



# Appeal Decision

Inquiry opened on 20 October 2009  
Accompanied site visits made on 29  
October 2009

by **Philip Major BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State  
for Communities and Local Government

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**Decision date:**  
**8 December 2009**

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## Appeal Ref: APP/E2001/A/09/2101851

### Land south of West Linton Farm, Brow Lane, Balkholme, East Riding of Yorkshire DN14 7XH.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Sixpenny Wood Windfarm against the decision of East Riding of Yorkshire Council.
- The application Ref: DC/07/04680/STPLFE/STRAT, dated 19 July 2007, was refused by notice dated 6 November 2008.
- The development proposed is a wind farm comprising ten turbines up to 125m high, control building, anemometry mast, access tracks including access off the public highway, underground electrical cabling (all for a period of 25 years) and a temporary construction compound.

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## Decision

1. I allow the appeal, and grant planning permission for a wind farm comprising ten turbines up to 125m high, control building, anemometry mast, access tracks including access off the public highway, underground electrical cabling (all for a period of 25 years) and a temporary construction compound at land south of West Linton Farm, Brow Lane, Balkholme, East Riding of Yorkshire DN14 7XH in accordance with the terms of the application, Ref: 06/07/04680/STPLFE/STRAT, dated 30 July 2007, and the plans submitted with it, subject to the conditions set out in the attached schedule.

## Preliminary Matters

2. I carried out visits of the area and particular viewpoints in company with the parties on 29 October. In addition I undertook unaccompanied visits to other locations as requested by the parties. This includes visiting the recently constructed wind farm at Lissett, East Yorkshire.
  3. It was agreed at the inquiry that the East Yorkshire has performed well against the targets set for renewable energy capacity to 2010, and looks to be in a strong position in relation to Regional Spatial Strategy (RSS) targets for 2021. However, it is also agreed that the targets are minima, and will be reviewed in the light of evolving national policy.
  4. The application is for 10 turbines and the current intention is to install turbines of 2MW rated power. Although turbines up to 3MW had been considered during the preparation of the proposal it is common practice for the choice of turbines to be made at the time planning permission is granted. Any contribution to the production of renewable energy is to be welcomed and I therefore see no
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difficulty with the actual turbines being determined in accordance with operational criteria set by the appellant. The size and configuration of the turbines has not been changed and the nature of the development in land use terms has therefore remained consistent. Grid access can be achieved through a connection to the line a short distance to the north of the site, and no issue has been taken on this point.

5. There has been little comment in relation to the proposed control building, anemometry mast, access tracks and temporary construction compound. These are relatively minor items when seen alongside the proposed turbines and have not led to the Council's reasons for refusing planning permission. Hence this decision concentrates on the turbines themselves.

## **Planning Policy**

### ***National Policy***

6. Relevant national policy can be found principally in Planning Policy Statement 1 – *Delivering Sustainable Development* (PPS1) and its supplement – *Planning and Climate Change*; Planning Policy Statement 22 – *Renewable Energy* (PPS22) and its companion guide – *Planning for Renewable Energy*; and Planning Policy Statement 7 – *Sustainable Development in Rural Areas* (PPS7).
7. The overriding message from PPS1 is that development plans should promote sustainable development, and this includes setting regional targets for renewable energy generation in Regional Spatial Strategies (RSS).
8. PPS22 indicates that renewable energy development should be capable of being accommodated throughout England in areas where the technology is viable, and environmental, economic and social impacts can be addressed satisfactorily. It encourages the promotion of renewable energy developments through the relevant development plan.
9. PPS7, although seeking to protect the countryside from unacceptable development, also advocates the sensitive exploitation of renewable energy sources in accordance with the policies of PPS22.
10. The recently published Renewable Energy Strategy sets out what the government sees as being needed to meet the legally binding targets set for renewable energy consumption. This indicates that about 30% of electricity generation will be required from renewables by 2020, compared with about 6% today. It is clearly a challenging objective. Onshore wind power is expected to make a major contribution.
11. The thrust of energy policy at a national level is therefore to promote the development of renewable technology to combat the effects of climate change. These policies carry very significant weight.

### ***Development Plan***

12. The development plan comprises the Regional Spatial Strategy for Yorkshire and the Humber 2008 (RSS12), saved policies of the Joint Structure Plan for Kingston upon Hull and the East Riding of Yorkshire 2005 (JSP) and the saved policies of the Boothferry Local Plan 1999.

13. The following policies are relevant to this appeal and can be summarised thus:

**RSS 12**

YH2 sets out a general objective of reducing greenhouse gas emissions in the region, and to continue to do so into the future.

ENV5 sets out regional targets for installed grid connected renewable energy capacity for 2010 and 2021. This is further broken down into indicative local targets, those for the East Riding being 41MW and 148MW by 2010 and 2021 respectively.

ENV9 seeks to ensure that the historic environment is safeguarded and enhanced.

ENV 10 seeks to safeguard and enhance landscapes that contribute to the distinctive character of Yorkshire and the Humber.

**JSP**

SP1 has the objective of protecting and enhancing the character and distinctiveness of settlements, including important skylines and views.

ENV6 seeks to protect the setting, character or appearance of strategically important buildings, including listed buildings.

SP4 seeks to protect the distinctive character of, amongst other areas, the Ouse and Trent Levels, within which the appeal site falls.

**Local Plan**

EN2 sets out criteria against which development will be assessed. These include the likely effects on, amongst other things, the character of the locality and amenity of local residents, ancient monuments and listed buildings, and the character of landscape. The policy indicates that significant adverse effects which cannot be mitigated or dealt with by condition or agreements will not be approved.

EN6 and EN7 are policies which seek to restrict development in open countryside, and ensure that any development permitted is appropriately sited, designed and constructed.

EN51 states that applications which adversely affect the setting of a listed building will be refused except where the proposal would secure the retention of and beneficial use of the listed building.

14. It is pertinent to note that the Local Plan predates both PPS1 and PPS22. It was conceded at the inquiry that Local Plan policy EN73 (which deals specifically with wind turbines) does not accord with national guidance. It can therefore be given little weight. Similarly, Policy EN49, though cited in the refusal notice, relates to developments which directly affect listed buildings and require listed building consent. That policy therefore has no relevance in the current case.

**General Background**

15. It was agreed between the appellant and Council that an inquiry into a particular proposal is not the forum for debating national policy on renewable energy. Government policy is strongly supportive of both onshore and offshore wind power in order to assist in the reduction of CO<sub>2</sub> emissions. It is widely

accepted that this technology results in savings of CO<sub>2</sub> emissions, and that wind turbines quickly move into 'credit' even allowing for construction and transport emissions. I am therefore able to give little weight to arguments advanced which question such savings.

16. For similar reasons I am unable to afford weight, in the context of this proposal, to the suggestion that there are better alternatives, such as wave and tidal power. These are undoubted possibilities for the future, but the fact remains that national policy seeks to take advantage of a raft of renewable technologies over time, and is strongly supportive of wind power at present.
17. It is common ground between the parties that within the East Riding there are 4 wind turbine developments of varying sizes which are installed, and which have a capacity of 43.5MW. Some 4.5MW of that is not grid connected, and this means that the target of 41MW grid connected by 2010 is not quite met. But it is close, and other renewable sources have not been counted. Whilst this is a creditable position in relation to the East Riding, the position in the region is less clear, and certainly less good. The agreed installed capacity falls well short, with a total of 97.3MW (again 4.5MW not grid connected) of onshore wind capacity against a renewables target to 2010 of 708MW. The regional target for 2021 is 1850 MW and for East Yorkshire it is 148MW.
18. As a result, although the East Riding might be said to be doing its bit, there is a long way to go, even taking into account the permitted but not built schemes in the region. National advice makes it clear that targets, when met, should be raised, and I see no reason why the target for the East Riding should not follow that course. There is no justification for restricting development because current targets are close to being met, or because new targets have not yet been worked out. In any event previous studies of potential capacity for the East Riding suggest that there is spare capacity. The target of 41MW to 2010 was only set after a process designed to allocate targets 'equitably' within the region, and not in relation to overall capacity. There is also no sequential test to be followed in site selection, and no extra weight can be attributed to any adverse effects just because targets are close to being met. This proposal must be considered on its merits taking into account the main issues and other considerations set out below.

### **Main issues**

19. The main issues raised in the appeal are:
  - (a) The effect of the proposed development on the surrounding landscape;
  - (b) The effect of the proposal on the living conditions of nearby residents, with particular reference to visual intrusion and noise;
  - (c) The effect of the proposal on the setting of Howden Minster.

### **Reasons**

#### ***Landscape***

20. The appeal site is within a flat landscape in the flood plain of the River Ouse as it widens towards the Humber estuary. There is no special designation of the landscape in this area. It falls within national landscape character area 39 – Humberhead Levels, as defined by Natural England in their Countryside

Character Area assessment. Within this a more local assessment has been carried out in the East Riding of Yorkshire Landscape Character Assessment of 2005 by Golder Associates. The development would be within the Drained Open Farmland landscape type (9) and the main part of the site, including the turbines would be within or on the northern edge of the sub-character type described as Blacktoft and Laxton Drained Farmland (type 9d). The northern part of the site lies within the type designated as M62 Corridor Farmland (type 8a) though to all intents and purposes it has the same character as type 9d.

21. The local assessment of the Drained Open Farmland describes the character of the area, and includes such descriptions as 'low lying flat intensively farmed', 'scattered farmsteads and villages', 'open large scale landscape with few trees and woodland', 'extensive views across the flat open landscape'. Within the more local type of Blacktoft and Laxton Farmland the description accurately identifies that the open views elsewhere in this character type are sometimes interrupted by small areas of woodland. These descriptions apply equally well to the M62 corridor type. I do not find the landscape to be particularly tranquil as suggested by reference to the Campaign to Protect Rural England tranquillity map; the M62 corridor is too close, and at times too prominent in the immediate background, for that to be a reasonable position to hold. There is additional intrusion from the nearby railways and B1230.
22. The stark openness of areas such as Goole Fields to the south of the Ouse is absent from the locality surrounding the appeal site, though the flat arable landscape still offers extensive views. The emphasis is horizontal, and the dispersed areas of minor woodland do little to combat that character trait. Although described by some as being akin to a parkland setting, I do not agree; to my mind the landscape is clearly large scale and flat, and predominantly open. Settlements and farmsteads are dispersed throughout the area, some being visually contained within distinct boundaries formed by lanes, roads, dykes and hedgerows. Nonetheless there are extensive vistas beneath 'large skies' which emphasise the flat, horizontal and simple nature of the landscape. But the landscape is clearly valued highly by the local population, and I saw evidence that it is well used for recreation during my site visits. There are both local and long distance footpaths close by, and the wind farm would be seen from both.
23. The landscape has clearly changed dramatically over the years, including the draining of land, hedgerow removal and establishment of large fields used for arable purposes. In short the landscape has been sculpted to reflect the needs of successive generations. This has been described as bland, and to the extent that it is simple and lacking complexity I agree. It is also not a particularly striking landscape. This lack of complexity, open character and lack of distinctiveness lead me to the judgement that it would have a moderate sensitivity to change.
24. I do not intend to provide a narrative on what would be seen from each viewpoint. Suffice to say that within this landscape, as with most others, the presence of wind turbines could not be hidden. The sparse woodland and tree cover would offer interruption of views from some locations, but in the main the wind farm would be wholly apparent as a collection of substantial features. The turning of the blades would add to the prominence. I agree with the

principal parties that the effect would be at its greatest within about 2km to 3km of the turbines, but reducing with distance.

25. In my judgement the development would have a significant effect on the character of the landscape of the area – turbines of this size could hardly do otherwise. I cannot see that in an area such as this there is any room for doubt about the effect of such a development on landscape character. In objective terms it could not realistically be argued that the character of the landscape would be enhanced by such large and uncharacteristic structures. Indeed I have no doubt that the effect on landscape character could only be described as adverse and long term irrespective of whether they are seen as a positive feature in the struggle against climate change. In effect it would change the landscape from its current state into a landscape which includes wind turbines as a major component of its character.
26. However, in my opinion the large scale, horizontal and simple character of the landscape lends itself as well as any rural landscape could to the introduction of large scale but vertical structures which in themselves are relatively simple and sculptural. There would be a distinct and noticeable contrast between the horizontal and vertical elements (landform and turbines) but both are large and neither would dominate the other. The turbines would be seen in the sweep of the wide horizons and the extensive skyscape in a manner which would tend to complement the landscape in scale.
27. Mitigation of the effects of the turbines can only be expected to be minimal given their size. However, I am satisfied that their siting has been designed so that the pattern of development would sit as comfortably as possible in the landscape. There would be no abrupt gaps or outlying turbines to disturb the composition of the layout. The wind farm would be seen as a coherent whole (much as that at Lissett is perceived) rather than a series of individual components. Consequently, though unavoidably prominent, the development would be in a form which would make sense to the viewer.
28. That said, it must be the case that some viewers will not like the look of the turbines, and will perceive substantial harm being caused to both the character and appearance of the countryside. On the other hand, it is shown both by general surveys, and by responses to this proposal, that not all are opposed to such development. Many people find the relatively simple aerodynamic design of turbines to be attractive.
29. In visiting the many viewpoints identified, and in travelling around the area generally, I noted that with distance the effect of the turbines would reduce significantly. But even within the 2 – 3km zone the development would, in my opinion, be acceptable. Large and unmissable I agree, and involving an adverse effect on the character of the landscape, but not so harmful that this should be the deciding factor when set against the pressing need for the development of renewable energy capacity.
30. In terms of the development plan it is clear that the proposal would accord with the terms of RSS policies YH2 and ENV5, which themselves reflect the strong support for renewable technology set out in national guidance. This must be balanced against the fact that the proposal would conflict with the objectives of

part of RSS Policy ENV10, JSP Policy SP4 and Local Plan policies EN2 and EN6. I turn to the overall balance later.

31. Before moving on to deal with the living conditions of nearby residents I will deal briefly with the potential cumulative impact of wind farms in the area. I am aware of other permitted schemes not yet built, and note that the Council takes no issue with cumulative effect. The Environmental Statement deals with this matter and I agree that although there is the potential to be able to see many turbines from some viewpoints the cumulative effect is not likely to be sufficiently harmful to justify refusing this proposal.

### ***Living Conditions***

32. Dealing firstly with visual intrusion, I note that the principle parties agree to a large extent on the number of properties from which significant views of the turbines would be possible. The 'worst case' advanced by the Council is that some 93 properties would be so affected. However, there is no right to a view per se, and any assessment of visual intrusion leading to a finding of material harm must therefore involve extra factors such as undue obtrusiveness, or an overbearing impact, leading to a diminution of conditions at the relevant property to an unacceptable degree.
33. During my accompanied site visit I was taken to a number of the dwellings closest to, and with the clearest views of, the appeal site. The occupants of these dwellings would be the most seriously affected by the development. It was clear to me that the turbines would be very prominent in views from those properties, as well as from others in similar locations, and to a lesser extent at properties and villages further afield.
34. But that prominence does not necessarily equate to harm. There would, of course, be a significant change in the view from those properties. The outlook would change from an aspect generally across open fields to an outlook in which turbine or turbines would be the major feature within the landscape. I can well appreciate that many would find that a serious diminution of their outlook, though accept that others would find them acceptable and attractive.
35. The distance to one or more turbines from any dwelling not associated with the development is agreed to be around 600m as a minimum. That is over 4 times the height to tip of the turbines themselves. The turbines are slim and would not fill the field of view, though there are locations where more than a single turbine would be prominent. Nonetheless, the landscape between the turbines would remain, and would be the major horizontal component of any view. Whatever personal feelings are held it is my judgement that given their spacing and configuration the turbines would not be so dominant that they would introduce unacceptable obtrusiveness, be overbearing to the point of oppressiveness, or otherwise lead to visual intrusion which would amount to significant harm to living conditions.
36. Turning to the objections made in relation to noise, I note that the Council is satisfied that the proposed development would be acceptable in this respect. Objections have been addressed by the appellant. This indicates that assessments were undertaken in accordance with the guidance of ETSU-R-97, as specified in PPS22, and show that the development is capable of complying with the noise limits set in that document.

37. The objectors views that noise evidence has been presented inaccurately and by reference to unreliable data has largely been brought forward late in the day, and have not been subject to testing by cross examination. Because of the late production of detailed objections on these grounds it was also not possible for the appellant to introduce an expert witness during the inquiry.
38. That said, post inquiry correspondence has clarified the situation. What is clear is that the noise monitoring locations were agreed, and I have no reason to doubt that the Council's expert and the appellant's noise expert carrying out the assessment chose appropriate locations. Similarly I have no substantive evidence to show that the time of year during the monitoring has led to materially higher results. Although harvesting was taking place during the period I am satisfied that data was recorded at appropriate times, and that anomalous recordings have been excluded from the results.
39. It is clear that wind direction during the monitoring period did not accord with the submitted wind rose for Humberside. Though there is no proven correlation between that wind rose and the site I accept that it is likely to be a closer match than the wind directions recorded during the monitoring period. Even so I am satisfied that there was a suitable range of wind directions and speeds recorded during the noise survey in order that the technical experts could draw meaningful conclusions, in accordance with ETSU guidance. In any event I have no alternative noise monitoring information.
40. Since the assessments were carried out a section of the M62 to the north has been resurfaced with low noise 'tarmac', and it has been acknowledged that this will have an effect on background noise assessments. Accordingly the predictions have been reworked by the appellant's experts, and this shows that the proposal continues to comply with ETSU-R-97 guidance. I have noted the comments by the objectors that greater allowance for the low noise surfacing should be made, but I am not persuaded by the evidence. It is the case that technical information suggests that the low noise surface is, in its early life, about 5dB quieter than standard asphalt. But I am told that low noise surfacing will become noisier with age, so a judgement must be made as to what allowance should be made 'in the round'. It therefore seems to me that the allowance of 5dB to account for the difference between the previous concrete surface and the new surface is reasonable. Similarly I am satisfied that the new central barriers on the M62 are likely to make no material difference.
41. Information and evidence on the noise implications of the proposal is based on survey data and predictions. It is therefore not precise, nor could it be, but it errs on the side of caution. I am well aware of the experience which has been gained by the appellant's advisers in this respect, and as a result can afford their conclusions significant weight. I am therefore satisfied that the objectors concerns have been satisfactorily addressed in correspondence. The amended figures for the proposed noise conditions (changed as a result of the road surface information) would, in my view, provide suitable protection. I also give significant weight to the fact that the Council's own technical officers have not raised objections to the appellant's evidence produced in the Environmental Statement and subsequently.

42. Dealing with other matters of noise nuisance raised by a number of objectors, it remains the position that there is no substantive and verified evidence of adverse health effects from wind farms from either low frequency noise or sleep loss. I recognise that this is a real concern for people living closest to the site, but I have no reliable evidence before me that such effects would ensue. Studies cited have not been peer reviewed and have not been carried out by specialists in acoustics. Although the studies suggest that wind farms can generate adverse effects there is currently insufficient evidence to support that conclusion.
43. It has been suggested that there should be a minimum separation distance between turbines and dwellings, and that some power companies require a set separation. However, ETSU-R-97 is predicated on the fact that noise imission at properties will be within acceptable set limits. As such there is no need to set separation distances. This remains the principle upon which government advice applies.
44. In conclusion on this issue I find that, subject to the imposition of appropriate conditions, the living conditions of nearby residents would not be likely to be unacceptably harmed. There would therefore be no conflict with the relevant objectives of Local Plan policy EN2. The proposal would be in accordance with the guidance of PPS22.

### ***Setting of Howden Minster***

45. The Minster Church of St Peter and St Paul is the most striking building in Howden. It is Grade I listed, and its attached and ruined choir is a Scheduled Ancient Monument (SAM). S66(1) of the Planning (Listed Buildings and Conservation Areas) Act of 1990 imposes a duty that, when considering whether to grant planning permission, special regard must be given to preserving the setting of a listed building.
46. The tower of the Minster stands out above the compact centre of the town and is seen from vantage points on the approach to the town and when passing by. Notable viewpoints are those from the north along the B1228, from where the tower and Minster roof are evident; from the M62 bridge over the River Ouse; and from the roads approaching generally from the east. It is clear that the Minster was erected with the intention of being a landmark, and it still serves that purpose, though the outwards expansion of the town, particularly by large industrial buildings in the eastern sector, has diluted its effect.
47. The Minster tower is also seen in views from the A63 Selby road when approaching from the west, and it is the effect of the proposed wind farm on this view which is the principal concern of the Council, and on which I focus.
48. There is no accepted definition of a building's setting. Certainly in this case the setting of the Minster would include the majority of the compact town in its immediate locality. It is here that the tower, nave, chapter house and choir are most in view, either wholly or in glimpses. But from these locations the wind farm would not generally be seen, and so could have little or no impact on the setting of the Minster.
49. From further afield the Minster is noticeable, but the fact that it can be seen does not equate with the viewer being in the setting. In short, I do not accept

that setting in this context means that land from which the Minster is a prominent landmark is automatically within the setting of the Minster. Nonetheless Planning Policy Guidance Note 15 (PPG15) – *Planning and the Historic Environment*, indicates that a proposed high or bulky building might affect the setting of a listed building some distance away, or alter views of a historic skyline. To the extent that the Minster tower forms part of a historic skyline, albeit much altered by newer development, any intrusion into that skyline could be deemed to affect the setting of the Minster.

50. In this case there is no disagreement that from the west the Minster tower would be seen in part with a backdrop of distant turbines. But the blades would be at a lower level than the top of the tower, and would primarily be seen to its left (north). These views would be restricted to relatively short stretches of the A63. In reality it is most unlikely that the views would be anything other than short glimpses from a moving vehicle since there is no footpath at this point and walking along the carriageway is a hazardous activity. The backdrop of turbines also varies according to the presence or otherwise of vegetation and the curvature and alignment of the road. In fact for much of the time on this approach (though the approach time itself is short) the turbines would be seen as set apart from the Minster tower, if they are seen at all. This contrasts with views from the B1228 where those walking along the footpath from Howden Station have an impressive vista of the Minster.
51. Hence, whilst I can well understand the Council's wish to ensure that the setting of the Minster is preserved, it is my judgement that the objections to the proposal on this basis are overstated. I consider that the Minster tower would retain its dominance. Any impact would be minor at worst and non-existent at best. I do not consider that the setting of the Minster would be harmed. As a result I am satisfied that the setting of the Minster would be preserved, and that there would be no conflict with the objectives of RSS policy ENV9, JSP policies SP1 and ENV6, or Local Plan policies EN2 and EN51.

### **Other Considerations**

52. A number of other considerations have been raised in writing and at the inquiry. Although I deal with them here together I can confirm that I have given the fullest attention to each of the matters introduced.
53. Shadow Flicker. The incidence of shadow flicker is recognised by the appellant and can be dealt with by a suitable condition. This would control the operation of particular turbines if shadow flicker was predicted and weather conditions were clear. As a result this matter carries little weight.
54. No objection has been raised by the Council in relation to ecological matters. Though I acknowledge that birds and bats have been killed by wind turbines I am reassured by the studies carried out for the Environmental Statement in this case. There is no evidence that the scheme would be likely to result in material loss of life to any wildlife. Similarly I recognise that habitat would be preserved or in part enhanced.
55. Highway safety has been raised as an issue in relation to deliveries to the site during the construction phase of development, and in relation to driver distraction. There is no objection from the Highway Authority. Having seen

- the location of the site access, which has good visibility along the B1230, I see no reason to suppose that the scheme would have a material effect on highway safety. Driver distraction seems to me to be unlikely given the range of development features to which drivers are commonly exposed without harm.
56. There is concern that construction activities could be disruptive to local residents. Given the fact that large scale plant would be required on site during construction I agree that this would be possible. However, suitable conditions would deal with this matter.
57. Television interference is possible with large structures such as turbines. However there are methods by which interference can be mitigated should it occur. This is a matter which is capable of being dealt with by appropriate condition.
58. Concern has been expressed that the wind farm could cause difficulties and accidents for horse riders. I have no doubt that turbines which come suddenly into view could indeed startle horses, but that is not the case here. The landscape is open, and the nearest turbines would be some distance from the nearby bridleway known as Skelton Broad Lane. As such I do not consider that danger to horse riders would be significant. Because of the separation distances from footpaths and property I also consider that other safety concerns such as ice throw are not sufficient to attract weight in this decision.
59. In addition to Howden Minster there are listed buildings closer to the site. The Council has not alleged any harm to their settings. These are modest buildings with a quite different relationship to their surroundings than Howden Minster, and I agree that none would be adversely affected by the proposal.
60. It has been argued that the development would bring some economic benefit to the area. However, I do not agree that this can be realistically seen as rural diversification, which seems to me to relate to small scale developments on individual holdings brought about by individual landowners. But I agree that economic benefit is inevitable to an extent, both in short to medium term job opportunities, and in provision of ongoing financial reward to landowners.
61. I am aware that several people have criticised the manner in which representatives of the appellant have dealt with nearby residents. That is not a matter for me as I must assess the proposal on its planning merits. I am also unable to give weight to concerns relating to property value as this is not a material planning consideration.

### **Overall Conclusion and Balancing Exercise**

62. On the main issues I find that there would be harm to the landscape character of the area, and conflict with some parts of the development plan. However, the degree of harm is limited and in my judgement is outweighed by the urgent need to provide renewable energy and the support of policy at national, regional and sub regional level. Subject to suitable conditions I do not find that there would be unacceptable harm to the living conditions of nearby residents, nor to the setting of Howden Minster. No other considerations are determinative, and consequently I have decided that the appeal will succeed.

## **Conditions and S106 Obligation**

### ***Conditions***

63. A raft of conditions was discussed at the inquiry, some of which I have noted above, with much of the content agreed between the Council and appellant. I have considered them in the light of the observations made, and the advice of Circular 11/95 – *The Use of Conditions in Planning Permissions*. In general I have removed wording such as ‘unless otherwise agreed with the local planning authority’ so as not to lead to a situation where changes could be made without following the procedures pursuant to S73 of the 1990 Act.
64. A condition allowing a five year commencement period is appropriate in this case given the long lead in times of some such schemes. The proposal is for a development which is intended to remain on site for 25 years. It is necessary to impose a condition restricting the development in line with that. In the event of any turbine not producing electricity for a period of 12 continuous months then it would be reasonable to require its removal, and land reinstatement, by condition, in order to reduce visual impact. It seems to me that a period of 12 months should enable any repairs required to malfunctioning turbines, or alternatively an application to be made to vary the condition, as necessary. Conditions are necessary which control the maximum height, appearance, and rotation of blades, in order to minimise intrusion. For the same reason a condition requiring final details of the control building and anemometry mast to be submitted and approved is necessary.
65. I accept that micrositing of turbines and tracks might be needed, depending on ground conditions. However, the suggestion that 30m should be allowed for this seems to me to be generous. That effectively gives a diameter of 60m in which to site a turbine. In my view that strays into the area where the whole layout might become compromised. I therefore agree that a condition restricting micrositing to 20m from the positions shown on the application drawings is reasonable and necessary in order to avoid unacceptable visual effects.
66. Conditions dealing with the traffic generation of the development, site access, the construction of the wind farm, and pollution control, are necessary to ensure that development takes place in an acceptable manner. These can be addressed by the requirement to submit appropriate schemes for approval prior to works commencing. It is also reasonable to require hours of working on site to be controlled by condition to protect the amenities of local residents. I will vary the suggested hours slightly to afford greater protection for residents on weekday evenings. For the same reason I agree that burning of materials on site, and the direction of any lighting rigs during construction, should be controlled by condition.
67. It is also necessary to control shadow flicker effects by condition, to avoid harming living conditions of residents who might otherwise be adversely affected. In addition, the possibility of television interference should be investigated, which can be controlled by condition, in order to ensure that a satisfactory service is available to local residents.

68. I agree that it is necessary to impose a condition requiring archaeological investigations in order to record any archaeology on site. In relation to wildlife on site, and to minimise intrusion or enhance habitat, it is reasonable to require a conservation strategy by condition.
69. As suggested by the Council it is reasonable to require a condition to ensure that the developer and/or operator of the wind farm informs the Ministry of Defence and/or Civil Aviation Authority of the details of the scheme, in order to ensure air safety. However, as there is no suggestion that any lighting would be required on site I do not intend to refer to that matter. Any subsequent lighting found to be necessary would be subject to a separate proposal.
70. The proposed noise conditions have been agreed between the Appellant and Council in principle, and are in a format commonly used in cases such as this. I have amended the wording slightly to take account of the views of all parties and believe that this will offer protection to local residents from an unacceptable noise environment.

### **S106 Obligation**

71. A Unilateral Undertaking pursuant to S106 of the Town and Country Planning Act 1990 has been submitted. This deals with 3 principle matters.
72. First, a community fund would be established, with the aims of promoting charitable, educational, community, environmental, energy efficiency and general community amenity schemes or projects for the benefit of the community within the East Riding, preferably within 5km of the site.
73. Secondly a donation would be made towards tree planting through the HEYwoods initiative. Thirdly there is an obligation to submit a Nature Conservation Strategy, which is attached as Schedule 2 to the Undertaking.
74. This Undertaking needs little comment from me. However, the advice of Circular 05/2005 – *Planning Obligations* - is relevant. It indicates that planning obligations are intended to make acceptable development which would otherwise be unacceptable in planning terms. I cannot say that without the obligation in its entirety the development proposed would be unacceptable. It seems to me that the community fund and tree planting contribution, though no doubt welcome and of benefit, bear only a tenuous direct relationship with the proposed development. I fail to see how they are fairly and reasonably related in scale and kind to the proposed development and they do not directly mitigate any adverse impact. That said, the obligation exists, and I am aware of the contents of '*Delivering Community Benefits from Wind Energy Development*' (a report for the Renewables Advisory Board) which deals with such matters. The obligation will bite and provide the benefits noted above as specified in the executed undertaking.

### **Conclusion**

75. For the reasons given above I conclude that the appeal should be allowed.

*Philip Major*

INSPECTOR

## **SCHEDULE**

### **Conditions and Guidance Notes**

- 1) The development hereby permitted shall begin not later than five years from the date of this decision.
- 2) This permission shall be for a period of 25 years from the date of first generation of electricity to the grid from all the development. Within 12 months after the end of that period all surface elements shall be removed from the site and the land restored in accordance with a decommissioning method statement submitted to and approved in writing by the local planning authority not later than 12 months before the expiry of the 25 years.
- 3) The turbines and tracks shall be sited within 20 metres of the positions shown on the submitted plan at Figure 4.1 of the Environmental Statement dated July 2007.
- 4) In the event that any turbine hereby permitted fails to produce electricity for supply to the electricity grid for a continuous period of 12 months, then:
  - (i) The operator of the development shall notify the local planning authority in writing within one month of the end of that 12 month period;
  - (ii) The wind turbine and its associated ancillary equipment shall be removed from the site within 9 months from the end of that 12 month period;
  - (iii) If any wind turbine is removed in accordance with (ii) above, the land associated with each removed turbine shall be restored in accordance with a scheme to be submitted to the local planning authority within 2 months of the end of the 12 month period. Such scheme to be approved in writing by the local planning authority and to include management and timing of the works and a traffic management plan. The restoration shall take place in accordance with the approved scheme.
- 5) No development shall take place until details of the wind turbine specification, including colour and finish, have been submitted to and approved in writing by the local planning authority. Only the approved wind turbine shall be installed at the development site.
- 6) The maximum height to the tip of any turbine blade shall be 125 metres above the adjacent ground level and all blades shall rotate in the same direction.
- 7) The wind turbines shall not display any sign, symbol or logo on any external surface, and no turbine shall be illuminated, unless express consent or permission has previously been obtained from the local planning authority.
- 8) No development shall take place until final details of the control building, including layout, elevations, materials, surface finishes and boundary treatment, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

- 9) No development shall take place until details of the anemometry mast, including dimensions and materials, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 10) No development shall take place until details of the proposed access to the site from the B1230, including temporary or permanent improvements to the public highway and any replacement tree planting, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 11) No development shall take place until a traffic management plan has been submitted to and approved in writing by the local planning authority. The traffic management plan shall include details of construction vehicle routing, management of junctions to and crossings of the public highway and other public rights of way, schedule of timing of movements, details of escorts for abnormal loads, temporary warning signing, and banksman/escort details. Development shall be carried out in accordance with the approved traffic management plan.
- 12) No development shall take place until a construction method statement has been submitted to and approved in writing by the local planning authority. The construction method statement shall address the following matters:
  - (i) Siting and details of the areas on site designated for the storage of heavy duty plant and equipment, including vehicles and car parking facilities for construction site operatives and visitors;
  - (ii) Details of all on site activities including earth moving, on site aggregate mixing, crushing, screening, piling, and on site storage and transportation of raw material;
  - (iii) Working practices to control fugitive emissions of dust arising from on site activities;
  - (iv) Working practices for protecting the living conditions of nearby residents, including measures to control noise and vibration arising from on site activities, as set out in British Standard 5228 Part 1: 1997 – *Noise and Vibration Control on Construction and Open Sites*;
  - (v) Details of any water crossings, including any proposed bridges and culverts where tracks cross drains;
  - (vi) Mitigation to avoid badgers becoming trapped overnight in open trenches.Development shall be carried out in accordance with the approved construction method statement.
- 13) No development shall take place until an environmental management plan has been submitted to and approved in writing by the local planning authority. The environmental management plan shall address the following matters:
  - (i) Construction vehicle maintenance and management;

- (ii) Minimisation of surface runoff and erosion;
- (iii) Construction of water crossings and culverts;
- (iv) Construction of a new bridge adjacent to Roseclose Bridge;
- (v) Construction of the control building and installation of electrical equipment;
- (vi) Construction of turbine foundations, including provision for any necessary dewatering;
- (vii) Adherence to relevant environmental legislation, relevant pollution prevention guidance and waste management procedures.

Development shall be carried out in accordance with the approved environmental management plan.

- 14) No development shall be carried out until a written scheme of investigation for archaeological resource has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved.
- 15) No development shall take place until a nature conservation strategy has been submitted to and approved in writing by the local planning authority. The strategy shall include those measures identified in the draft heads of terms format included at Appendix 2 of the Supplementary Environmental Information. The strategy shall be implemented as approved.
- 16) No development shall take place until a scheme for the mitigation of unacceptable shadow flicker effect for any dwelling within 10 rotor diameters of any turbine has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved.
- 17) No turbine shall be erected on site until a scheme to secure the investigation and mitigation of any electro-magnetic interference to terrestrial television caused by the operation of the turbines has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved.
- 18) The hours of work during the construction phase of the development shall be limited to 0700 to 1800 hours Monday to Friday, and to 0800 to 1300 hours on Saturdays. No work shall take place on Sundays or Bank Holidays.
- 19) Traffic movements to or from the site associated with the construction of the development shall be limited to 0700 to 1800 Monday to Friday, and 0800 to 1300 on Saturdays. No traffic movements shall take place on Sundays or Bank Holidays.
- 20) Notwithstanding the provisions of condition 19, delivery of turbine and crane components may take place outside the hours specified subject to not less than 24 hours prior notice of such traffic movements being given to the local planning authority and to the Humberside Police.
- 21) No open burning of any waste material shall be permitted within the site.

- 22) Any lighting rigs during construction on site shall be installed in such a way that the light is directed away from residential property.
- 23) Within 6 months of the date of this permission the developer and/or operator of the wind farm shall provide written confirmation to the Ministry of Defence/Civil Aviation Authority of the proposed date of commencement of the development and the maximum extension height of any construction equipment.
- 24) Within 28 days of the commissioning of the final turbine the developer and/or operator of the wind farm shall provide written confirmation to the Ministry of Defence/Civil Aviation Authority of the date of completion of construction; the height above ground level of the highest potential obstacle; the position of that structure in latitude and longitude.
- 25) The rating level of noise immissions from the combined effects of the wind turbines on the development site (including the application of any tonal penalty) when calculated in accordance with the attached Guidance Notes, shall not exceed the values set out in the tables below. Where there is more than one property at a given location these noise limits apply to all properties at that location. Noise limits at properties lawfully existing at the date of this permission not listed in the tables shall be taken from the nearest listed location.

Between 23:00 and 07:00 hours (Noise Level in dB  $L_{A90, 10min}$ ):

Location	Standardised Wind Speed at 10 m height (m/s)											
	1	2	3	4	5	6	7	8	9	10	11	12
Balkholme, Nearest Location	43	43	43	43	43	43	43	43	44	45	47	49
West Linton Farm	43	43	43	43	43	43	43	43	44	45	47	49
East Lynton Farm	43	43	43	43	43	43	44	45	47	49	51	53
Manor Farm, Greenoak	43	43	43	43	43	43	44	45	47	49	52	54
Property at Greenoak Crossing	43	43	43	43	43	43	44	45	47	49	52	54
Carr House Farm	43	43	43	43	43	43	44	46	49	51	54	57
Low Metham Grange	43	43	43	43	43	43	44	46	49	51	54	57
Northside Farm	45	45	45	45	45	45	45	46	49	51	54	57
Property at Railway Crossing at Shortbutts Lane	43	43	43	43	43	43	44	46	49	51	54	57
Laxton, Nearest Property	43	43	43	43	43	43	43	44	47	50	53	57
Property at Nine Acre Plantation	43	43	43	43	43	43	43	44	47	50	53	57
Kilpin, Nearest Property	43	43	43	43	43	43	45	47	49	51	53	56

At all other times (Noise Level in dB  $L_{A90, 10min}$ ):

Location	Standardised Wind Speed at 10 m height (m/s)											
	1	2	3	4	5	6	7	8	9	10	11	12
Balkholme, Nearest Location	42	42	42	43	43	44	45	46	47	49	51	52
West Linton Farm	42	42	42	43	43	44	45	46	47	49	51	52
East Lynton Farm	46	46	47	48	49	50	51	53	54	55	57	58
Manor Farm, Greenoak	38	39	40	41	43	44	46	48	50	52	53	55
Property at Greenoak Crossing	38	39	40	41	43	44	46	48	50	52	53	55
Carr House Farm	36	37	38	40	42	43	46	48	50	52	54	56
Low Metham Grange	36	37	38	40	42	43	46	48	50	52	54	56
Northside Farm	45	45	45	45	45	45	45	48	50	52	54	56
Property at Railway Crossing at Shortbutts Lane	36	37	38	40	42	43	46	48	50	52	54	56
Laxton, Nearest Property	37	38	39	40	42	43	45	47	48	50	51	52
Property at Nine Acre Plantation	37	38	39	40	42	43	45	47	48	50	51	52
Kilpin, Nearest Property	39	40	42	43	45	46	48	49	50	51	52	53

- 26) At the request of the local planning authority following a complaint to it, or following the reasonable request of the local planning authority, the wind farm operator shall within 2 months, at its expense, employ a consultant approved by the local planning authority to assess and report on the level of noise immissions from the wind farm following the procedures described in the attached Guidance Notes.
- 27) Wind speed, wind direction and power generation data for each wind turbine shall be continuously logged and provided to the local planning authority at its request and in accordance with the attached Guidance Notes within 28 days of such request.

## **THE GUIDANCE NOTES FOR PLANNING CONDITIONS COVERING NOISE**

These notes are to be read with conditions 25 – 27. They further explain these conditions and specify the methods to be deployed in the assessment of noise immissions from the wind turbines.

### **NOTE 1**

(a) Values of the  $L_{A90,10min}$  noise statistic should be measured at the complainant's property using a sound level meter of IEC 651 Type 1, or BS EN 61672 Class 1, standard (or the equivalent relevant UK adopted standard in force at the time of the measurements) set to measure using a fast time weighted response. This shall be calibrated in accordance with the procedure specified in BS4142: 1997 (or the equivalent relevant UK adopted standard in force at the time of the measurements).

(b) The microphone shall be mounted at 1.2 - 1.5 m above ground level, fitted with a two layer windshield or suitable alternative approved by the local planning authority, and placed at the complainant's property. Measurements shall be made in "free-field" conditions, so that the microphone shall be placed at least 3.5m away from the building facade or any reflecting surface except the ground.

(c) The  $L_{A90,10min}$  measurements shall be synchronised with measurements of the 10-minute arithmetic average wind speed and with operational data from the wind turbine control systems.

(d) The wind farm operator shall continuously log arithmetic mean wind speed and arithmetic mean wind direction and power generation data in 10 minute periods from the nacelle anemometers of each wind turbine, duly corrected for the presence of the rotating blades, to enable compliance with the conditions to be evaluated. Wind speed and wind direction shall be averaged from the data from all wind turbines and 'standardised' to a reference height of 10 metres as described in ETSU-R-97 at page 120 using a reference roughness length of 0.05 metres.

### **NOTE 2**

(a) The noise measurements shall be made so as to provide not less than 20 valid data points as defined in Note 2 paragraph (b). Such measurements shall provide valid data points for the range of wind speeds, wind directions, times of day and power generation requested by the local planning authority. In specifying such conditions the local planning authority shall have regard to those conditions which were most likely to have prevailed when the complainant alleges that there was disturbance due to noise. At its request the wind farm operator shall provide all of the data collected under condition 26 to the local planning authority.

(b) Valid data points are those that remain after all data collected during rainfall have been excluded.

(c) A least squares, 'best fit' curve shall be fitted to the valid data points to define the wind farm noise level at each integer speed.

**NOTE 3**

Where, in the opinion of the local planning authority the noise immissions at the complainant's property contains a tonal component, the following rating procedure shall be used.

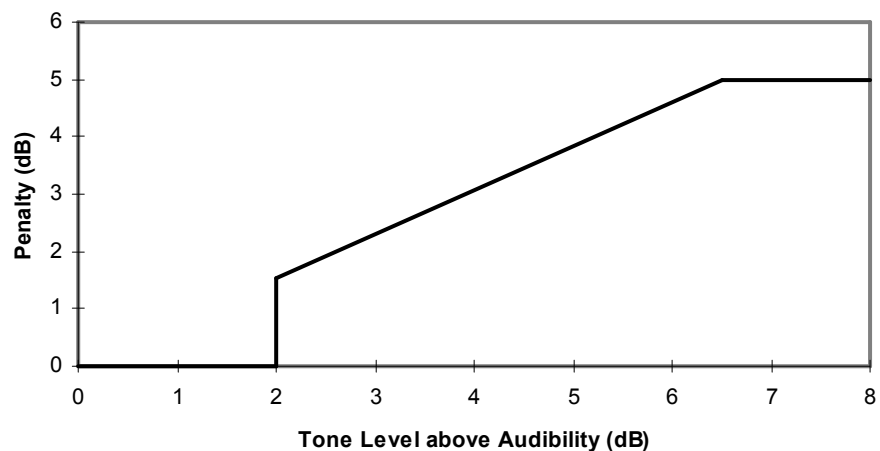
(a) For each 10-minute interval for which  $L_{A90,10min}$  data have been obtained as provided for in Note 1 a tonal assessment shall be performed on noise immissions during 2-minutes of each 10-minute period. The 2-minute periods shall be regularly spaced at 10-minute intervals provided that uninterrupted clean data are available.

(b) For each of the 2-minute samples the margin above or below the audibility criterion of the tone level difference,  $\Delta L_{tm}$ , shall be calculated by comparison with the audibility criterion given in Section 2.1 on pages 104 -109 of ETSU-R-97.

(c) The margin above audibility shall be plotted against wind speed for each of the 2-minute samples. For samples where the tones were below the audibility criterion or no tone was identified, a value of zero audibility shall be assumed.

(d) A linear regression shall be performed to establish the margin above audibility at the assessed wind speed for each integer wind speed. If there is no apparent trend with wind speed then a simple arithmetic average shall be used.

(e) The tonal penalty is derived from the margin above audibility of the tone according to the figure below. The rating level at each wind speed is the arithmetic sum of the wind farm noise level, as determined from the best fit curve described in Note 2, and the penalty for tonal noise.



**NOTE 4**

If the rating level is above any of the limits set out in condition 25, measurements of the influence of background noise shall be made to determine whether or not there is a breach of condition. This may be achieved by repeating the steps in Note 2, when all the wind turbines are not operating, and determining the background noise at the assessed wind speed,  $L_3$ . The wind farm noise at this speed,  $L_1$ , is then calculated as follows where  $L_2$  is the measured level with wind turbines operating normally but without the addition of any tonal penalty:

$$L_1 = 10 \log \left[ 10^{L_2/10} - 10^{L_3/10} \right]$$

The rating level is re-calculated by adding the tonal penalty (if any) to the wind farm noise  $L_1$ . If the rating level exceeds the limits set out in condition 25 then the development fails to comply with that condition.

## **APPEARANCES**

### **FOR THE LOCAL PLANNING AUTHORITY:**

Miss M Thomas

Of Counsel.

She called

Mr A Smith DipTP MRTPI

Associate, Scott Wilson.

Miss R Condillac

Principal Landscape Architect, Scott Wilson.

BA(Hons) DipLA CMLI

Mr S Devey DipTP

Team Leader for Conservation, Landscape and

MRTPI

Archaeology, East Riding of Yorkshire Council.

### **FOR THE APPELLANT:**

Mr D Goodman

Partner, Hammonds LLP.

He called

Mr D Stewart MA DipTP

Principal, David Stewart Associates.

MRTPI

Miss A Priscott BA(Hons)

Principal, Anne Priscott Associates Ltd.

CMLI

Dr R Wools BArch PhD

Principal, Roger Wools & Associates.

DipCons RIBA IHBC

### **INTERESTED PERSONS:**

#### **IN OPPOSITION**

Mr D Hatton

Chairman, Sixpenny Wood-Not.

Mr D Davis MP

Member of Parliament for the area.

Mrs R Holland

Local Resident.

Mr M Barnard

Adviser to Sixpenny Wood-Not on noise.

Dr N Wilkinson

Eastrington Parish Council.

Mr I Scotter

Local Resident.

Mr G Bloom MEP

Member of the European Parliament.

Mrs M Cockbill

Chair, East Riding CPRE.

Mr F Holland

Local resident.

Mrs J Sowden

Local Resident.

Mr J Stephenson

Local Resident.

Mr T Harford

Former resident of Laxton.

Mr S Evison

Local landowner.

Ms J Evison

Former local resident.

ClIr P Robinson

Councillor for Howdenshire Ward.

## IN SUPPORT

Mr R Claxton	East Riding Resident.
Miss J Gregory	Local Resident.
Cllr C Vassie	Energy Champion, York City Council.
Mr M Cooper	Local Resident.

## **DOCUMENTS HANDED IN AT THE INQUIRY (OR SUBSEQUENTLY BY AGREEMENT)**

### **From the Council and Objectors**

- 1 Opening submissions of Miss Thomas.
- 2 Extract of the Environmental Impact Assessment Regulations 1999.
- 3 Consultation response from Natural England, dated 6/11/2007.
- 4 Extract of LVIA methodology.
- 5 Consultation response from the Civil Aviation Authority dated 22/8/2007.
- 6 Extract from the Listed Buildings Act 1990.
- 7 Visual Impact of Windfarms: Best Practice. SNH 2002.
- 8 Covering letter and copy of updated noise assessment.
- 9 Bundle of letters opposing the proposal.
- 10 Closing Submissions (and associated documents) of Miss Thomas.
- 11 Post Inquiry response (11/11/09) to the submissions of Hayes McKenzie (4/11/09).

### **From the Appellant and Supporters**

- 12 Opening submissions of Mr Goodman.
- 13 UK Renewable Energy Strategy Executive Summary.
- 14 Extract from Tedder Hill Landscape Proof.
- 15 Extract LVIA Field Survey Sheet.
- 16 Communication from Yorkshire Electricity Distribution Plc.
- 17 Bundle of letters supporting the proposal.
- 18 Closing submissions of Mr Goodman.
- 19 Post inquiry Hayes McKenzie comments of 4/11/09.
- 20 Post inquiry Hayes McKenzie comments of 16/11/09.

### **General Inquiry Documents**

- 21 Council's letter of notification of the inquiry.
- 22 Statement of Common Ground.
- 23 Digest of Development Plan policies.
- 24 File of documents and correspondence from the submission of the application to the Council's decision.
- 25 Suggested conditions, Council's comments, and corrected draft noise condition.

- 26 Certified copy of executed s106 Unilateral Undertaking.
- 27 File of statements from those speaking against the development.
- 28 File of statements from those speaking in favour of the development.

**PLANS HANDED IN AT THE INQUIRY**

- A Plan of wind farm development operational, permitted, pending, refused and at appeal in E Yorkshire and the surrounding areas.
- B Swept path analysis of the proposed site access.