

## **BRECKLAND COUNCIL**

### **DEVELOPMENT CONTROL COMMITTEE – 17 DECEMBER, 2007**

#### **REPORT OF THE HEAD OF LEGAL SERVICES**

**(Author: J S Chinnery )**

#### **SHIPDHAM: TWO WIND TURBINES AT LAND NEAR**

#### **WOOD FARM: ECOTRICITY. APPLICATION NO. 3PL/2004/0313/F**

**Summary:** There will be a new, third Public Inquiry but restricted solely to noise. Authority is requested to enter into a S.106 Agreement which aims to control noise problems.

### **1. BACKGROUND**

- 1.1 Ecotricity's previous application for two wind turbines on this site was refused in 2002 by the Council and after a Public Inquiry the appeal was dismissed in September 2003 on one ground: that the information available was "not sufficient to illustrate that the resultant noise climate would not give rise to disturbance to nearby residents". The Inspector saw no objection to the proposal on visual, policy, highway, proximity to Norwich International Airport or Shipdham Airfield or any other grounds.
- 1.2 Ecotricity's second application, again for two turbines on this site, was put to this Committee on 20 December 2004. The Principal Planning Officer's Report did not raise any reasons for objecting to approval except one: aircraft safety. His comments on noise were, in summary: "It is considered that, subject to the imposition of appropriate conditions, the proposal would not result in material harm to amenities of local residents as a result of noise." The Committee agreed with this, and refused the Application solely on the ground of the effect on Norwich International Airport (NIA) radar and aircraft safety. The Members who were present will recall the strong objection from the NIA.
- 1.3 Ecotricity appealed against the refusal, and NIA withdrew their objection two hours after the start of the resulting Public Inquiry, which commenced on 21 March 2006 and lasted four days. The Inspector allowed the appeal, granted permission and awarded partial costs against the Council for the late withdrawal by the NIA.
- 1.4 A local resident challenged in Court the grant of permission, saying that the noise condition was uncertain and unenforceable. The Treasury Solicitor agreed, and the decision was quashed by the Court and the appeal remitted back to the Secretary of State to be redetermined. Following a great deal of technical legal argument, the application has now been referred to the same Inspector at a new Public Inquiry (for which no date has yet been fixed) to resolve the one issue only: the potential impact of and means of controlling noise.

### **2. KEY DECISION**

- 2.1 This is not a key decision.

### **3. COUNCIL PRIORITIES**

- 3.1 The matter raised in this report falls within the following Council priorities:
  - A safe and healthy environment
  - A well planned place to live which encourages vibrant communities

4. The Council has taken expert advice from both noise experts and specialist Counsel, and as a result has been able to agree a form of wording for a S.106 Agreement with the Appellants, by which our experts agree that noise emitted by the two turbines can be adequately measured and controlled, in order to avoid material harm to the amenities of local residents, and therefore according with the Committees' previous views. Members should note that the local residents do not agree with this approach.

5. **RECOMMENDATION**

5.1 The Committee is asked to note the position and to give authority to enter into the S.106 agreement in the form agreed by our experts.

5.2 On the basis that the S.106 Agreement is completed as expected, the Council will not be making any substantive representations at the forthcoming Public Inquiry.

[ Note: The draft Agreement is highly technical in nature, but can be viewed by any Member, if requested.]