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28 July 2022

Dear Mr Beddoe,

ELECTRICITY ACT 1989 (AS AMENDED)

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

THE ELECTRICITY GENERATING STATIONS (VARIATION OF CONSENTS) (ENGLAND AND WALES) REGULATIONS 2013

HECKINGTON FEN ONSHORE WIND FARM

1. THE APPLICATION

- 1.1. I am directed by the Secretary of State for Business, Energy and Industrial Strategy (“the Secretary of State”) to refer to the application dated 1 February 2018 (“the 2018 Variation Application”) submitted by Ecotricity (Next Generation) Limited (“the Applicant”) to vary the consent granted by the Secretary of State on 8 February 2013 (“the original consent”) to construct and operate a 22 turbine onshore windfarm of up to 66MW capacity at Heckington Fen, Lincolnshire (“the Development”).
- 1.2. The application for the section 36C variation was published in accordance with the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013 (“the Variation Regulations”) and served on the relevant planning authority.
- 1.3. The 2018 Variation Application seeks to extend the date by which the Development must be commenced from 5 years to 10 years from the date on which consent was granted (i.e. until 8 February 2023). The 2018 Variation Application was received by the Secretary of State on 2 February 2018, shortly before the original consent was due to expire (considered in section

4 below). Given that the original consent can no longer be implemented unless the 2018 Variation Application is granted, the Secretary of State considers that the 2018 Variation Application is, in effect, an application for a new consent and, therefore, the question of whether the Development remains in accordance with local and national policy on onshore wind is potentially relevant to the Secretary of State's decision on the 2018 Variation Application.

2. THE REQUESTED VARIATIONS TO THE WIND FARM

- 2.1. Prior to the submission of the 2018 Variation Application, the Applicant had applied to the Department of Energy and Climate Change ("DECC", the predecessor or BEIS) on 6 February 2015 to vary the original consent ("the 2015 Variation Application"). That application proposed alterations to some sections of the onsite access track, relocation of the onsite substation and an increase in the rotor diameter of the turbines to maximise the renewable energy generation of the site. No changes were proposed to the overall tip height of the turbines (125m), the maximum number of turbines (22) or the locations of the turbines. The 2015 Variation Application also sought to vary condition 5 of the original consent to allow the discharge of the Radar Mitigation Scheme ("RMS") condition prior to installation of the turbines rather than commencement of the development. The Applicant considered that this variation still provided the necessary protection for military and civilian radar whilst allowing the Development to be commenced.
- 2.2. Public consultation on the 2015 Variation Application took place in accordance with the requirements in regulation 5 of the Variation Regulations. No objections were received from the Ministry of Defence ("MOD") or the National Air Traffic Service (also known as NATS (En Route) plc) ("NATS") in relation to the proposed variation to the RMS condition, a point returned to in section 6 below. However, a significant number of other objections to the variation were received from the public, local parish councils and Lincolnshire County Council which raised various grounds including:
 - i. that the proposed increase in turbine rotor diameter would cause greater landscape and visual impact, invalidate any previous noise assessment, and cause a significant increase in risk to radar;
 - ii. the proposed increase in the size of the sub-station and the proposed change of location for it;
 - iii. the potential for ground works (including the sub-station) to be left stranded if construction was allowed to proceed before there was agreement on radar mitigation and the mitigation was not subsequently forthcoming; and
 - iv. that the proposed variations were of such significance that they should be subject to a public inquiry, a new application or refused outright.

3. THE CHANGES IN PLANNING POLICY

- 3.1. Following the close of the consultation, on 18 June 2015 the Secretary of State for Communities and Local Government ("DCLG") issued a Written Ministerial Statement ("the 2015 WMS")¹.
- 3.2. In the 2015 WMS, the Government announced new considerations to be applied to proposed onshore wind energy development in England. These considerations took effect from 18 June 2015. The 2015 WMS set out new considerations to be applied by Local Planning Authorities when determining planning applications for onshore wind development, requiring

¹ <https://publications.parliament.uk/pa/cm201516/cmhansrd/cm150618/wmstext/150618m0001.htm>

that when determining planning applications for wind energy development involving one or more wind turbines, Local Planning Authorities should only grant planning permission if:

- the development site is an area identified 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.

3.3. Whilst the original consent for the Development had already been granted, the Secretary of State took the view that the test contained in the 2015 WMS was potentially relevant to the decision on the 2015 Variation Application. Therefore, on 19 January 2016 DECC initiated a further round of public consultation seeking representations from the Applicant and the public on whether and how local concerns had been addressed.

3.4. North Kesteven District Council did not formally object to the 2015 Variation Application during the consultations. However, it expressed reservations in respect of the RMS condition and the potential for abortive works should the Development commence before a RMS was agreed. It also urged the Secretary of State to have regard to the strength of local opposition to the scheme as expressed through representations and suggested he commission an independent assessment of the conflicting expert noise evidence before determining the variation application.

4. THE 2018 VARIATION APPLICATION

4.1. The 2015 Variation Application remains undetermined.

4.2. The Applicant submitted the 2018 Variation Application on 2 February 2018. The original consent was due to expire on 8 February 2018.

4.3. On 23 February 2018 the Secretary of State wrote to the Applicant to inform it that the application did not meet the necessary requirements and could not be published until further, updated, information had been submitted. The Applicant submitted this information to BEIS on 11 May 2018. On 12 June 2018 the Secretary of State notified the Applicant that the information was fit for purpose.

4.4. Consultation on the 2018 Variation Application commenced on 5 October 2018 and closed on 8 November 2018 for all parties except North Kesteven District Council which was asked to comment by 8 December 2018.

4.5. A number of parties raised concerns about the Secretary of State's ability to determine the 2018 Variation Application. This issue is dealt with in section 7 below.

5. THE ENVIRONMENTAL INFORMATION

5.1. In accordance with the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017 ("the EIA Regulations") which apply to the variation of a section 36 consent, a Supplementary Environmental Impact Report ("SEIR") dated July 2017 was submitted with the Application. The document describes the Development and updates the analysis of the environmental effects set out in the Environmental Statement dated September 2005 submitted with the original application and the updated Environmental Statement dated July 2015 submitted with the application for the 2015 varied consent.

- 5.2. In accordance with the EIA Regulations and the Variation Regulations, the SEIR was advertised and placed in the public domain, along with the previously submitted environmental information, to give people an opportunity to comment on it.
- 5.3. The Environment Agency responded on 16 October 2018 confirming that it had no objection to the 2018 Variation Application.
- 5.4. Natural England responded on 5 November 2018 confirming that it had no objection to the 2018 Variation Application.
- 5.5. On the basis of the information supplied by the Applicant, coupled with the view of Natural England, the Secretary of State is satisfied that, with the exception of noise, there is no new evidence on the environmental impacts of the scheme.

6. RADAR MITIGATION

- 6.1. The Secretary of State notes that the MOD and NATS did not object to either the 2015 or 2018 Variation Applications, but considers that the basis on which those organisations decided not to object should be clearly understood. Conditions 5 and 6 of the Section 36 Consent are central to this understanding:

5. *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 those 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.

6. *No turbines shall become operational unless and until all measures required by the approved Radar Mitigation Scheme to be implemented and the Secretary of State having consulted with the Ministry of Defence and NATS (En Route) plc, has confirmed this in writing. The Development shall thereafter be operated fully in accordance with the approved Radar Mitigation Scheme.*

- 6.2. The 2015 Variation Application proposed to amend the wording of the first paragraph of Condition 5 to read:

*"No **construction of a wind turbine** 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."*

The wording in bold italics was intended to replace the word “development”.

6.3. Ecotricity’s covering letter for the 2015 Variation Application stated:

“the wording of Condition 5 is proposed to be amended to allow the discharge of this condition prior to the installation of the turbines, as opposed to the requirement for its discharge prior to commencement of the development. As the scheme is required to mitigate the potential impacts of the turbines on the Watchman Primary Surveillance Radars at RAF Coningsby, RAF Waddington and the air traffic control operations of the MOD, plus the Primary Radar Installations at Claxby and the air traffic management operations operated by NATS (En Route) plc, the requirement of the scheme to be agreed prior to the erection of the turbines should still provide the necessary protection, while still allowing the proposed development to be commenced;”

6.4. The Secretary of State therefore notes the requested change would enable Ecotricity to implement the original consent, thereby preventing it from lapsing, but would not prejudice the MOD or NATS’ radar operations as it will not be possible to instal any wind turbines until the Secretary of State has separately approved a Radar Mitigation Scheme.

6.5. In response to the 2015 Variation Application, the MOD stated on 20 May 2015:

“In respect of the variation proposed to Condition 5, it should be noted the MOD has commenced discussions with Ecotricity (Next Generation) Limited regarding radar mitigation and it is understood that all parties are in agreement regarding the requirement for mitigation. It is on this basis that the MOD has no objection to the proposed variation to Condition 5.”

6.6. The MOD raised no objection to the 2018 Variation Application, and stated on 5 November 2018:

“The MOD has been consulted by the applicant, Ecotricity, on the proposed amendments to the wording of Conditions 4 and 8(2), and in particular to the contents of the ‘Heckington Fen Wind Park Military Air Traffic Control Radar Position Statement’ dated October 2018. This document has been reviewed by colleagues in Defence Equipment and Support (DE&S) who are satisfied with the content presented.”

6.7. In response to the 2015 Variation Application NATS stated “I can confirm that we have no issues with the variation – no objection remains.” In response to the 2018 Variation Application it stated:

“The proposed development has been examined from a technical safeguarding aspect and does not conflict with our safeguarding criteria. Accordingly, NATS (En Route) Public Limited Company (“NERL”) has no safeguarding objection to the proposal.”

6.8. Having reviewed the responses of the MOD and NATS to both the 2015 and 2018 Variation Applications it is clear to the Secretary of State that the requested changes do not alter the radar safeguards put in place by the original consent. The interests of both the MOD and NATS are safeguarded and, consequently, neither party needed to object to the requested changes. Whether or not Ecotricity is able to develop an effective Radar Mitigation Scheme the MOD and NATS’ radar operations are protected from interference, either because an effective strategy can be implemented or because no solution to radar interference can be found and therefore the wind farm will not be constructed. However, the Secretary of State considers it important that neither the MOD nor NATS expressed a view on the feasibility of radar mitigation measures. Consequently the Secretary of State considers that, whilst the lack of objections by the MOD and NATS to the proposed 2015 and 2018 Variation

Applications are clearly material considerations in respect of the current application, no weight can be attached to their lack of objection in terms of the likelihood of finding, or the feasibility of, any final solution.

- 6.9. The Heckington Fen Wind Park Military Air Traffic Control Radar Position Statement (October 2018) was prepared by QinetiQ and Ecotricity, and provides an update on work undertaken by Ecotricity and the Ministry of Defence Wind Farm Team during 2015 – 2017:

“This work concluded that there were no solutions available at that point in time with a reasonable prospect of addressing the MODs [sic] concerns. Since this work was completed Ecotricity has been continuing to investigate alternative potential solutions which were not assessed during 2015-17.”

The document set out a proposed four stage programme with QinetiQ for the evaluation of ‘stealth turbines’.

- 6.10. After reviewing this document, on 25 April 2019 the Secretary of State wrote to Ecotricity and the MOD stating:

“The Secretary of State is currently considering the Variation Application. However, he considers that at present he does not have sufficient information to reach a view on the likelihood of radar mitigation coming forward within the extended commencement deadline proposed by the Applicant in the [2018] Variation Application. He is, therefore, seeking further information/clarification from the Applicant and the Ministry of Defence (“MOD”) in relation to the “Heckington Fen Wind Park Military Air Traffic Control Radar Position Statement” (“the Radar Position Statement”) dated October 2018.

The Secretary of State notes that paragraph 5.4.18 of the Overarching National Policy Statement for Energy (EN-1) provides that where “Grampian” or other forms of conditions are proposed which relate to the use of future technological solutions to mitigate impacts on civil and military aviation, consideration will need to be given to the likelihood of a solution becoming available within the time limit for implementation of the development consent.”

- 6.11. Responses to the request were supplied by Ecotricity on 22 May 2019 and MOD on 24 May 2019. NATS did not respond.

- 6.12. Ecotricity highlighted that

“since February 2018 the [radar mitigation] project has effectively been in a state of suspension – until the variation application to change Condition 8(2) is determined it is unknown whether or not a valid permission for Heckington Fen Wind Park remains. As such any significant expenditure during this period would be and remains high risk and speculative. The applicant therefore took the commercial decision not to commence Phase 1 of the radar programme unless the Secretary of State first approves the variation application.”

- 6.13. It further stated:

“It is the applicants [sic.] intention that a Radar Mitigation Scheme will be submitted to the Secretary of State for approval in accordance with Condition 5 after the successful completion of the Phase 2A (Stage 1 Trial).”

- 6.14. In its response to the Secretary of State the MOD addressed this point:

“In their response, Ecotricity has stated that they intend to submit a Radar Mitigation Scheme (RMS) after successful completion of the Phase 2A (Stage 1 Trial). This is a possibility, however, if MOD was to agree an RMS at such an early stage, the RMS would need to contain sufficient caveats/obligations so as to ensure that the MOD radars were not impacted, and Ecotricity would need to accept these. This would include the facility allowing for the shutdown of the turbines if they were to impact upon the radars. Ecotricity would be proceeding at risk.”

6.15. The MOD continued:

“The MOD has no proof that the proposed technological solution will not work, hence it has maintained no objection. MOD is, however, sceptical that this proposed solution would work at this location.”

6.16. The MOD concluded:

“The MOD also has concerns regarding the practicalities of administering a through-life solution predicated on the radar operator placing enduring demands on the wind farm owner to maintain stealth performance, such that acceptable radar performance is delivered at all times through the life of the development. This distills down to an apportionment of risk and responsibility which MOD would insist remain with the developer. In effect, this would translate as a liability on the developer to cease operation of any turbine where its stealth properties are failing to meet acceptable radar performance during the lifetime of the wind farm: this could occur at any time and present an unbounded liability to the developer.”

6.17. North Kesteven District Council (letter 6 December 2018) stated:

“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 timescales 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.”

6.18. North Kesteven District Council further stated:

“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.”

6.19. In relation to the non-inclusion of the RPS as part of the 2018 Variation Application North Kesteven District Council stated:

“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 created a significant area of procedural concern.”

6.20. Richard Buxton Solicitors, on behalf of the community group “Heck Off”, argued that the failure to resolve the ongoing difficulties caused by the potential radar interference from the wind turbines meant that the variation was not of the type contemplated by the regulations and guidance but was because a separate issue had not been resolved and that the

application was consequently misguided. It highlighted that the radar issue was first brought into focus in 2002 when the Parliamentary Under Secretary of State for Defence and Minister for Veterans stated in the Wind Energy and Aviation Interests Interim Guidelines that the MOD fully supported the Government's renewable energy targets but had concerns about the effects of wind turbines on a number of MOD activities including radar, but that these difficulties had not yet been resolved. It also highlighted that Ecotricity was aware of the problem when it submitted the original application and that it had taken a commercial risk in proceeding whilst this issue remained unresolved.

- 6.21. The Secretary of State notes that the Applicant has undertaken no further work on the Radar Mitigation Scheme and that any resumption of such work is conditional on the 2018 Variation Application being granted: unless and until the Application is granted no further work will be undertaken on the Radar Mitigation Scheme will be done. Consequently, at the point of determining the 2018 Variation Application the Secretary of State notes that there is no Radar Mitigation Scheme.
- 6.22. At the point the 2018 Variation Application was made the Applicant had had five years to come up with an effective Radar Mitigation Scheme but had not been able to do so. If the 2018 Variation Application is granted the time to secure such measures will be extended until 8 February 2023, but still with no certainty that an effective Radar Mitigation Scheme could be designed for this Development. The Secretary of State notes that if the 2015 Variation Application is subsequently granted this would indefinitely extend the timeframe for the Applicant to secure the Radar Mitigation Scheme without any certainty that the windfarm could be built, although that issue is not part of this decision.
- 6.23. In relation to the issue of radar mitigation, and in particular the lack of evidence that a feasible solution can be found in the time available, the Secretary of State attributes significant weight against granting the 2018 Variation Application.

7. CONSIDERATION OF OTHER MATERIAL ISSUES

- 7.1. Of the parties formally consulted East Lindsey District Council, the Environment Agency, Natural England, the Met Office, NAT, and Ofcom raised no objection.

Ability of the Secretary of State to extend the time for implementing the consent

- 7.2. A number of parties raised concerns about the ability of the Secretary of State to grant a section 36C variation to extend the duration of the planning consent.
- 7.3. Lincolnshire County Council (letter 26 October 2018) highlighted that on 23 February 2018 it wrote to the Secretary of State to advise that the Council was unaware that the development had lawfully commenced before the expiry date of the original consent and therefore considered that the consent had expired and was no longer capable of being amended or varied.
- 7.4. Swineshead Parish Council (letter 31 October 2018) noted that the application in valid form was not received until May 2018, but consent expired in February 2018 and that therefore Ecotricity should not be able to extend the permission as the original consent had lapsed.
- 7.5. Amber Hill Parish Council (letter 31 October 2018) questioned whether there is a legal precedent to extend temporary consent. It also highlighted the statement within the Planning Inspector's original report that "There would be no extension of the time set aside for resolving this matter" (the radar mitigation, paragraph 297 of the Inspector's Report).

- 7.6. Boston Borough Council (letter 7 November 2018) questioned whether it is possible for the Secretary of State to grant a section 36C variation request for an application relating solely to the deadline for implementing the consent. The Council noted that the application, as made prior to the deadline for commencement, contained insufficient information for it to be valid and the Council contended that therefore the consent had expired.
- 7.7. Richard Buxton Solicitors (letter 27 November 2018), writing on behalf of the community group of residents “Heck Off”, also disputed the ability of the Secretary of State to extend the consent on the basis that it was not possible to vary the deemed consent as section 73(5) of the Town and Country Planning Act 1990 does not allow for extensions of the time within which a development must start, and therefore that it is not possible to amend the wording of the deemed planning permission. It further argued that extensions of time of this sort are not contemplated by reference to the corresponding regulations and that the variations contemplated are those that relate to construction, extension and operation, and highlighted provisions within the DECC guidance, *Varying consents granted under section 36 of the Electricity Act 1980 for generating stations in England and Wales* (July 2013) which it contended supported its position.
- 7.8. North Kesteven Council (Form PP8, 6 December 2018) also raised concerns that the section 36C process is not appropriate to extending the deadline for implementing the consent. It also highlighted (see paragraph 6.17 above) that the Radar Protection Strategy had not formed part of the supporting documents to the 2018 Variation Application.
- 7.9. The section 36 variation procedure does not allow a change in an existing consent that would result in a development that would be fundamentally different in character or scale from what has been originally granted. Any such changes would be the subject of a fresh application for consent.
- 7.10. The Secretary of State notes that the only change requested is to the deadline for implementing the consent, and that the 2018 Variation Application involves no physical changes to the parameters of the scheme. The Secretary of State considers that the varied development would not be fundamentally different in character or scale from the Consented Development and that it is appropriate for the 2018 Variation Application to be considered under the section 36C variation procedure. The Secretary of State is also of the view that the 2018 Variation Application constitutes a legally valid application within the terms of s36C of the Electricity Act 1989 which is capable of being determined notwithstanding that the commencement date specified in the original consent and deemed planning permission have now passed. The Secretary of State also considers that the discretionary powers contained in s36(4) of the Electricity Act 1989 and s90(2) and 90(2ZA) of the Town and Country Planning Act 1990 (“TCPA”) to vary the conditions contained in the original consent and deemed planning permission could be used to extend time for commencement. He does not consider that the statutory restriction on extending commencement conditions contained in s73(5) of the TCPA apply here as this provision is expressed to apply only to applications made under s73 itself and does not restrict the power in s90(2ZA) to direct that existing conditions attached to a deemed planning permission be varied.
- 7.11. The Secretary of State has considered all representations on this matter, but accords them no weight for or against the granting of the 2018 Variation Application.

Effect on the local community

- 7.12. Swineshead Parish Council noted that the extension would leave the local community with another five years of uncertainty when it appeared that the original permission had lapsed.

7.13. Amber Hill Parish Council highlighted the anxiety, costs and time that local people had been subjected to and requested the Secretary of State to reject the Variation Application to end these concerns.

7.14. Richard Buxton Solicitors raised the issue on behalf of “Heck Off”. It noted that the reason for Condition 8 to the original consent was

“To strike a balance between the time it may take to put in place the necessary pre-construction measures required – for example, tendering, obtaining the necessary funding, micro-siting of the turbines – and minimising the impact of any period of uncertainty for those who may be affected pending the decision to begin construction works.”

It also highlighted the Inspector’s conclusion in paragraph 297 of his Report that “There would be no extension of the time set aside for resolving this matter” (the radar mitigation). It argued that the five year condition was carefully considered at the time that the original consent was granted and that it was a reasonable time limit that balanced the competing demands.

7.15. As set out in section 6 above, the Secretary of State is of the view that the position has changed since the original consent was granted and the failure to deal with radar mitigation weighs heavily against the order being granted. In relation to this, the Secretary of State considers it essential to review the impacts on other parties of any further prolonged delay and the attendant uncertainties whilst a potential Radar Mitigation Scheme is being considered. The Secretary of State is of the view that the effect on the local community of further prolonged uncertainty is relevant and accords significant weight against granting the 2018 Variation Application request.

Noise

7.16. Boston Borough Council raised concerns about whether there were flaws or omissions in the original noise assessment and whether a fresh assessment should be undertaken given changes in the planning circumstances since the original consent was issued.

7.17. North Kesteven District Council recommended an independent review of the noise issue in the light of conflicting views expressed in Chapter 10 of the Heckington Fen Wind Park Environmental Statement submitted as part of the original section 36 application and a third party noise assessment prepared by Dr Yelland on 6 June 2016 on behalf of a group of local Parish Councils and local residents.

7.18. Amber Parish Council highlighted that both the original and 2015 Noise Impact Assessments were not compliant with ETSU² or IOAGPG³. It also expressed concern that the supporting documents for the 2018 Variation Application failed to mention Amber Hill or Swineshead Bridge. It also expressed concern about how noise was dealt with, highlighting that paragraph 5.9 in Chapter 5: Noise argued that traffic levels are likely to have increased since

² The Assessment & Rating of Noise from Wind Farms (ETSU-R-97) (September 1996), DTI
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/49869/ETSU_Full_copy_Searchable.pdf

³ Institute of Acoustics, A Good Practice Guide to the Application of ETSU-R-97 for the Assessment and Rating of Wind Turbine Noise (May 2013),
<https://www.ioa.org.uk/sites/default/files/IOA%20Good%20Practice%20Guide%20on%20Wind%20Turbine%20Noise%20-%20May%202013.pdf>

2011 and that therefore the previous noise measurements are likely to be conservative. The Council highlighted that Amber Hill is nowhere near the A17 and is an “extremely quiet and tranquil village, with very little traffic movement” and therefore considered that the noise assessment was not in any way representative.

- 7.19. Richard Buxton Solicitors point out that although the 2018 Variation Application is an application for time extension it relies on contested noise assessments (see paragraph 7.18 above). The 2016 consultation elicited further objections to the 2015 Variation Application from a group of parish councils and local campaigners, including approximately 300 responses based on a template letter, which contended that the original noise assessment was flawed and that contrary to the earlier conclusions of the Planning Inspector adopted by the Secretary of State, the Development would exceed the noise guidelines set out in the guidance document ETSU-R-97 if constructed as originally consented and that the exceedance would be greater if the variation application were to be allowed. The Applicant submitted further responses to BEIS in October 2016 and May 2017 to address the issues raised in consultation, including a rebuttal report from its own noise expert which concluded that the noise condition limits set out within paragraph 8(24) of the original consent could be achieved.
- 7.20. The Secretary of State has considered this issue and has concluded that it is not necessary to revisit the noise assessment issue in order to determine the 2018 Variation Application. However, the Secretary of State considers that this is an issue of particular importance for the determination of the 2015 Variation Application due to the proposal to change the consented turbine parameters.

The potential impacts on The Pilgrim School

- 7.21. A number of responses to the consultation on the 2018 Variation Application drew attention to the fact that the former Amber Hill primary school had been reopened as a Community Special School, named The Pilgrim School, which provides education for pupils who need special school placement due to medical need and therefore cannot attend mainstream schools. These expressed concern that noise from the turbines may have a negative impact on the wellbeing of the children attending the school and pointed out that the noise assessment did not consider this issue and needed to be updated to include it. Amber Hill Parish Council highlighted that the Local Education Authority (Lincolnshire County Council) selected the location because of its quiet and tranquil location. It also highlighted five children living nearby with health issues that would be adversely affected by wind turbine noise and whose house run along the road adjacent to the east side of the proposed wind farm. North Kesteven District Council asserted that the opening of the school represents a significant material change in circumstances and expressed concern that the updated Environmental Statement fails to acknowledge the presence of the school as a noise sensitive receptor, that consequently no reliance can be placed on any of the conclusions in relation to noise and that it needs to be updated.
- 7.22. The Secretary of State agrees that this may represent a change in circumstances that on which further information is required. However, given the conclusions of the Secretary of State in this letter no further information has been requested at this time.

Visual impact

- 7.23. Objections were received due to the potential visual impacts of the scheme, both on the immediate area which includes nearby residential properties and cumulatively with other windfarms being proposed in the area. The Secretary of State notes that one of the parties contended that the proposal lies within an “area of outstanding natural beauty”, but the

landscape and visual section of the Applicant's Environmental Statement stated that the closest designated Area of Outstanding Natural Beauty to the site is the Lincolnshire Wolds, approximately 20km to the north-east of the Application site.

- 7.24. In considering concerns about the visual impacts the Secretary of State is mindful that the 2018 Variation Application seeks only to increase the duration of the pre-existing consent for the Development. As part of the original consenting process the landscape and visual impacts of the scheme were taken into consideration. Consequently, in the absence of evidence that the situation has changed and that the impacts would consequently be different now than when originally assessed as part of the consented Development the Secretary of State concludes that there are no new landscape and visual impacts arising from the 2018 Variation Application and does not accord any further weight to this issue in determining the application.

Cultural heritage

- 7.25. One party objected due to impacts on cultural heritage. However, after carefully reviewing the entire objection letter it was not possible to identify which item(s) of cultural heritage it was considered were being affected. The Secretary of State notes this concern, but also notes that other parties have not raised it. Given the absence of detail the Secretary of State considers that it is not possible to sustain this issue and consequently it cannot be considered. In any event, as with the issue of visual impacts considered above, the Secretary of State is not aware of any changes in planning circumstances in relation to cultural heritage. Consequently, even if the cultural heritage considered to be at risk had been identified, in the absence of evidence that the situation has changed and that the impacts would consequently be different now than when originally assessed as part of the consented Development the Secretary of State concludes that there are no new cultural heritage issues arising from the 2018 Variation Application and does not accord any weight to this issue in determining the application.

Road Safety

- 7.26. One party objected due to the risk of driver distraction due to the turbines being so close to roads. However, no further detail in relation to this issue was provided. The Secretary of State notes this concern, but also notes that other parties have not raised it. As with visual impacts and cultural heritage considered above the Secretary of State is not aware of any changes in planning circumstances in relation to road safety. Consequently, in the absence of evidence that the situation has changed and that the impacts would consequently be different now than when originally assessed as part of the consented Development the Secretary of State concludes that there are no new road safety issues arising from the 2018 Variation Application and does not accord any weight to this issue in determining the application.

Inability to fulfil the requirements of the planning permission

- 7.27. The Secretary of State notes that one party objected to the scheme on the basis of that the Applicant had been unable to fulfil the requirements of the planning permission granted. No specifics were given about which requirement(s) this objection relates to, but the Secretary of State has chosen to treat it as an objection in relation to radar mitigation, which is dealt with in section 6 above.

Loss of prime agricultural land

- 7.28. One party objected due to the loss of agricultural land. The Secretary of State is mindful that the 2018 Variation Application seeks only to increase the duration of the pre-existing consent

for the Development. As part of the original consenting process the impact on agricultural land was taken into consideration, with the Inspector noting that North Kesteven District Council had not argued that unacceptable harm arose from loss of agricultural land and concluding that the loss of agricultural land from the development was small. The Secretary of State has seen no evidence that the situation has changed and that the impacts would consequently be different now than when originally assessed. Consequently the Secretary of State concludes there are no new issues arising from the loss of agricultural land and does not accord any weight to this issue in determining the application.

Impact on ability to sell house

7.29. The potential impact of the development on the ability of local residents to sell their houses was raised by several parties. The Secretary of State has considered the impacts on the local community of an extension to the consent together with feasibility of the radar solution above.

Changes to planning policy

7.30. Boston Borough Council drew attention to the changes to the NPPF, as well as the emerging South East Lincolnshire Local Plan 2011-2036, which was adopted on Friday 8th March 2019.

7.31. Boston Borough Council considered that the consequences of the changes to national and local planning policy, coupled with the opening of the Pilgrim School and the pre-existing concerns about the original noise assessment were such that, coupled with its views on the validity of the application, that a fresh application needs to be submitted containing a revised and up to date noise assessment including the potential impact upon the Pilgrim School and surrounding residents and a revised environmental assessment that takes into account the objectives of the revised NPPF (2018) and relevant policies contained within the (now adopted) emerging South East Lincolnshire Local Plan 2011-2036.

7.32. Swineshead Parish Council and Amber Hill Parish Council both highlighted the changes to the National Planning Policy Framework and the lack of requisite support of residents.

7.33. The Secretary of State has considered the representations relating to the NPPF and the newly adopted South East Lincolnshire Local Plan. Whilst the Secretary of State considers them material to the application, he also notes that other key planning policies (such as those contained in NPSs EN-1 and EN-3) have not changed. Consequently the Secretary of State does not accord any weight to this issue in determining the application.

8. SECRETARY OF STATE'S DECISION ON THE HOLDING OF A PUBLIC INQUIRY

8.1. Regulation 8 of the Variation Regulations gives the Secretary of State discretion to hold a public inquiry into a Variation Application. In considering whether to hold a public inquiry, the Secretary of State must consider any representations which have been made to him by a relevant planning authority or any other person where those representations are not withdrawn.

8.2. The objections raised by various parties are set out in detail in sections 6 and 7 above. The Secretary of State has carefully considered the views of the relevant planning authority and consultees and all other material considerations. He takes the view that there is no further information required to enable him to take a decision on the 2018 Variation Application and that it would not, therefore, be appropriate to cause a public inquiry to be held into the Application.

9. CLIMATE CHANGE ACT 2008 AND THE NET ZERO TARGET

On 2 May 2019, the Climate Change Committee recommended that the UK reduce its greenhouse gas emissions to net zero by 2050. This was proposed to deliver on the commitments the UK made by signing the Paris Agreement in 2016. On 26 June 2019, following advice from the Committee on Climate Change, the UK Government announced a new carbon reduction 'net zero' target for 2050 which resulted in an amendment to the Climate Change Act 2008 requiring the UK to reduce net carbon emissions by 2050 from 80% to 100% below the 1990 baseline. The Secretary of State considers that granting consent for the 2018 Variation Application has the potential to contribute to the delivery of low-carbon and renewable energy, ensuring a secure, diverse and affordable energy supply in line with commitments to 'net zero' and the need to address climate change, and the priorities set out in the Government's British Energy Security Strategy. However, the Secretary of State notes that this will only happen in the event that the Applicant is able to secure an effective Radar Mitigation Scheme, and consequently the Secretary of State accords only limited weight to the policy support for the application.

10. NATURAL ENVIRONMENT AND RURAL COMMUNITIES ACT 2006

The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, has to have regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting amended development consent. The Secretary of State is of the view that biodiversity has been considered sufficiently in this application for an amendment to accord with this duty.

11. EQUALITY ACT 2010

11.1. The Equality Act 2010 requires public authorities to have due regard in the exercise of their functions to:

- (a) the elimination of unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- (b) the advancement of equality of opportunity between people who share a protected characteristic and those who do not; and
- (c) the fostering of good relations between people who share a protected characteristic and those who do not.

11.2. The Secretary of State has considered the potential impacts of granting or refusing the Variation Application in the context of the general equality duty and has concluded that it is not likely to result in any significant differential impacts on people sharing any of the protected characteristics.

11.3. The Secretary of State does not, therefore, consider that either the grant or refusal of the Variation Application is likely to result in a substantial impact on equality of opportunity or relations between those who share a protected characteristic and others or unlawfully discriminate against any particular protected characteristics.

12. HUMAN RIGHTS ACT 1998

The Secretary of State has considered the potential infringement of human rights in relation to the Natura 2000 Convention on Human Rights, by the Varied Development. The Secretary

of State considers that the grant of Varied Development would not violate any human rights as given effect in UK law by the Human Rights Act 1998.

13. SECRETARY OF STATE'S DECISION ON THE 2018 VARIATION APPLICATION

The Secretary of State has considered the 2018 Variation Application and the representations received in relation to it. The Secretary of State notes that there is no valid Radar Mitigation Scheme and has seen no credible prospect of one being secured within the timeframe sought by the Applicant. That is a factor which weighs significantly against the granting of the variation and, having considered all matters that have been raised in relation to this Application, the Secretary of State concludes that it is of sufficient weight to mean that the planning balance overall weighs against consent being granted for the 2018 Variation Application and consequently refuses to grant the variation sought to the consent for the Development pursuant to section 36C of the Electricity Act 1989.

14. GENERAL GUIDANCE

- 14.1. The validity of the Secretary of State's decision may be challenged by making an application to the High Court for leave to seek a judicial review. Such an application must be made as soon as possible. Parties seeking further information as to how to proceed, including the relevant time limits for making an application, should seek independent legal advice from a solicitor or legal adviser, or alternatively may contact the Administrative Court at the Royal Courts of Justice, Strand, London WC2A 2LL.
- 14.2. This decision does not convey any approval or consent that may be required under any enactment, bye-law, order or regulation other than sections 36 and 36C of and Schedule 8 to the Electricity Act 1989 and section 90(2ZA) of the Town and Country Planning Act 1990.

Yours sincerely



Gareth Leigh

Head of Energy Infrastructure Planning