's Environmental Health Officer has advised that he was not in a position to assess the reliability of the baseline measurements and therefore agree prevailing background noise levels, both of which formed the basis for the assessment and the determination of site specific noise limits. Nevertheless, it is pertinent that the Council's EHO is satisfied with the general methodology applied in the undertaking of the original ETSU-R-97 noise assessment, and the Inspector noted that the proposals would comfortably comply with the relevant noise limits established by ETSU-R-97 methodology. The Council has already, in 2016, made further representations to the SofS 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 SofS to seek an independent review of the noise impacts of the proposed development ahead of issuing his decision.

2.13 As far as the Council is aware, the SofS has yet to commission an independent noise assessment and it is unclear whether this will follow from the current submission. Mindful of the SofS's role as determining authority, and where the SofS is responsible for concluding on the variation scheme's overall compliance with the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, and in the on-going absence of any independent assessment of the matter, it would be appropriate to raise this as a matter of concern for BEIS to assess in their role as the determining authority – particularly given the applicant's conclusions at paragraph 5.28 and 5.29 of the supporting statement in relation to the background noise environment.

2.14 With regards to Amplitude Modulation, the Inspector identified that this is not yet well known enough for its prediction to be possible and that consequently it would be difficult to create and enforce a condition but that if the phenomenon became apparent then it would be possible to take action under noise nuisance. Such matters remain unchanged and have not been specifically highlighted by the Council's EHO.

<u>Residential amenity – shadow flicker and reflected light</u>

2.15 Shadow flicker is the effect caused when an operating turbine is located between the sun and a receptor, such as a dwelling or place of work. The effect occurs when the shadow of the blades falls over the receptor causing the light intensity within specific affected rooms of the building to fluctuate.

2.16 The magnitude of shadow flicker varies both spatially and temporally, and depends upon the existence of a number of environmental conditions coinciding at any particular point in time. These include wind speed and direction (the orientation of the nacelle and rotors to the sun), the position and height of the sun, cloud cover and the position of the turbine to the receptor.

Generally, shadow flicker effects are more likely to occur during the early morning or late evening when the sun is low in the sky.

2.17 Guidance within EN-3 confirms that shadow flicker impacts are generally restricted to properties within a 10 rotor diameter distance from the turbine which given the degree of separation to properties was considered unlikely to materially impact upon the enjoyment of domestic properties by the Inspector. He did however impose a condition which would, in the event of problems occurring, require the matter to be addressed. Given that there are no new residential properties closer to the turbines, the position and proportions of which remain unchanged, the position remains as per the 2012 application. Officers therefore consider that that the proposal to extend the time limit for the implementation of development from 5 to 10 years does not alter the impacts of development on residential amenity insofar as it relates to shadow flicker and reflected light.

Ecology and Biodiversity

2.18 The Inspector did not raise ecology as an issue during the consideration of the original submission but the deemed planning permission is subject to a number of conditions relating to updated protected species surveys to inform a scheme of mitigation where necessary, a specification for checking surveys for nests of breeding birds and requirement for submission and approval of an Ecological Enhancement Plan.

2.19 The Council's Consultant Ecologist has assessed the application and advises that there have been no substantive changes in the habitat context since the last assessment in 2009, so on this basis the protected species risks are also likely to remain unchanged. An appropriate level of ecological survey and assessment has been undertaken to demonstrate this. The only change in the protected species present is the establishment of several badger setts and the confirmed presence of great crested newts in one of the drains. While badgers and great crested newts are legally protected, the presence of these two species is not relevant to decision-making on this application. Appropriate mitigation for badger has been identified and mitigation for the great crested newt will be informed by the updated survey data. As the project will not be commencing in the immediate future, further habitat and protected species update surveys would be required before the development can proceed. This has been conditioned by the Inspector previously, and the wording remains appropriate (Conditions 16 and 17).

2.20 The Consultant Ecologist does however question, given the resubmission is at a time when there is an increasing expectation (e.g. in the NPPF and via Policy LP21 of the CLLP) that new developments demonstrate no net loss of biodiversity and, where possible deliver a net gain, whether the agreed scope of the ecological enhancement that would accompany the development should be re-visited. The consultant ecologist considers that the ecological enhancements proposed for a site of this scale are limited and of very narrow focus and that ideally a draft Ecological Enhancement Plan should have been required to set appropriately detailed terms of reference for what is to be provided in future. AECOM provide a number of examples of biodiversity gain that could be secured and recommend monitoring for a minimum of 10 years to review and qualify the biodiversity gains achieved.

2.21 With regards to ornithology, the Consultant Ecologist found it disappointing that estimates of collision risk for key bird species were not recalculated to evidence the statements made and to address bird species, e.g. pink-footed goose, that were not assessed previously. The additional year of survey data provided a good opportunity to validate the original assessment through use of data derived from a greater number of survey observations, to ensure the collisions estimates were as accurate as possible. Furthermore, AECOM recommend that biodiversity net gains for birds could be expanded to include a greater range

of bird species, and that post construction monitoring of bird collision mortality should be considered.

2.22 It is suggested that these comments be forwarded to BEIS for information. Natural England as a statutory consultee will respond directly to BEIS.

Highways and transport

2.23 The proposed means of access from the A17 remains unchanged as does the approximate number of construction vehicles and the route they would take, although the baseline vehicle movements for the associated roads have been updated to reflect the intervening time period since submission of the first application. The Highways Officer has raised no objections to the proposed extension of time on grounds of highway safety or capacity. Officers therefore consider that the proposal to extend the time limit for the implementation of development from 5 to 10 years does not alter the impacts of development on highways safety or capacity.

Other matters

2.24 Matters relating to telecommunications, spacing and safety, blade icing and turbine efficiency remain as per the original Committee Report for 09/1067/S36; no objections or concerns remain and the proposal to extend the time limit for the implementation of development from 5 to 10 years has no impact on these interests.

Aviation

2.25 The rationale behind the applicant's current s.36c variation submission rests solely on their inability to address the previous requirements in relation to the military aviation impacts of the proposed wind farm. In summary, following the issue of consent in 2013 and the imposition of condition 5 of the s.36 consent (see below), the applicant has been unable to develop a Radar Mitigation Strategy (RMS) in consultation with the Ministry of Defence, and they are seeking an extended time period in order to implement the development to enable ongoing dialogue and a resolution of the matter. Wind turbines have the potential to adversely impact upon two aspects of air traffic movement and safety. Firstly they may represent a risk of collision with low flying aircraft and secondly they may interfere with the proper operation of radar by limiting the capacity to handle air traffic and aircraft instrument landing systems. The application site is approximately 12km from RAF Coningsby, 20km from RAF Cranwell, 28km from RAF Waddington, 41km from RAF Cottesmore and approximately 65km from Humberside airport and 76km from East Midlands airport.

2.26 During the consideration of the original consent application objections were received from both Defence Estates and National Air Traffic Services (NATS) regarding unacceptable interference to air traffic control at the four RAF bases listed above and the NATS system operated at Claxby respectively. However these objections were withdrawn at the commencement of the Public Inquiry subject to the imposition of conditions.

2.27 In his subsequent consideration of the matter, with the objections having been withdrawn based on discussions and agreements between the relevant parties, the Inspector at paragraph 197 stated that:

> *"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 an 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. 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 the matter".

2.28 Consistent with the Inspector's recommendation to the SofS, condition 5 of the Consent under the Section 36 of the Electricity Act 1989 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.
In this condition, "Radar Mitigation Scheme" means arrangements designed to mitigate the impact of the Development upon:
(a) The operation of the Watchman Primary Surveillance Radars at RAF Coningsby, RAF Cranwell and RAF Waddington and the air traffic control operations of the Ministry of Defence which are reliant upon these radars; and,

(b) The operation of the Primary Radar Installation at Claxby and the air traffic management operations operated by NATS (En Route) plc whose effectiveness might otherwise be affected by the Development.

The Radar Mitigation Scheme shall set out the appropriate measures to be implemented to mitigate the impact of the Development on the radar installations and air traffic control and management operations referred to above and shall be in place for the operational life of the Development provided the radar installations remain in operation.

2.29 In 2015 the applicant submitted an application (ref: 15/0416/S36) to vary their section 36 consent and deemed planning permission to allow for the erection of turbines of different proportions, access tracks re-siting, a revised substation and to amend the wording of condition 5 as set out above to prohibit the construction of a wind turbine until a radar mitigation scheme has been submitted to and approved by the Secretary of State. This application remains undetermined.

2.30 It is therefore of some significant concern that the current application for the extension of time has been submitted on the basis that the radar mitigation scheme still remains outstanding. In their letter of 1st February 2018 the applicant sets out the reasons for the current submission:

- 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 and a Radar Position Statement will be provided shortly (subject to approval from various involved parties, including the MOD) which will set out details of both the work undertaken since consent was granted in 2013 and the ongoing mitigation strategy which is aiming to deliver a solution within a 3-5 year timeframe.

- A decision on the original variation of Consent Application, submitted 6th February 2015, has not been forthcoming. The existing Variation of Consent Application proposed that the wording of 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. In a letter of 20th May 2015, the Ministry of Defence confirmed that it had no objection to this proposed variation to Condition 5. As a decision has not yet been made on the

original Variation of Consent Application, the Applicant is currently unable to commence development within the timescale set out under Condition 4 of the Consent.

2.31 As far as the District Council is aware, when the s36.c application was initially received and subsequently validated by BEIS, it was accompanied solely by the 'Heckington Fen Wind Park – Variation of Consent' Supporting Statement which incorporated brief updates to the relevant chapters of the original Environmental Statement. As noted above, the DECC guidance is clear at paragraph 35 that an applicant must be able to describe the whole of the development that is proposed to be authorised by the variation procedure and that the applicant must be able to give a 'clear and complete picture' of the development that would result if the variation is granted and implemented.

2.32 However, rather than forming part of the original submission from the applicant to BEIS, a copy of the Radar Position Statement (RPS) (dated October 2018) prepared by the applicant was only received by the District Council on 5th November, triggered as a result of a proactive approach from Officers to Defence Estates (on behalf of the Ministry of Defence) and subsequently to BEIS directly. The Radar Position Statement has since been made publicly available on the applicant's website. The Council has also ensured that a copy is publicly available via our planning online website. The delay in the submission of this important information promised at the outset of the process, and what your Officers would respectfully suggest is such a fundamental document and evidence to support the entire basis of the current variation application, creates a significant area of procedural concern. 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.

2.33 The May 2018 Supporting Statement/Environmental Statement update contains no discussion of a strategy to mitigate radar impacts and indeed paragraphs 6.26 and 6.28 of the supporting statement refer to previous discussions between the applicant and BEIS resulting in aviation impacts being 'scoped out' of the Environmental Statement update; essentially meaning that BEIS do not require the applicant to formally address the issue of aviation impact through their submission – even though this forms the singular basis for the application. This seems to be wholly contrary to the guidance note requiring openness and detail of the proposed changes and ergo the technical consideration/s directly resulting in such.

2.34 Notwithstanding the questionable status and purpose of the RPS, Officers have reviewed the document which states that during 2015-17 the applicant has 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. No solutions were available at that point in time but they considered there to be a reasonable prospect of addressing the concerns. The applicant states that subsequently they have continued to work to investigate any potential solutions not previously identified. It is notable that the 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.

2.35 Since mid-2017 the applicant advises that they have been exploring the potential of 'stealth turbines' with the defence contractor QinetiQ. This comprises incorporating radar absorbent material into turbine blades to reduce their effects on radar. The applicant states that such an approach has been successfully applied on a 35 turbine/96MW EDF site in France. The applicant considers that stealth materials either alone or in combination with other technology such as a wind farm filter have the potential to deliver an effective radar mitigation strategy.

2.36 In the RPS the applicant envisages a four stage programme:

- Phase 1 Feasibility (6 months) – agreement of modelling and performance criteria for the stealth turbines to be agreed between QinetiQ and the MOD. The study will seek to establish if stealth turbine technology has the potential to reduce radar interference to such an extent that additional mitigation is not required. If however, it is concluded that further mitigation is still needed then the study will seek to identify whether any other technologies could, potentially, in combination with stealth turbines, successfully address the issue. The aim of the study is to ultimately determine whether there is sufficient evidence to suggest that a Phase 2A trial will be successful, and thus enable a commercial decision on progressing.

- Phase 2A Stage Trial (12 months) – The initial trial is designed to minimise risk and cost of a full scale trial. Potential options include the manufacture and installation of stealth blades on a site such as the applicants' near Swaffham, Norfolk to enable evaluation of performance against RAF Marham air traffic control radar (either using existing or proposed future systems). If necessary additional mitigation (such as infill radar) to remove any unacceptable residual radar returns could also be trialled.

- Phase 2B Stage Trial (12 months) – subject to the success of the Phase 2A, Phase 2B full scale testing of the stealth blades (and if necessary additional radar mitigation) on a representative wind farm and radar system, or if acceptable to the MOD, on Heckington Fen will be undertaken. The applicant advises that this could be undertaken incrementally with one turbine being tested at a time. However, the current consent does not allow for the erection of any wind turbines on site (or indeed any development at all) until the RMS is agreed. As such, the suggested 'testing' on a single turbine at Heckington Fen would not be permissible under the terms of the existing consent and would require a (Town and Country Planning) application in its own right to the District Planning Authority. Any such application would be considered against the restrictive provisions of paragraph 154 (b) of the NPPF and policy LP19 of the CLLP which preclude wind energy development other than with community backing and is within an area identified as suitable for wind energy development. No such areas are identified/allocated in the CLLP and mindful of the number and nature of outstanding objections to the original Heckington Fen scheme, any future application may have difficulty in satisfying the former (without prejudice).

- Phase 3 Implementation (12-18 months) – any required radar mitigation would be fully implemented and signed off by the MOD, having followed a full 'release into service' process. The applicant expects that at the end of phase it is expected that the MOD will confirm that the RMS has been successfully implemented enabling the turbines to become operational in accordance with Condition 5 of the 2013 consent. A lifetime maintenance and monitoring programme will also need to be agreed. Phase 3 is expected to run fully or partially concurrent with Phase 2B. In total therefore, depending on the degree of any overlap between the feasibility and test phases, the applicant has estimated a minimum of 3.5 years' worth of what appears to be essentially experimental testing before they expect the MOD to formally verify and approve the RMS. 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.

2.37 The Ministry of Defence is a statutory consultee on this type of application and therefore their response has been issued directly to BEIS. However a copy of these has been received prior to completion of this report and confirms that they raise no objection to the proposed extension of time. They state that they have been consulted by the applicant and are content with the Military Air Traffic Control Radar Position Statement, which has been reviewed by colleagues in Defence Equipment and Support who are satisfied with the content presented.

2.38 However, notwithstanding this, it is an area of significant concern that the applicant has only provided at the 11th hour some evidence to support their reasons for seeking the variation in order to allow the local authority the opportunity to properly scrutinise the application. The purpose and weight that BEIS may give to the RPS is however questionable given that the document does not in fact, by the applicant's own admission, form part of the supporting evidence base. The RMS position statement was only received on 5th November following Officer discussions with the MOD and BEIS respectively.

2.39 It should also be noted that the Statement was received after the deadline for public comments set out within the Statutory Notices.

2.40 This is particularly relevant given the Inspector's comments that the s.36 consent and the deemed planning permission was predicated upon there being no further time to resolve the radar mitigation issue - the Inspector at the time was clearly of the opinion that there was sufficient evidence before him in 2012 that the development could proceed subject to a radar mitigation strategy being agreed and it is clear that his decision on this particular matter (summarised at paragraph 197 of the Inspector's Report) was directly influenced by the agreement between the applicant and relevant aviation bodies. However, it remains unclear as to what was comprised in any exchange of information between the applicant and aviation bodies that led to the initial 'agreement in principle'. Furthermore, the Inspector clearly did not envisage the need for ongoing resolution of the matter beyond the initial 5 year period – which the applicant is now seeking (and which as above must be set against circa 2 years of apparent inactivity in even addressing the issue). On the contrary, the Inspector sought to address local concern at the potentially drawn out nature of any agreement by noting that *'there would be no extension of the time set aside for resolving the matter'.* The current submission is directly at odds with this statement, and your Officer's review of the October 2018 Radar Position Statement (the status, weight and purpose of which is now questioned) highlights a scenario which at the applicant's own submission is predicated on a series of tests and trials.

2.41 The House of Lords decision in British Railways Board v Secretary of State (1994) makes it clear that it is not for the planning authority to refuse permission for development which is otherwise in the public interest merely because the development may face serious difficulties in implementing that permission. It will be a matter of planning judgement for the decision-maker as to whether any condition is reasonable in the circumstances with regard to the prospects of whether the relevant matter is resolved. Members will be aware of the guidance at paragraph 55 of the NPPF which states that "planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development permitted, enforceable, precise and reasonable in all other aspects."

2.42 Whilst the British Railways Board decision was taken in the context of planning permission, the Council's legal advice is that there should be no reason why the substance of that decision would not be applicable in the context of Electricity Act consents. It is therefore a matter of judgement for BEIS as to whether the radar mitigation strategy condition satisfies the relevant tests and is capable of being resolved within a further 5 year period.

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'.

2.44 The success of the trial programme (and therefore the overall outcome) is predicted on a significant number of 'conditional' factors, including:

- 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.

2.45 As noted above the Phase 2B Stage 2 Trial, may require the full scale testing of stealth blades (and if necessary additional mitigation) on a wind farm and RAF radar representative of Heckington Fen, or if acceptable to the MOD, on Heckington Fen itself. The applicant has supplied no information to confirm which operational 'surrogate' windfarm offers the same locational and military aviation characteristics as Heckington for the purpose of trial testing, and the current consent precludes any turbine being constructed for 'test' purposes. Finally, the Radar Position Statement briefly references the 22 year military air traffic control contract awarded to Aquila. The MOD contract is known as 'Project Marshall' and the Radar Position Statement 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. Furthermore, Aquila has confirmed 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.

2.46 On this basis, having regard to the practicalities of achieving all the stages of the as yet untested RPS within the proposed 5 year extension of time, which has no identified start date, Officers would register a concern about the potential efficacy of the tests and trials in delivering a RMS that could be approved by the SofS and that would enable the development to commence as per the s.36 Consent ie. no development until the radar issue is resolved. There also remains some concern that in the face of the trials and tests still to be done, there is a 'watering down' of the effectiveness of condition 5 of the original 2013 s.36 Consent. The Council has already expressed its reservations on this point to the SofS through the 2015 application, and these ought to be restated, that by potentially entertaining any revision of condition 5 the development could be commenced ahead of any actual and clear confidence that the RMS can, as a matter of fact, be satisfactorily resolved and thereby effectively blighting the area and lives of the local residents. Further, as set out above, to permit any trial or tests under this variation application that include the construction of a single wind turbine would, in your Officers' view, exceed the powers of the SofS – the construction of a single test turbine sits outside the parameters of the s.36 Consent and, if such an installation is necessary, it would need planning permission from the District Planning Authority. The whole question of the ability of this development to reasonably accord with condition 5 of the original consent regarding the RMS is, therefore, very much in doubt.

I. Conclusion

1. Taking all of the above factors and embedded uncertainty into account, it is considered that the applicant has fallen significantly short of demonstrating that an RMS can be devised, tested (over multiple phases) and agreed in conjunction with the MOD within the requested timeframe. Rather than proactively seeking to address this issue ahead of implementing the consent, at the applicant's own admission there appears to have been a minimum 2 year period of inactivity following the grant of the s.36 consent when radar mitigation was not pursued nor, it would appear, was any meaningful contact made with the necessary aviation consultees.

2. In February 2013, The Secretary of State for Business, Enterprise and Regulatory Reform granted consent under Section 36 of the Electricity Act 1989 and a direction under Section 90(2) of the Town and Country Planning Act for the erection of 22 wind turbines with associated infrastructure and new vehicular access, at Six Hundred Farm, Six Hundred Drove, East Heckington. The application was assessed on the 'worse case' scenario of 22 turbines, with a maximum tip height of 125m and maximum rated capacity of 3MW giving a total rated capacity of 54MW. The application was allowed following a public inquiry triggered by the objection of North Kesteven District Council in their role as a statutory consultee, on grounds of visual impact. Condition 4 of the Electricity Act Consent and condition 2 of the deemed planning permission require development to commence before the expiration of 5 years from the date of the associated consent/ permission – i.e. by 8th February 2018.

3. In 2015 an application to amend the approved scheme to allow for turbines of different blade sizes (but overall height not exceeding 125m) and to enable development to commence in advance of discharge of the precedent radar mitigation strategy condition, was submitted. Members raised no objections to this consultation although some concerns were expressed. This application remains undetermined by the Secretary of State and does not form part of the current variation application.

4. A further variation application has now been submitted to amend the wording of condition 4 of the Electricity Act Consent and condition 2 of the deemed planning permission to extend the date before which development must be commenced from 5 to 10 years (i.e. by 8th February 2023). The rationale behind the submission is that the applicant has thus far been unable to agree a radar mitigation strategy with the MOD. No other changes are proposed to the consent scheme.

5. It is important to note that as the application has been made under the Electricity Act 1989, this is not a planning application, but an application under the provisions of that Act with NKDC a statutory consultee. The decision maker is the Secretary of State for Business, Energy and Industrial Strategy. Given the nationally significant nature of the application, the National Policy Statements on Energy take precedence with the NPPF, then the development plan (CLLP) and any other material considerations. The two National Policy Statements on Energy were both adopted prior to the consideration of the original application at the public inquiry. The subsequent National Planning Practice Guidance which accompanies the NPPF and Policy LP19 of the CLLP both reflect the Written Ministerial Statement of June 2015, which states that except for proposals for the repowering of existing turbines, proposals should not be supported unless it is either within an area identified for such in the development plan, or, if following consultation, it can be demonstrated that the planning impacts identified by the local community have been fully addressed and the proposal has their backing. However as this application has been submitted under the Electricity rather than the Planning Act, it is not governed by the latter or policies relevant to determinations under it.

6. Given that the application proposes no physical changes to the consented scheme under the Electricity Act and the deemed planning permission, it is considered that the proposed extension of time would be unlikely to give rise to further associated impacts in relation to matters of landscape and visual impact, cultural heritage, residential amenity – outlooks, shadow flicker and reflected light or highways. With regards to matters of ecology the Council's Consultant Ecologist has advised that further enhancements should be sought with regards to biodiversity, ornithology and post construction of bird collision mortality and these detailed comments will be forwarded to BEIS for information.

7. Of primary consideration in terms of this variation application with regards to issues of associated impacts are matters of noise, aviation impact and procedural matters.

8. With regards to residential amenity – noise, the Inspector in his consideration of the original application found that the predictions of noise emission to dwelling around the site are such that it is expected that the noise limit recommendations set out within ETSU-R-97 (the appropriate tool for assessing such impacts) would be 'comfortably' met but noting that noise prediction is not an exact science, applied a condition restricting overall noise levels at certain properties. Subsequently in June 2015, the Council received a copy of a Noise Impact Assessment Appraisal undertaken by a Dr Yelland, funded by a local opposition group questioning the original noise impact assessment within the Environmental Statement submitted in July 2010. The Council has already in 2016, made further representations to the Secretary of State drawing his attention to this third party report 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 in relation to the 2015 proposed variation.

9. The current submission is not accompanied by a new noise assessment, although the applicant 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. There are therefore two conflicting reports and the Council in its role as a statutory consultee with a limited period to assess/provide comment, is not in a position to carry out an independent assessment in relation to this matter. It is therefore considered appropriate to continue to raise this as a matter of concern for BEIS to assess in their role as the determining authority.

10. With regards to matters of aviation, the applicant's inability to agree a radar mitigation strategy with the MOD forms the justification for the need to extend the period for the commencement of development. Whilst BEIS must consider each s.36c variation application on its own merits, depending on the particularities of the case, it does not appear from the Council's reading of the July 2013 DECC guidance note that the procedure is aimed at extending the time limits for implementation of a consent. Rather, in the Council's reading, the guidance persists to enable developers to make physical modifications to consented schemes in response to technological advancements. The applicant has confirmed that no changes to the original scheme are proposed.

11. The Inspector in considering this matter at the public inquiry noted that the objections from the MOD (and NATS) had only been withdrawn at the beginning of the inquiry and considered that 5 years would reflect the usual time available for starting a project of this nature and that there would be no extension of time set aside for resolving the matter. The failure to be able to satisfactorily resolve the matter with the MOD led to the initial variation

application in 2015 which amongst other things sought to allow the commencement of development in advance of the strategy being approved. The Radar Position Statement which was referenced by the applicants as early as February 2018 was not received by the District Council until 5th November 2018, a month into the two month statutory consultation period for the District Council to comment and after the statutory consultation period for the public to comment. The document's purpose and weight is questionable given the applicant's confirmation that it does not form part of the submission to BEIS. Whilst the Statutory Consultee (MOD) does not raise objection to the proposed extension of time, the belated submission of this key supporting document gives rise to concerns regarding the transparency and robustness of the process. Furthermore the applicant's four phase test programme is in part predicated on the ability to undertake proposed trial testing at Heckington Fen, but where conditions attached to the existing consent/deemed planning permission prevent development until the strategy has been approved.

12. It is therefore recommended that the above concerns relating to noise, aviation and procedural matters be expressed in writing to the Secretary of State.

J. RECOMMENDATION

That the Council raise three areas of specific and significant concern (as detailed below) to the Secretary of State for Business, Energy and Industrial Strategy (BEIS) 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.

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.

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.
Mindful of the brief nature of the update on noise in support of the S36 variation application and the absence of any supporting data to justify the applicant's conclusions on subsequent changes to the background noise environment, 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.

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 197 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 197 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:

- 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 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 197 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. 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.

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.

K. Document Information	
APPENDIX NO. N/A	**TITLE**

BACKGROUND PAPERS	
Title	**Location of Background Papers**
• Previous Reports / Minutes • Planning Application background	N/A N/A

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