

## AGENDA ITEM NO: 9/3(h)

<b>Parish:</b>	<b>King's Lynn</b>	
<b>Proposal:</b>	<b>Construction of 300m of road.</b>	
<b>Location:</b>	<b>Riverside Business Centre Cross Bank Road King's Lynn Norfolk</b>	
<b>Applicant:</b>	<b>Mr Michael Stollery</b>	
<b>Case No:</b>	<b>16/00531/F (Full Application)</b>	
<b>Case Officer:</b>	<b>Mr C Fry</b>	<b>Date for Determination: 13 May 2016</b>

**Reason for Referral to Planning Committee** – Called in by Cllr. Moriarty

### 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 existing byway on the higher level land.

The application site is relatively flat and is to the north of the route provided by the EA.

The proposal seeks consent to provide a road that extends from the EA route and diverts back onto the existing BOAT navigating around the turbine blades.

### 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; 415m south of Point Cottages on Crossbank Road; 275m east of the Sewerage Works, West Lynn; and 20m west of an existing byway that is open to all traffic (BOAT 1). The site is relatively flat and comprises a grassed area on the western side of an existing hedge that flanks the existing byway.

The site is approximately 20m west of the applicant's Wind turbine.

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

The application site is approximately 300m in length and 4m wide.

This application seeks consent for engineering works to provide a roadway beyond an existing hard surfaced area provided by the Environment Agency, on the applicant's land.

## **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
- Provision of a 5 bar gate.
- The stopping up of BOAT 1 is required in order to facilitate a diversion to comply with a condition on the wind turbine application
- The first 700m of the new BOAT has been constructed by the EA under its statutory powers
- The application seeks permission for the engineering works for a 300m part of the BOAT x 4m in width x 300mm deep.
- A geo-textile membrane will be laid in the channel,
- 500 tonnes of Type 1 crushed concrete will be laid to a depth of 250mm and 200 tonnes of road planning to complete the surface at a depth of 50mm.

An updated statement

- The removal of a 5 bar gate from the proposal.
- During elements of higher tides, where parts of the new road are flooded, the upper section can be used. Mickram Ltd will enable this via alerts from the EA.

### *Flood Risk Assessment*

- it is intended to continue the surface of the existing access road that was installed by the EA, that suggests a surface level of 4.58m AOD.
- During times of tidal inundation access

## **PLANNING HISTORY**

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

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: OBJECTION** No flood risk assessment has been provided, the application plan does not match the diversion order plan.

Insufficient detail about the placement of the route to be constructed in relation to the riverbank. A cross section drawing supplied as part of the diversion order was based on information provided by the EA about the placement of the route in relation to existing features, which ensured the route remained higher up the bank and at less risk to flooding events.

NCC has provided a construction specification but would not recommend removal of the topsoil only vegetation.

This application only covers the northern end of the route. The remainder of the route, originally constructed by the EA may require additional work to bring up to a suitable standard to become the new route for the Byway. NCC has concerns about both the alignment and quality of construction of this section which will be the subject of future discussion with the applicant. This of course could be covered by a separate planning application in due course and does not directly affect this current application.

The application refers to the erection of a gate on the current route of the byway. The gate itself may not require planning consent.

Revised comments from the highway's officer in regards to the revised proposal, involving the removal of gates from the scheme, will be reported in late correspondence.

**Internal Drainage Board: NO OBJECTION** but would like to highlight the following points:-

- The board suggests liaising with the EA and the Emergency Planning team about the safety of the new route. The amended route may not be safe to use with river levels somewhat lower than those required to trigger the EA's flood alert system.
- The board is pleased to see the applications assertion that the existing rights of access will not be affected by the proposals, and that the current route will be available to all
- The EA route was only a temporary feature, installed to assist contractors undertaking bank revetment repair works along the River Great Ouse.
- The applicant would have to obtain prior written consent from the board for any section of the track above/adjacent to the Board's discharge pipe

**Civic Society: OBJECTION** there is no safe land west of the existing by-way on which to build a new road. It will consistently flood and the river bank is equally unsustainable requiring a huge amount of work relative to the gain.

A re-routed byway will disrupt the continuity of the river bank

**Environment Agency: NO OBJECTION** the applicant already has Flood Defence Consent for the work (reference: CB-2014-162) and we have no further concerns on the submission of this application.

The site is located within Flood Zone 3 of the EA Flood Map. The site also lies within Tidal Category 3 on King's Lynn and West Norfolk Strategic Flood Risk Assessment for the predicted situation in 2115. However, the work itself will not impact on flood risk in this location and has no impact on the tidal defences.

A condition is requested that the development be carried out in accordance in the FRA and the mitigation method that when the re-aligned road is flooded the EA will be allowed to use the original access road.

**Emergency Planning Officer: NO OBJECTION**

**Ramblers Society: OBJECTION** The cross section would have more relevance and meaning if it was a cross section of the whole slope or shelf from the river to the top of the bank, and showing where the byway were to sit. It would be more logical to enforce condition 11 of 14/00398/F and move the turbine away from the BOAT.

## **REPRESENTATIONS**

**FIFTY THREE** letters of **OBJECTION** to the application on the following grounds:-

- The road will be prone to flooding
- Hinder access to point cottages
- Hinder access for emergency vehicles
- Not wide enough for 2 way traffic
- Affect the ability to use the area for leisure pursuits
- No barrier between the new track and the river
- Erecting of a gate along the present byway will hinder access
- The risk of travelling under the turbine blades is less than the risk of going to the river bank especially in dark or in icy conditions.
- Concerns about protected species being disturbed in the hedgerow.
- Should not be approved as a method to overcome the condition on the turbine permission
- No relative heights shown on the cross section drawings
- Who is going to be responsible for the upkeep of the roadway
- Contrary to points 3 and 13 of the Human Rights Act, preventing the right to live in freedom and safety and the freedom to move and travel.
- Part of the existing track which will be used for the BOAT is not suitable.
- Documents in the planning portal however indicate that it is possible to make adjustments to the operation of the turbine.
- The council has to take due regard to the health and safety of the public and in this case would not expect them to be forced to drive into the flood channel.
- The planning department stated that December 2014 the moving of byway would not be a suitable solution
- The Public Right of Way diversion is longer than necessary is this to facilitate an anaerobic digester plant?
- Material will be deposited on the track leading to hazardous obstructions
- No room to create passing places

- Impede the common law right of fishing along the Ouse.
- Ice shards would fall on people opening up the access gate
- Service vehicles will not drive along the lower track for safety reasons.
- The BOAT can be diverted onto the adjacent farmland
- The applicant has queried the rights of those at point cottages to gain access to their properties
- The hedge has been partially destroyed

#### **SIX letters of SUPPORT**

- The proposal will not stop people doing what they do now
- Car access to the road will still be available and passing place in place
- Better views of the river
- No lower than the current section which is already there
- No closer to the river than the tarmac level of the road.
- The applicant has written to the residents advising them that anybody who has a legal right and the emergency services will be able to use the upper route.

**SIXTEEN** letters of **OBJECTION** to the revised proposal since the removal of gates being erected as part of this application

- The possible option of having a route on lower land is not acceptable
- Has advice been sought from emergency services in regards to the suitability of the proposal.
- No cross sectional drawing of the road that shows the river bank.
- Welfare of animals.
- Upkeep of the road.
- Why is part of the road not the same standard.
- The length of diversion is not necessary.
- The higher route will only be opened when the lower route is flooded.
- No need for the alternative route.

#### **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 oversailing 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 oversailing 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 oversailing the byway whilst rotating by stopping up the existing BOAT and providing a new BOAT at lower level.

The stopping up order for the existing BOAT comprises of two separate processes before it becomes effective; the “made” stage and the “authorisation” stage. At present the stopping up order has passed the made stage, no objection to the stopping up order was received at this stage and the Secretary of State has authorised the stopping up order subject to compliance with a number of conditions that are to be enforced by Norfolk County Council. No part of the highway will be stopped up pursuant to this Order until the Council (Norfolk County Council) certify to the developer that the provisions of article 3 (1) of this Order have been complied with. The first provision relates to:-

1. The developer shall to the reasonable satisfaction of the Council provide a new highway which shall be a Byway Open to All Traffic, which will provide the realigned Byway Open to All Traffic 1 (BOAT1) route to replace the length of that Byway which is to be stopped up as described in the Schedule) along the route shown.

It is the engineering works that are required to satisfy the first provision of the Order that are the subject of this application only. The merits of stopping up the byway are not being determined in this application.

### **Impact upon Amenity**

The proposed roadway will be 4m wide as required by the Order and is 300m in length. The road surface will be 300mm above the existing ground surface; the first 250mm will be crushed concrete and 50mm of road planings to finish off the surface.

The finish to the surface of the road does not cause any detrimental visual impact.

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.

By no longer erecting gates on the existing BOAT and the new roadway, which is subject of this application, no-one's enjoyment of land and buildings beyond the applicant's land is detrimentally affected. 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 on a lower level than the existing route and 20m away from the existing BOAT route. The road will be susceptible to flooding during high tides as referred to in the Flood Risk Assessment.

The Flood Risk Assessment states that the road is to be built on top of the existing surface, in accordance with NCC specification in order to comply with the stopping up order in the maintenance of the new BOAT, when the order becomes effective. This would render the road to be 4.393m AoD. The road will be covered at high tide on a total of 16 occasions in the year.

The Environment Agency has no objection to application. The works will not impact on the existing levels of flooding experienced in this location and has no impact on the tidal defences. A condition is requested by the EA that they will have access to the original BOAT in the event of the tide being flooded this would be in line with paragraph 4.4 of the FRA. However this is not necessary, a condition that restricts the permitted development rights for the erection of gates and means of obstruction on this will ensure under planning legislation that route remains open.

The Emergency Planner originally objected to the scheme. The Emergency Planner was concerned that no flood risk assessment had been carried out, in particular stating, it would be of benefit to have data indicating at what level flooding may occur, potential depth and how often the proposed access/egress properties and land and how emergency access were required this could be a concern.

Following the submission of the Flood Risk Assessment carried out by Engineering Support Practice and a statement provided by the applicant, the existing route will be made available at all times and the proposal has removed the erection of gates prohibiting access to the higher, existing BOAT. A condition is imposed that the land outlined in red and blue, will have the permitted development rights for the erection of gates removed.

## **Highway Safety**

Norfolk County Council Highways department has no objection to the proposal. However, the Public Rights of Way officer objected to the application as no flood risk assessment was provided, the application plan does not match the diversion order plan and insufficient detail provided in relation to the construction specification of route and its siting in relation to the riverbank.

According to the Public Rights of Way Officer, the diversion order proposal was meant to be 3.5m from the hedgeline, as shown on a cross-sectional plan. The cross-section however was not to scale, and was a "typical cross section" through the road. The order plan clearly identifies the route being some 20m away from the existing BOAT.

The rights of way officer requires that the construction of the route should not remove the topsoil, which has now been addressed in further correspondence. NCC highways officer also requires the upgrading of the EA route, outlined in blue. The upgrading of the EA route needs planning permission and would be the subject of an additional planning application.

The applicant has been made aware of this issue.

The application has now provided a flood risk assessment, and the location plan is aligned with the BOAT order plan. The cross-section shows the road being built on top of the existing surface and its specification referred to in earlier correspondence.



The cross-section that was submitted with the BOAT order and any inaccuracies with the cross section that formed part of the Stopping up Order is an issue for NCC highways to resolve.

The Public Rights of Way Officer's comments in regards to the revised proposal, i.e. removal of the gates and the submission of the FRA will be reported in late correspondence.

## **CONCLUSION**

The application relates solely to engineering works to provide a road at lower level than the existing BOAT.

The road is intended to be used as part of the revised BOAT route which has been the subject of a stopping up order. The stopping up order is at the authorisation stage, which requires any form of planning permission for any engineering works to provide the surface to the new BOAT to be determined as its first proviso.

The flood risk assessment and accompanying cross-sectional drawings identifies that the road will be 300mm higher than existing site levels and whilst susceptible to flooding, the applicant has stated that the existing BOAT will be free to all traffic movement.

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 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 1 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 The development hereby permitted shall be carried out in accordance with the following approved plans
  - Location Plan BOAT 1 - received 22 May 2015
  - BOAT 1 plans received 8th May and 24th May identifying blue land ownership
  - Cross Sectional drawings - received 24th May 2015.
  - Cross Sectional drawing of road construction in so far as materials only received
- 2 For the avoidance of doubt and in the interests of proper planning.
- 3 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:-
  1. The land that forms part of this application outlined in red on location plan received 22nd May 2016

2. The blue land as identified on BOAT 1 plans received 3rd May 2016
3. The blue land as identified on BOAT 1 plans received 24th May 2016 unless details have first been submitted to and approved in writing by the Local Planning Authority.
- 3 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