

CABINET

08 October 2013

WIND TURBINE DEVELOPMENTS AND SEPARATION DISTANCES

Report of Chief Officer (Regeneration & Planning)

PURPOSE OF REPORT			
To enable Cabinet to consider the petition submitted to Annual Council asking that the City Council as Local Planning Authority introduce a revised Development Management policy relating to wind turbines which introduces a minimum safeguarding distance between turbines and dwellings.			
Key Decision	<input type="checkbox"/>	Non-Key Decision	<input type="checkbox"/>
		Referral from Council	<input checked="" type="checkbox"/>
Date Included in Forthcoming Key Decision		n/a	
This report is public			

RECOMMENDATIONS OF CHIEF OFFICER (REGENERATION AND PLANNING)

- (1) That Cabinet notes the new guidance from DCLG on renewable and low carbon energy and that its revised policy in the publication version of the Development Management Development Plan Document complies with that guidance. Furthermore it does not take steps to introduce separation distances between wind turbines and residential properties as to do so would be to ignore published national planning guidance.

1.0 Introduction

- 1.1 At Council on **13th May 2013** a petition was received from Mr Phil Storer , as follows:.

“We have read the letter dated **16 April 2013** from the Chief Planning Officer at Milton Keynes to the Chief Planner at the CLG. We have also read the Joint Press Release from FELLs and FORCE dated 18 April 2013.

We note that the judgement has been interpreted as confirming that local authorities can set exclusion zones to protect local people from inappropriate development and we petition Lancaster City Council to amend Lancaster City Council’s Core Strategy as adopted by Lancaster City Council on 23 July 2008, (or such other planning document as may be appropriate) so as to include a minimum separation distance as a safeguard to protect the amenity of wind turbine neighbours.”

In accordance with the Constitution, the petition was referred to Cabinet for consideration.

- 1.2 The petitioners referred to a recent High Court decision made on **15th April 2013** which related to a legal challenge by RWE and NPower Renewables against Milton Keynes Council.
- 1.3 The petitioners may have read commentary on the decision, but such commentary is not wholly accurate. In fact the decision says that Local Planning Authorities are within their rights to prepare planning policy which does not mirror Government advice on any particular area of planning, but it also goes on to explain what steps the Secretary of State might take to block the adoption of such policies through the current processes for the formal adoption of plans and policies. However, it does not say, as suggested by the petitioners, that councils can set exclusion zones which the Government cannot overrule.
- 1.4 This report provides Members with advice on the current position and the implications for changing the Council's current policy approach to planning applications for wind farms. It is a matter for Members then to consider whether in the light of that advice they want to pursue a change to their current policy position. They must however take account of what the implications might be for the Council in defending such an approach at appeal, and in particular in relation to the issue of costs awards.

2.0 Material Considerations

- 2.1 The emerging draft Local Plan policy (DM18 Development Management DPD) has been formulated in the light of the Government's consistent advice on the use of buffer zones. It adopts a criteria based approach which can be applied to the particular circumstances of any given case and updates the existing adopted policies in the Local Development Framework Core Strategy and the saved Lancaster District Local Plan policies, against which current planning applications are determined. The emerging policy as drafted appears to mirror exactly what the Government's latest position advocates. In short this Council has always understood that there was an appropriate balance to be considered. It has never seen the Government's targets for renewables as an absolute consideration.
- 2.2 As Lancaster District is geographically quite different from the landscape in and around Milton Keynes there would be a need to demonstrate a rationale for introducing spacing criteria between turbines and housing which could be practically and consistently applied and reasoned. This is much easier in a generally flat landscape, but difficult in one characterised by upland areas and rolling valleys. Difficulties with objective interpretations would occur when a spacing distance, which might be suitable in flatter locations such as the coastal plain, had to be applied in hillier locations such as the Lune Valley.
- 2.3 The High Court judgement relating to the issue of spacing distances suggests that any council could consider introducing spacing distances provided they can produce a clear and objective reason for doing so. However, this needs to be balanced against the views expressed by Mark Prisk MP (Minister for Housing – DCLG) prior to the issuing of the latest guidance.

"We have made it clear in Parliament that fixed separation distances nationally would cut across our localist approach. Speaking generally, fixed separation distances could automatically rule out locations which would otherwise be suitable for wind turbines. It is much better for local councils to use their local plans to help shape

where development should and should not take place, as the (National planning Policy) Framework encourages”.

- 2.4 The High Court decision does not simply concern itself with the rights and wrongs of spacing distances. The High Court decision considers in detail issues surrounding the status of and the procedures for adopting Development Plan Documents and Supplementary Planning Guidance. It also highlights the Secretary of State’s ability to intervene and apply national planning policy through the examination processes undertaken by the Planning Inspectorate. In short Councils cannot introduce a set of policies which are not judged to be sound by the Secretary of State.
- 2.5. Since the High Court decision and the ministerial statements, the Government has clearly given full consideration to the issue of spacing distances. In the revised practice guidance issued on **29th July 2013** the position is made clear.

Para 16. Local Planning Authorities should not rule out otherwise acceptable energy developments through inflexible rules on buffer zones or separation distances. Other than dealing with set back distances for safety, distance of itself does not necessarily determine whether the impact of a proposal is unacceptable. Distance plays a part, but does so in the local context including factors such as topography, the local environment and near-by land uses. This is why it is important to think about in what circumstances proposals are likely to be acceptable and plan on this basis.

3.0 Conclusions

- 3.1 The publication of the new practice guidance makes it clear that any attempt by local authorities, inspired by the Milton Keynes decision to introduce buffer zones or spacing distances will be blocked by the Secretary of State and the Planning Inspectorate through the appeals and Local Plan Adoption process. The Council’s current policy in the draft version of its Development Management DPD is, however, entirely in line with the latest Government guidance.

4.0 Details of Consultation

- 4.1 There has been no external consultation at this stage other than that which has taken place in relation to the current drafting of the proposed Local Plan policy.

5.0 Options and Options Analysis (including risk assessment)

- 5.1 **Option 1** Not to introduce an amended policy. This option may still be challenged by groups opposing wind turbine development through the examination of the Development Management Development Plan Document, but is more likely to be found as a favourable approach by the Secretary of State. The approach would be unpopular with some local communities including some Parish Councils as the view may be taken that the Council has declined to tighten the constraints imposed on wind farm developments. This option would however be expected to receive support from the Secretary of State and the Planning Inspectorate, and avoid costs awards against the Council at appeal if it ignores national policy guidance.
- 5.2 **Option 2** To undertake a revision to the existing Development Management policy, as advocated by the petitioners, (and not by officers) to aim to include a minimum separation distance. This option would in principle seek to satisfy the pressures being applied on the City Council to take this action, but will not be found acceptable

by the Secretary of State. Equally opposition groups to turbine developments are not guaranteed to be satisfied if any spacing distances are not perceived by them to be adequate. The creation of an appropriate evidence base will take time and impose a further funding burden on the existing Local Plan budget. It would need a decision from Council to amend the policy and delay the progress of the Development Plan Document to adoption and place the Council at risk of costs awards against it at appeal. for ignoring national policy guidance.

6.0 Officer preferred option

6.1 Following the publication of the most recent guidance from the Government on 29th July 2013 the Officer recommendation is Option 1.

RELATIONSHIP TO POLICY FRAMEWORK

The development of renewable energy is supported in the Council's Corporate Plan and the Local Development Framework Core Strategy. The Emerging Local Plan Development Management Document currently includes Policy DM18 which relates to Wind Turbines.

CONCLUSION OF IMPACT ASSESSMENT

(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing) Wind turbine developments have significant impacts predominantly on rural communities and require careful balance between the national and local community interests as well as the impact on landscape and ecology in areas such as Lancaster District which have a significant number of areas of special environmental protection.

FINANCIAL IMPLICATIONS

The creation of an evidence base to support any change in policy would incur additional expenditure, which could not be justified following the publication of new national guidance. The risk of legal challenge through Judicial Review or costs at appeal also has to be acknowledged and the assumption is that any related costs arising would fall on reserves or balances, rather than them being met from existing revenue budgets.

SECTION 151 OFFICER'S COMMENTS

The s151 Officer has been consulted and she reiterates the need to give careful consideration to the financial implications of the options presented.

LEGAL IMPLICATIONS

The establishment of Development Plan policy which achieves full legal weight is beneficial to the district because it enables development to be controlled in an effective manner. There is a risk to be attached to a strategy which promotes new policy in conflict with the Government's new policy guidance. That risk comes in two forms. On the one hand full legal weight could not be delivered for such a policy contrary to the Secretary of States latest guidance. On the other hand the emerging use of such a policy before being examined by the Secretary of State could lead to a risk of costs being incurred at appeal or the same legal challenge faced by Milton Keynes Council. Members need to consider these potential implications.

MONITORING OFFICER'S COMMENTS

The Monitoring Officer has been consulted and has no further comments.

BACKGROUND PAPERS

Milton Keynes Council
Wind Turbines Supplementary Planning
Document and Emerging Policy July 2012

R(RWE Npower renewables) V Milton
Keynes Council [2013] EWHC 751; 15 April
2013.

Ministerial Statements by the Secretary of
State for Communities and Local
Government, and Minister of State for
Business, Innovation and Skills and
Department of Energy and Climate Change.
6th June 2013.

Planning practice Guidance for renewable
and low carbon energy 29th July 2013

Contact Officer: Andrew Dobson

Telephone: 01524582303

E-mail: adobson@lancaster.gov.uk