

POLICY, FINANCE AND ADMINISTRATION COMMITTEE

10th JULY 2013

REPORT OF HEAD OF REGULATORY SERVICES

APPEAL AGAINST REFUSAL OF PLANNING APPLICATION : 10/00951/FUL: WIND FARM COMPRISING OF 9 TURBINES TOGETHER WITH ASSOCIATED ANCILLARY INFRASTRUCTURE. ASFORDBY WINDFARM SITE, BYPASS ROAD, ASFORDBY

1.0 PURPOSE OF REPORT

- 1.1 To update on progress with the above appeal Inquiry, advise of its resource implications and seek additional funding for participation in the Public Inquiry in respect of the above planning application.

2.0 RECOMMENDATIONS

- 2.1 **To allocate a further sum of £40,000 from the General Fund Working Balance in order to cover the cost of providing legal advocacy and high quality expert evidence at the recent Public Inquiry and its next stages.**

3.0 KEY ISSUES

- 3.1 Members will be aware that the Council has recently been defending an appeal in respect of the above application. The application was accompanied by an Environment Impact Statement and as such had a wider range of procedural requirements than the majority of applications we handle. The application was reported to Committee in July 2012 and was refused.
- 3.2 As Members will be aware, the Committee resolved to refuse planning permission. Due to the nature of the grounds for refusal the Council was obliged to provide a legal advocate, a planning witness, a heritage witness and a landscape witness. In the case of this application an external planning witness was required due to the professional standards required of planning officers, who recommended approval of the application.
- 3.3 The appeal commenced on the 8th May and was programmed to sit for 11 days, which was longer than originally anticipated (8 days). The appeal was conducted by means of evidence submitted by expert witnesses, presented by legal advocacy and tested by cross examination. The Inspectorate decided to conduct the Inquiry on a topic by topic basis which required the Council to provide legal advocacy and a planning witness for the duration, again this was longer than originally anticipated. The appeal adjourned on the 23rd May until the 19th July 2013 to enable outstanding issues with Network Rail to be resolved.
- 3.4 In January 2013, the Head of Regulatory Services submitted a report to REEA requesting a sum of £50,000 from the General Fund Working Balance in order to provide legal advocacy and high quality expert evidence. This was agreed and a

further £30,000 was reserved from surplus fees from the 2012/13 Development Control budget. Therefore, a total of £80,000 was reserved for the appeal.

3.5 At the time of the meeting in January, the arrangements for the Inquiry had not been set by the Inspectorate. It was subsequently established that it would be over 9 days, involve multiple parties, and cover a wide range of issues (i.e wider than simply the Council's reasons for refusal). In addition, there was a requirement to find a venue, due to the unavailability of the Civic Suite for the three weeks selected by the Inspectorate, and the Inspector required the provision of a sound system, additional furniture and ventilation. The cost result was that costs have escalated above the £80,000 provided. Total costs (not including staff time) of defending the appeal have accumulated to £120,295.41. Therefore, a further £40,000 is required to cover the cost of this appeal.

3.6 Members need to be aware that the Inquiry has only been adjourned and there will be a cost associated with the resumption which is currently unknown. There has also been a recent Ministerial Statement by the Secretary of State and there is a risk that the Inquiry may be reopened to discuss whether any Policy changes in relation to renewable energy affect the case. If reopened, the Council will need to be fully represented and both the advocate and witnesses will be required to be reappointed in order to defend the Council's position.

4.0 POLICY AND CORPORATE IMPLICATIONS

4.1 Clearly the funds requested remove the possibility of them being used for other purposes. However, the Council was required to participate in the appeal and the appeal format selected requires legal representation and securing expert witnesses to defend the case. The scope of securing an advocate and expert witnesses was limited due to availability and the specialist nature of the issue.

5.0 FINANCIAL AND OTHER RESOURCE IMPLICATIONS

5.1 The cost of the appeal has unfortunately escalated above the original estimate and secured budget. However, this was unavoidable due to the length of time allocated for the Inquiry and the cost of appointing external specialist. The external specialist cost escalated due to the amount of material that was need to familiarise themselves with the application so they could defend the Councils case professionally, materials and photocopying. Where possible the cost of the appeal was sought to be minimised by using existing resources where possible including the time of the Applications and Advice Manager, using staff to staff the reception and using Phoenix House instead of paying for an external venue.

6.0 LEGAL IMPLICATIONS/POWERS

6.1 There are no legal implications relating to this report.

7.0 COMMUNITY SAFETY

7.1 There are no direct community safety implications relating to this report.

8.0 EQUALITIES

8.1 There are no Equalities implications relating to this report

9.0 RISKS

- 9.1 There are significant risks associated with the appeal in terms of the Council's reputation and of course the ultimate outcome.
- 9.2 There is a risk that if the Inquiry is reopened to hear evidence in relation to the Policy changes announced in Parliament that further additional funding will be required.

Likelihood	A				
	B				
	C		1, 2		
	D				
	E				
	F				
		IV	III	II	I
	Impact				

Risk No.	Description
1	Risk of failing to robustly defend Council decision
2	Risk of additional cost if Inquiry re-opened due to Policy changes announced

10.0

CLIMATE CHANGE

- 10.1 There are no climate change implications relating to this report

11.0 CONSULTATION

- 11.1 None

12.0 WARDS AFFECTED

- 12.1 Asfordby and Ab Kettleby are most directly affected.

Contact Officer: J Wallis, Applications and Advice Manager
 Date: 19th June 2013

Background Papers: Planning Application file 10/00951/FUL