

## RURAL, ECONOMIC AND ENVIRONMENTAL AFFAIRS COMMITTEE

9<sup>th</sup> JANUARY 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 seek funding for participation in a Public Inquiry in respect of the above planning application.

#### 2.0 RECOMMENDATIONS

- 2.1 **That, in the event that a public inquiry is arranged, it is delegated to the Head of Central Services to allocate a sum of £50000 is from the General Fund Working Balance in order to provide legal advocacy and high quality expert evidence, to enable full participation at a standard that maximises the prospects of success in the appeal Inquiry.**

#### 3.0 KEY ISSUES

- 3.1 Members will be aware that the Council recently dealt with the above application. The application was accompanied by an Environment Impact Statement and as such has 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 The applicant has approached the Authority to notify us of their intention to lodge an appeal and that they will be seeking a Public Inquiry. At the time at writing the appeal had not been submitted With appeals determined by Public Inquiry the Council is obliged to participate and present its position. It will be conducted by means of evidence submitted by expert witnesses, presented by legal advocacy and tested by cross examination. It is anticipated that the inquiry will last two weeks during the entirety of which legal representation will be necessary.
- 3.3 As Members will be aware, the Committee resolved to refuse planning permission on the following grounds:

*Planning Permission should be refused for the following reason:-*

- i) *The proposed development would result in substantial harm to the setting of St Bartholomew's Church (Grade II\*), Welby arising from the wind farm and turbines 1, 2, 3 and 4 in particular and significant harm to the setting of St James the Greater Ab Kettleby (Grade II\*) St Peter's Church (Kirby Bellars) and the and to the setting of the Moated Site at Ab Kettleby Garden, Moat and Five Fishponds at Kirby Bellars (which are Scheduled Ancient*

*Monuments). It would also result in a cumulative harmful impact on the setting of a wide range of other heritage assets in the immediate and wider area. It is not considered that the benefits accruing from the development in terms of renewable energy generation, the proposed landscape mitigation measures and the proposed interpretation area for the deserted Welby Medieval Village are sufficient to outweigh these identified sources of harm and as such the development does not meet the criteria set out in the NPPF (paras 133 and 134) and National Policy Statement for Renewable Energy Infrastructure (read in conjunction with the relevant sections of the Overarching National Policy Statement for Energy Infrastructure)*

- ii) The proposed wind turbines would, by virtue of their height, distribution in the landscape and movement, introduce a new element into this landscape that would be widely visible. This visibility and presence would exceed that of any existing local features by reason of the height, colour and movement of the proposed turbines. The development would constitute a prominent feature in the open countryside which would fail to protect or enhance its distinctive local character and is not capable of mitigation or adequate compensation. Accordingly the development is contrary to the provisions of Policy OS2 of the adopted Melton Local Plan and the objectives of the East Midlands Regional plan, and the guidance offered in the NPPF (para 109). These impacts are not considered to be outweighed by the benefits of the proposal in terms of the generation of renewable energy.*

3.4 Due to the nature of the grounds for refusal the Council will need to provide a legal advocate and key witnesses, which at this stage are anticipated as; a planning witness, a heritage witness and a landscape witness. In the case of this application it may be considered that an external planning witness is required due to the conflict in professional conduct of the internal planning officers who recommended approval of the application.

3.5 The Head of Legal Services has made enquires of several advocates regarding their availability and cost, and it is estimated expenditure of £20000 will be incurred. There is no provision for such expenditure within existing budgets; these are formulated on the basis of known demands, without contingency for possible unplanned events such as this Inquiry. Expert witnesses are likely to command fees in the region of £10,000 for the attendance required.

3.6 For information, the Committee is advised that two applications for individual turbines near Thorpe Satchville which were determined by the Development Committee in September 2012 are also the subject of appeal. These are to be determined by written representations and the Council's position will be represented by officers in consultation with Members of the Development Committee (as per internal procedures). The Statements of Case are required by 3<sup>rd</sup> and 15<sup>th</sup> January respectively.

#### 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 is required to participate in the appeal and the appeal format selected requires legal representation. The Head of Legal Services has identified the advocacy from a range available, but scope is limited due to availability and the specialist nature of the issue.

**5.0 FINANCIAL AND OTHER RESOURCE IMPLICATIONS**

5.1 As specified above

**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.

<b>Likelihood</b>	A				
	B				
	C		1		
	D				
	E				
	F				
			IV	III	II
		<b>Impact</b>			

<b>Risk No.</b>	<b>Description</b>
1	Risk of failing to robustly defend Council decision

**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 Worley; Head of Regulatory Services  
Date:

Background Papers: Planning Application file 10/00951/FUL