



Department
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Your ref:
Our ref: 12.04.09.04/31C

8 February 2013

Dear Mr Muir

ELECTRICITY ACT 1989 (“the Act”)

TOWN AND COUNTRY PLANNING ACT 1990

**APPLICATION FOR CONSENT TO CONSTRUCT AND OPERATE A WIND
TURBINE GENERATING STATION AT SIX HUNDRED FARM, SIX HUNDRED
DROVE, EAST HECKINGTON, LINCOLNSHIRE**

1. THE APPLICATION

- 1.1 I am directed by the Secretary of State for Energy and Climate Change (“the Secretary of State”) to refer to the application submitted on 15 December 2009 (“the Application”) by Next Generation Limited, subsequently changed to Ecotricity (Next Generation) Limited, (“the Company”) for both the consent of the Secretary of State under section 36 of the Act (“section 36 consent”) to construct and operate a wind turbine generating station with a maximum capacity of 66MW on land at East Heckington, Lincolnshire, and for a direction under section 90(2) of the Town and Country Planning Act 1990 (“section 90 direction”) that planning permission for that generating station and an ancillary development (together referred to as “the Development”) be deemed to be granted.
- 1.2 The application for section 36 consent was revised on 20 July 2011 to reduce the number of turbines from 28 to 22.
- 1.3 The application falls within the scope of the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 as amended (“the 2000 Regulations”). The Company supplied environmental information to the Secretary of State on 20 July 2011. Further environmental information

was submitted on 9 December 2011. In this letter, this information is together referred to as the “Environmental Statement”. The Environmental Statement describes the Development and gives an analysis of their environmental effects. In accordance with the 2000 Regulations, the Environmental Statement was advertised and placed in the public domain to give people an opportunity to comment on it.

2. PUBLIC INQUIRY

- 2.1 Following an objection to the Application by the relevant planning authority, North Kesteven District Council (NKDC), the Secretary of State was obliged to cause a public inquiry into the application to be held under Schedule 8 to the Electricity Act 1989. The Secretary of State appointed Mr Philip Major, BA (Hons), DipTP, MRTPI (“the Inspector”) to preside over the public inquiry. The public inquiry was governed by the Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007 (“the Inquiries Procedures Rules”).
- 2.2 The public inquiry was held at the Boston West Golf Club, Hubberts Bridge, Boston, Lincolnshire. It opened on 31 July 2012 and closed on 9 August 2012. The Inspector submitted his report of the public inquiry to the Secretary of State on 1 November 2012.
- 2.3 Rule 4(1)(c) of the Inquiries Procedures Rules requires the Secretary of State to provide a statement of the matters which, in his view, are the matters to be considered at the inquiry.
- 2.4 It was the view of the Secretary of State, on the basis of the information available to him at the time that the following topics should be considered at the inquiry:
 - (1) the extent to which the proposed development would be in accordance with saved Policies C2, C17 and LW1 of the North Kesteven Local Plan and Policies 1, 26, 31 and 40 of RSS8;
 - (2) the extent to which the proposed development is consistent with the objectives of the Government’s policy on the energy mix and maintaining a secure and reliable supply of electricity as the UK makes the transition to a low carbon economy and achieving climate change goals;
 - (3) the extent to which the proposed development is consistent with the policies relating to generation of renewable energy contained within the National Policy Statements for Energy Infrastructure, EN-1 and EN-3;

- (4) the extent to which the proposed development is consistent with relevant policies in the Government's National Planning Policy Framework which has replaced *inter alia* PPS1, PPS7 and PPS22;
- (5) the visual impact of the proposed development;
- (6) the cumulative impact of the proposed development with the existing Bicker Fen wind farm;
- (7) the impact of construction and operational traffic associated with the proposed development on the local highways, including users and safety;
- (8) the impact of the proposed development on air traffic control radar systems at R.A.F. Coningsby and other R.A.F. radar sites;
- (9) the impact of the proposed development on air traffic control radar systems at Claxby and other neighbouring civil aviation radar sites;
- (10) any potential impacts on the health of local residents; and,
- (11) any other matters that the Inspector considers relevant.

2.5 The Inspector considered all the above matters, including, under (11), any grid connection, Lincolnshire County Council's policy on wind farm development, the human rights of residents, alternative sources of power, the safety of wind turbines, the scale of any benefits to the local jobs market and the impacts on tourism and concluded, amongst other things, the following (the numbers refer to the paragraph numbering in the Inspector's Report):

"The Overall Balance

334. The considerations which support the proposal, dealing with the imperative of addressing climate change and the need to achieve a secure and reliable supply of electricity are compelling. They clearly outweigh the moderate levels of harm to the landscape and visual amenity which I have identified. There are no other matters which have been raised by any party which would alter the balance of these conclusions."

2.6 The Inspector recommended that:

"335. For the reasons given above I recommend that Consent be granted subject to the conditions in the attached annex, and that planning permission be deemed to be granted."

2.7 The Secretary of State accepts the full content of the Inspector's Report, including his findings on matters of fact, conclusions and recommendation

(including the reasons given for that recommendation). A full copy of the Inspector's Report can be found at Annex A to this letter. An addendum to the Report is at Annex B.

3. CONDITIONS

- 3.1 The Secretary of State has considered carefully the conditions subject to which the Inspector has recommended that the section 36 consent be granted and the section 90 direction be given. He agrees that they are suitable for inclusion in any section 36 consent and section 90 direction he may give that planning permission be granted for the Development subject to certain minor changes.

4. SECRETARY OF STATE'S CONSIDERATION OF THE ENVIRONMENTAL INFORMATION

- 4.1 Regulation 3 of the 2000 Regulations prohibits the Secretary of State from granting section 36 consent unless he has first taken into consideration the environmental information, as defined in those Regulations.
- 4.2 The Secretary of State is satisfied that the Environmental Statement is sufficient to allow him to make a determination on the Application and that the Company has followed the applicable procedures in the 2000 Regulations.
- 4.3 The Secretary of State has considered the environmental information carefully. In addition to the Environmental Statement, he has considered the comments made by the Council, by the bodies consulted under Regulation 2 of the 2000 Regulations and by other consultees and objectors.
- 4.4 Taking into account the extent to which any environmental effects will be modified and mitigated by measures the Company has agreed to take or will be required to take, either under the conditions attached to the section 36 consent or the Planning conditions, the Secretary of State believes that any remaining environmental effects will not be such that it would be appropriate to refuse section 36 consent for the Development or reject the application for deemed planning permission to be granted under section 90 of the Town and Country Planning Act 1990.
- 4.5 NKDC expressed concerns about the late submission of the Applicant's landscape sensitivity analysis which post-dated the submission of the main ES documentation by several months. However, in response to this point, the Inspector comments in paragraph 262 of the IR: "What matters though, is that the analysis has been undertaken, and there has been no suggestion that the ES was defective." In the light of the Inspector's comments, the Secretary of State believes it would not be appropriate to refuse section 36 consent for the Development or reject the application for deemed planning

permission to be granted under section 90 of the Town and Country Planning Act 1990 because of the concerns raised.

5. SECRETARY OF STATE'S CONSIDERATION OF THE POSSIBLE EFFECTS ON A EUROPEAN SITE

- 5.1 Regulation 61 of the Conservation of Habitats and Species Regulations 2010 (as amended) ("the Habitats Regulations") requires the Secretary of State to consider whether the Development would be likely to have a significant effect on a European Site, as defined in the Habitats Regulations.
- 5.2 In the event of such an effect, the Secretary of State must undertake an appropriate assessment of the implications for the European Site in view of its conservation objectives. The section 36 consent and any section 90 direction may only be granted if it has been ascertained that the proposed Development will not adversely impact upon the integrity of such a site unless it can be shown that there are no alternatives, there are imperative reasons of overriding public interest and compensatory measures are in place.
- 5.3 Natural England, the relevant statutory adviser on nature conservation matters, advised that the Development was not likely to have a significant effect on the internationally important interest features of the Wash Special Protection Area, Special Area of Conservation, Ramsar site and National Nature Reserve and is not likely to adversely affect the interest features of the Wash Site of Special Scientific Interest. The Secretary of State has considered this advice. He can see no reason not to accept it and has, therefore, decided that an appropriate assessment is not required.

Conclusion on Possible Effects on a European Site

- 5.4 In conclusion, therefore, the Secretary of State considers that his duties in relation to potential impacts on European Sites and Species have been properly discharged.

6 DEVELOPMENTS SINCE THE PUBLIC INQUIRY CLOSED

- 6.1 As indicated in paragraph 2.2 above, the Inspector closed the public inquiry on 9 August 2012. However, the Secretary of State has to consider whether anything has occurred since 9 August 2012 which is material to any decision he may make on the granting of the section 36 consent.
- 6.2 The Secretary of State has received no representations in relation to the Application since the Inquiry closed which raise issues not covered in the evidence and argument put forward at the Inquiry as described in the Inspector's Report and he is not aware of any other events or matters that have come to light since 9 August 2012 which are material to his decision.

7 SECRETARY OF STATE'S DECISION

7.1 The Secretary of State has carefully considered:

- (a) the Inspector's Report and conclusions;
- (b) the views of the relevant planning authority;
- (c) the objections;
- (d) the representations made to him by various bodies; and,
- (e) the environmental information and all other relevant matters

and having regard to the matters specified in paragraph 1(2) of Schedule 9 to the Electricity Act 1989, he

- (i) accepts the Inspector's findings of fact, conclusions and recommendation for approval of the application for consent under section 36;
- (ii) is of the view that the Development should be approved, subject to the inclusion of the Planning Conditions and section 36 conditions identified in Section 3 above;
- (iii) is of the view that the environmental information is of sufficient quality for him to be able to make a decision on the proposed Development; and,
- (iv) is of the view that a decision to grant consent is consistent with the policies on the need for and development of new electricity generating infrastructure as set out in the Overarching National Policy Statement for Energy (EN-1) (in particular sections 3.3 and 3.4) and the National Policy Statement for Renewable Energy Infrastructure (EN-3) as well as the relevant substantive policies of the National Planning Policy Framework.

7.2 The Secretary of State, having regard to the matters specified in paragraph 7.1 above, has decided to grant consent for the Development pursuant to section 36 subject to conditions including: (i) a condition that the Development shall be in accordance with the particulars submitted with the application, as amended on 20 July 2011; and (ii) a time as to the time within which the Development must commence.

7.3 The Secretary of State believes that the Planning Conditions and section 36 conditions will ensure that the Development proceeds in a form and manner that is acceptable in planning policy terms, and he has, therefore, decided to issue a section 90(2) direction that planning permission be deemed to be granted subject to the Planning Conditions.

- 7.4 I accordingly enclose the Secretary of State`s consent under section 36 of the Electricity Act; and a direction under section 90(2) of the Town and Country Planning Act 1990.
- 7.5 This letter serves as the Secretary of State`s statement under regulation 10(3) of the Electricity Works (Environmental Impact Assessment) (England and Wales) 2000 Regulations.

8. **DISTRIBUTION**

- 8.1 In accordance with Rule 22(1) of the Inquiries Procedures Rules, a copy of this letter together with a copy of the Inspector`s Report have been sent to those parties identified in the Appearances section of the Report.

9 **GENERAL GUIDANCE**

- 9.1 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 application must be made as soon as possible and in any event not later than three months after the date of the decision. Parties seeking further information as to how to proceed 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.
- 9.2 This decision does not convey any approval or consent that may be required under any enactment, bye-law, order or regulation other than section 36 of and Schedule 8 to the Electricity Act 1989, and section 90 of the Town and Country Planning Act 1990.

Yours sincerely

GILES SCOTT
Head, National Infrastructure Consents