

AGENDA ITEM NO: 9/2(e)

Parish:	King's Lynn	
Proposal:	To install a new track that will be used to stop up Boat1 around the wind turbine installed under 14/00398/F. The bank will be supported by sheet piling	
Location:	Wind Turbine SW Point Cottages Cross Bank Road King's Lynn Norfolk	
Applicant:	Mr Michael Stollery	
Case No:	16/01022/F (Full Application)	
Case Officer:	Mr C Fry	Date for Determination: 3 August 2016 Extension of Time Expiry Date: 6 October 2016

Reason for Referral to Planning Committee – Called in by Councillor Smith

Case Summary

The application site lies within an area designated as Countryside according to local plan proposals Maps for King's Lynn.

The site lies between the River Great Ouse and the Byway Open to All Traffic (BOAT).

Members will recall a recent application 16/00531/F to erect 300m of roadway was recently deferred by the Planning Committee, to re-assess the proposed route to facilitate the diversion of the existing byway. However that application has since been withdrawn.

The proposal seeks consent to alter the embankment to facilitate a road that diverts round the applicant's turbine in a semi-circular shape.

Key Issues

Planning History and Principle of Development
Impact upon Amenity
Flood Risk
Highway Safety
Other Material Considerations

Recommendation

APPROVE

THE APPLICATION

The site is approximately 2.2km north of the junction of Crossbank Road and Edward Benefer Way; 420m south of Point Cottages on Crossbank Road;

283m east of the Sewerage Works, West Lynn (across the river); and adjacent to the existing byway that is open to all traffic (BOAT 1). The site forms the supporting embankment to the existing byway and comprises of grass and hedging.

The site is little over 27m to the centre of the applicant's Wind turbine.

The site can be seen from distant views from West Lynn.

The application site is approximately 50m in length and 4m wide. The application site at its furthest point is 13m from the edge of the existing BOAT.

This application seeks consent for engineering works to provide a roadway beyond the blade swept area, which will be used to divert traffic from the existing BOAT.

Members will recall that a recent application for diverting the BOAT onto lower land adjacent to the Great River Ouse, 16/00531/F, was deferred at July's Committee, that particular application has since been withdrawn.

SUPPORTING CASE

The application has been supported with the following suite of documents:-

Planning Statement

- The construction of a new route is required to comply with the provisions of the stopping up order for BOAT 1
- The road surface will be 300mm deep and laid into the existing level, approximately 7.3m AOD.
- The new bank will be constructed and re enforced using sheet piling.
- The new route will be on a radius of 27m from the centre of the turbine at the same levels as the existing BOAT.

Flood Risk Assessment

- The site is within Flood Zone 3b, functional flood plain
- Kings Lynn Internal Drainage Board assets are not affected by the proposal.
- The new access road will be 7.3m AOD.

PLANNING HISTORY

In relation to this application, the following planning applications are relevant:-

16/00531/F: - Withdrawn- Construction of 300m of road

15/00591/F: Application Refused: 16/03/16 - Removal of condition 10 for planning permission 14/00398/F

14/00936/F: Application Refused: 15/09/14 - Removal of condition 11 of planning permission 14/00398/F: for new site layout, smaller turbine and external transformer Appeal Dismissed 08/01/16;

14/00398/F: Application Permitted: 04/06/14 - Variation of Condition 2 of Planning Permission reference 13/01191/F to allow a new site layout, a smaller turbine and the transformer to be externally housed

13/01191/F: Application Permitted: 04/12/13 - Erection of a 500kw wind turbine

RESPONSE TO CONSULTATION

Parish Council: N/A

NCC Highways: this application impacts a section of public right of way and therefore for the NCC comments in relation to this aspect would need to be provided by our Public Rights of Way team

PROW Officer: NO OBJECTION the route follows amendments submitted to the Stopping Up Order. A condition will need to be imposed that the revised Order is in place prior to granting planning permission.

Internal Drainage Board: NO OBJECTION

Environment Agency: NO OBJECTION subject to condition

Emergency Planning Officer: NO OBJECTION

Marine Management Organisation comments that if the engineering works are below the Mean High Water Springs Mark, a license for the works will be required from the Marine Management Organisation.

Natural England: NO OBJECTION

REPRESENTATIONS

ONE general comment making a general observation that the proposed route appears to be sensible solution to the users of the byway, provided it is the same height as the existing route and of a safe standard to be approved by the EA and NCC.

NATIONAL GUIDANCE

National Planning Policy Framework – sets out the Government's planning policies for England and how these are expected to be applied.

National Planning Practice Guidance - Provides National Planning Practice Guidance, in support of and in addition to the NPPF

LDF CORE STRATEGY POLICIES

CS01 - Spatial Strategy

CS02 - The Settlement Hierarchy

CS03 - King's Lynn Area

CS06 - Development in Rural Areas

CS08 - Sustainable Development

CS09 - Housing Distribution

CS12 - Environmental Assets

SITE ALLOCATIONS AND DEVELOPMENT MANAGEMENT POLICIES PRE-SUBMISSION DOCUMENT

DM1 – Presumption in Favour of Sustainable Development

DM2 – Development Boundaries

DM15 – Environment, Design and Amenity

DM21 - Sites in Areas of Flood Risk

PLANNING CONSIDERATIONS

The main planning considerations in regards to this application are:-

- Planning History
- Impact upon Amenity
- Flood Risk
- Highway Safety
- Other Material Considerations

Planning History

The application has been made in order to facilitate compliance with condition 11 of 14/00398/F. 14/00398/F was a variation of planning condition 2 on 13/01191/F to allow a new site layout, a smaller turbine, and the transformer to be externally housed.

Condition 11 of 14/00398/F states the following:-

Prior to the installation of the turbine hereby approved details of how the turbine shall be set up to prevent the blades rotating when they are over-hanging Byway Open to All Traffic No.1 shall be submitted to and approved in writing by the Local Planning Authority. The turbine shall be installed in accordance with the agreed details and thereafter maintained in accordance with them.

The applicant applied to remove Condition 11 to 14/00398/F, under application no. 14/00936/F, which was refused by the Planning Committee on the 1st September 2014 and unsuccessfully appealed (Appeal reference no. APP/V2635/W/14/2228508 - determined 7th January 2016)

The Inspector determined that the over sailing of the byway by the blades would be an overwhelming sight when crossing directly underneath and would diminish enjoyment of the route or cause anxiety, whether on foot, using a bicycle or in a vehicle in terms of the perception of risk. The biggest perceivers of risk would, according to the inspector, be horse riders.

The inspector concluded that the condition enabled the turbine to function, and was not an onerous condition. The condition was stated to be reasonable, necessary, relevant to planning and to the development, precise and enforceable.

The inspector concluded that planning policies should protect and enhance the public rights of way, and should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings and considered that the protection of this public right of way from the active over sailing by the blades of the wind turbine is in accordance with the thrust of that policy.

The turbine has been erected and is fully operational and is in breach of condition 11. Whilst never being able to apply to formally discharge condition 11 of 14/00398/F, as details of how the blades will not rotate over the byway should have been agreed prior to the installation of the turbine, the applicant has sought to comply with the restriction of the blades over sailing the byway whilst rotating by stopping up the existing Byway Open to All Traffic (BOAT) diverting around the wind turbines blades.

Running in parallel with this application is a Stopping up order for the existing Byway Open to All Traffic (BOAT) - E/2365 which is being determined by the National Casework Team. The consultation period for the stopping up order ended on the 26th August. The stopping up order is now progressing to the "made" stage.

Impact upon Amenity

The proposed roadway will be 4m wide as required by the Order and is approx. 55m in length. The roadway will be formed by raising the level of the existing bank to the same height as the existing Byway Open to Open to All Traffic (BOAT) and its surface will be 300mm deep.

Paragraph 17 of the National Planning Policy Framework requires local planning to seek a good standard of amenity for all existing and future occupants of land and buildings.

No-one's enjoyment of land and buildings beyond the applicant's land is detrimentally affected as no gates on the existing Byway Open to All Traffic (BOAT) or on the new roadway are proposed to be erected. A condition is attached to the decision notice which prohibits the erection of gates and fences on the applicant's land.

Flood Risk

The new road will be at the same height as the existing Byway Open to All Traffic (BOAT) and is at its furthest point 13m away from the existing Byway Open to All Traffic (BOAT). The road will not be susceptible to flooding at its height of 7.3m AOD.

The Environment Agency (EA) originally objected to application. The use of piling at the site, due to its limited lifespan and maintenance requirements is a concern of the EA and also modelling would likely be required to understand the impacts of a tidal surge at the site and the potential effects on the earth embankment. The EA comment that there will be small eddy currents at the end of the piling.

The EA have been supplied with an amended Flood Risk Assessment (FRA), which identifies the use of revetment scour protection to be installed at the transition zones both upstream and downstream of the proposed structure to form a streamlined profile at the intersection of the earth bank soft defence and the proposed piling.

The EA have now withdrawn their objection to the application following analysis of the revised FRA and the proposed engineering solution. A condition is to be imposed that the development is carried out in accordance with the Flood Risk Assessment which includes the proposed engineering solution.

The Emergency Planner has no objection to the scheme.

Highway Safety

Norfolk County Council Highways department and the Public Rights of Way (PROW) officer have no objection to the proposal. The PROW officer requests that planning permission should only be consented on the basis that the new stopping up order is already in place. This condition is not necessary as the legality of diverting the existing Byway Open to All Traffic is considered under separate legislation. This application only concerns itself with the engineering operation of providing a semi-circular road way.

CONCLUSION

The application relates solely to engineering works to provide a road at the same height as the existing BOAT.

The road is intended to be used as part of the revised BOAT route which is now the subject of a revised stopping up order application. The stopping up order is now progressing to the "made" stage.

The flood risk assessment and accompanying cross-sectional drawings identifies that the road will be 7.3m AOD, which will be piled. The piling works will be protected by concrete revetment blocks.

Subject to conditions the proposal is considered to comply with the provisions of the National Planning Policy Framework, National Planning Practice Guidance and Local Plan Policies.

RECOMMENDATION:

APPROVE subject to the imposition of the following condition(s):

- 1 Condition the development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 1 Reason To comply with Section 91 of the Town and Country Planning Act, 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act, 2004.
- 2 Condition the development hereby permitted shall be carried out in accordance with the following approved plans
 - Location Plan received 16th August 2016
 - Cross Sectional drawings A received 18th August 2016

- 2 Reason for the avoidance of doubt and in the interests of proper planning.
- 3 Condition Notwithstanding the provision of Class A of Schedule 2, Part 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, (or any Order revoking, amending or re-enacting that Order) no gates, bollard, chain or other means of obstruction shall be erected across the following parcels of land:-
 - The existing BOAT 1 and Proposed Boat 1 semi-circular route as identified on site Location Plan Turbine 1 – received 16th August 2016 unless details have first been submitted to and approved in writing by the Local Planning Authority.
- 3 Reason In the interests of safeguarding public amenity and in the interests of flood risk in respect to the residential neighbours at Point Cottages in accordance with the principles of the NPPF.
- 4 Condition The development permitted by this planning permission shall be carried out in accordance with the approved FRA addendum dated 29th July 2016 by Engineering Support Practice and the following mitigation measures detailed within the FRA:-
 - the arched extension is to be constructed and finished to a minimum height of 7.30m AOD.
- 4 Reason To ensure the integrity of the proposal in the interest of flood risk