

REPORT TO CABINET

REPORT OF: Economic Development Portfolio Holder

REPORT NO: PLA971

DATE: 3rd June 2013

| | | |
|---|---|----------------------------------|
| TITLE: | Adoption of Wind Energy SPD | |
| KEY DECISION OR POLICY FRAMEWORK PROPOSAL: | Key Decision | |
| PORTFOLIO HOLDER: NAME AND DESIGNATION: | Cllr Frances Cartwright Grow the Economy, Economic Development Portfolio Holder | |
| CONTACT OFFICER: | Karen Sinclair, Planning Policy & Partnerships Service Manager 01476 406438 k.sinclair@southkesteven.gov.uk | |
| INITIAL IMPACT ANALYSIS: | Carried out and Referred to in paragraph (7) below | Full impact assessment Required: |
| Equality and Diversity | n/a | n/a |
| FREEDOM OF INFORMATION ACT: | This report is publicly available via the Your Council and Democracy link on the Council's website: www.southkesteven.gov.uk | |
| BACKGROUND PAPERS | Draft Wind Energy SPD http://www.southkesteven.gov.uk/index.aspx?articleid=4775 | |

1. RECOMMENDATION

That:

- a) Cabinet notes the comments received in response to the public consultation on the draft Wind Energy Supplementary Planning Document (SPD) as set out in Appendix 2 and the further consultation on the definition of small wind turbine as set out in Appendix 3
- b) The proposed changes to the draft Wind Energy SPD set out in Appendix 4 to the report are approved
- c) The Wind Energy SPD, as amended in accordance with recommendation b) above, is adopted
- d) The SPD take effect following the end of the call in period and it be applied to all qualifying pre-application enquires, requests for scoping opinions and planning applications registered as valid after this date.

- e) **The following paragraphs and figures of the Landscape Character Assessment (2007) are rescinded: 1.20 (part only – reference to wind energy proposals), 4.33, 4.55, 4.76, 4.100, 4.132, 4.153, 4.172, 4.175 and Figure 28.**

2. PURPOSE OF THE REPORT

- 2.1 To enable the Cabinet to consider the issues raised in the representations made during the public consultation on the draft Wind Energy Supplementary Planning Document (SPD), to consider proposed changes to the document and for it to be adopted.

3. DETAILS OF REPORT

- 3.1 The draft Wind Energy SPD was approved for the purposes of public consultation by the Cabinet on the 1st October 2012 (Report PLA 945).
- 3.2 The SPD provides guidance to planning officers, elected members, developers, local communities and the public on:
- Key planning issues associated with wind energy developments during their construction, operation and decommissioning
 - Criteria that will be applied when determining applications for wind energy developments
 - Good siting and design of wind energy schemes including how potential impacts can be minimised
 - Information that should be provided when submitting a planning application
- 3.3 As a SPD the Wind Energy SPD will, when adopted, be a material consideration in the determination of relevant planning proposals and, having been through a process of consultation, can be given a significant degree of weight.
- 3.4 Public consultation on the draft SPD took place between the 19th October and 30th November 2012. The SPD was made available at the District Council offices and libraries, on the website and publication was advertised by way of a statutory notice published in the local press and the issuing of a press release. Direct notification of the consultation was also made to Parish/Town Councils and other organisations that were considered likely to have an interest in the subject matter.
- 3.5 At the end of the consultation period, a total of 619 representations were received from 68 individuals, Parish Councils, neighbouring local authorities, local and national organisations and wind energy companies and renewable energy sector representatives. Appendix 1 attached to this report provides a breakdown of the number and type of representations received to each section of the draft SPD.
- 3.6 In April 2013 a further four week consultation was undertaken on whether the definition set out in the SPD of a small scale wind turbine should be changed from up to 50 metres in height (to blade tip) to up to 30 metres in height (to blade tip). This change was proposed in recognition that small turbines may

still be substantial structures in the landscape and that those towards the upper height limit for small turbines of 50 metres (as defined in the draft SPD) could have a significant impact and therefore ought to be subject to greater scrutiny. It also reflected the experience of the Council over the past 12 months in terms of the type/size of wind turbines for which planning applications have been made within the District. At the end of the consultation period, representations had been received from 29 individuals or organisations.

- 3.7 Appendix 2 summarises the representations received to the draft SPD together with a response and, where appropriate, proposed changes to the SPD. Appendix 3 summarises the representations received to the consultation on the definition of a small wind turbine. The changes proposed, which are set out in full in Appendix 4, do not change the original approach/guidance set out in the draft SPD but rather are intended to provide clarification of these e.g. policy context, Environmental Impact Assessment (EIA) procedures, use of visualisations, ecological assessment requirements for small scale developments, water issues and consultation arrangements. In addition to responding to issues raised in representations, a number of changes are proposed to ensure the SPD is up to date and/or reflect recent developments.

Issues Raised

- 3.8 The sections of the SPD that attracted most representations were separation distances and the incorporation of Lincolnshire County Council's Statement of Intent on Wind Farms into the SPD. The proposal to rescind parts of the Landscape Character Assessment also received a number of responses.

Separation Distances

- 3.9 The issue of separation distances was referred to in the draft SPD (paragraphs 3.2.14 – 16) but as none were included no detailed work on the issue of separation distances was undertaken in preparing the SPD.
- 3.10 In April 2013, the High Court handed down judgement on a legal challenge by RWE Npower Renewables to the Milton Keynes Wind Turbine SPD, which sought to set minimum separation distances between wind turbines and residential dwellings. The single ground on which the judicial review was successful was that the local authority had already defined in its adopted Local Plan a wind turbine buffer zone. As such, the amended separation distances in the SPD were in conflict with the pre-existing buffer zone in the adopted local plan, a position that was contrary to Local Planning Regulations.
- 3.11 Whilst the judgement confirmed that local authorities may define separation distances between turbines and dwellings and that these may be defined in a SPD, it was clear that they should be phrased positively rather than negatively i.e. that policies should not be phrased in terms of planning permission being refused if turbines were within x meters of a dwelling, but rather that planning permission may be granted if turbines are more than x meters of a dwelling. However, below the threshold distance, the impacts of proposals would still need to be considered on a case by case basis and it would be counter to national policy simply to refuse such a proposal based on distance without

judging the impact of the development, in particular in respect of noise and residential visual amenity.

- 3.12 The judgement made no comment on the justification or appropriateness of the separation distances Milton Keynes sought to introduce and it remains the case that it would have to be demonstrated the separation distances were based on robust evidence, were reasonable and justified and subject to full public consultation if it were intended to introduce them. To introduce separation distances now would require a significant further investment of resources and delay possible adoption of the SPD for possibly as much as 12 months, if not longer, whilst they were researched, proposals that might constitute reasonable and justified separation distances be drawn up and then consulted upon.
- 3.13 In essence the position outlined in paragraph 3.11 is what the draft Wind Energy SPD has sought to reach: applications for large or medium sized turbines need to be supported by a full range of technical information to enable a detailed assessment to be made and specifically an assessment of residential visual amenity within 2km of a turbine. Given this, it is not intended to pursue the introduction of separation distances at this time.

Lincolnshire County Council Wind Farm Position Statement

- 3.14 A number of representations suggested that the Council should seek to align the SPD with Lincolnshire County Council's (LCC) Position Statement (which the County Council adopted in February 2013 as its policy towards the location of wind farm development). On several issues, the LCC policy employs separation distances and takes a blanket approach that proposals falling within the specified distance should not be allowed. In light of the Milton Keynes judgement, as discussed above, it is considered that it would be inappropriate for the SPD to be aligned with the LCC policy on wind farms.

Landscape Character Assessment

- 3.15 The South Kesteven Landscape Character Assessment (LCA) makes reference to the sensitivity of each of the seven identified landscape character areas (*lca*) to wind energy development. Although the wording is caveated to indicate that each proposal should be considered on its own merits, these sections have been read as the Council's position on wind energy development and have been taken to indicate that wind proposals in some *lcas* would be considered favourably.
- 3.16 The preparation of the SPD provides an opportunity to make clear that it is against the key issues set out in the SPD that wind energy proposals will be assessed and considered and that the sections of the LCA relating to wind development sensitivity are not a material consideration in the determination of relevant planning applications. The draft SPD indicated, therefore, that it was the intention, on the adoption of the SPD, to rescind those sections of the LCA that refer to the sensitivity of the landscape to wind energy developments. A number of representations were received in respect of this proposal: some misunderstood and thought it was the intention that the whole of the LCA be rescinded whilst others thought that the references to the sensitivity to wind energy development in the LCA should remain.

3.17 It is considered, for the reasons set out in paragraph 3.14 above, the reasoning for rescinding those parts of the LCA referring to wind energy proposals remains justified and appropriate. The following sections of the LCA will, therefore, be rescinded: 1.20 (part only – reference to wind energy proposals), 4.33, 4.55, 4.76, 4.100, 4.132, 4.153, 4.172, 4.175 and Figure 28. Information to this effect will be notified on the website and included in hard copies of the LCA when they are made available in the future.

Definition of Small Wind Turbine

3.19 Of the 29 representations received to this consultation, 18 supported the proposed change, three objected and eight made comments. Of those who supported the change, six suggested that the upper height should be reduced even further to 20 or 15 metres as being more in keeping with the scale of buildings, particularly churches, within the landscape or because it would be more consistent with the thresholds set out in the Environmental Impact Assessment (EIA) Regulations. Even those who objected supported the principle that reducing the upper height definition was a move in the right direction. Given the consultation response on this issue, it is proposed that the reduction in height of a small wind turbine to 30m be included in the Wind Energy SPD.

4. OTHER OPTIONS CONSIDERED

4.1 Do not adopt the SPD - the alternative would be to rely on prospective developers hopefully engaging in pre application discussions prior to submitting a planning application. The preparation of the SPD is more positive in that it provides guidance to developers, SKDC officers and the general public on the key issues and impacts to consider in assessing or submitting a planning application for wind energy.

5. RESOURCE IMPLICATIONS

5.1 There will be minimal costs associated with the adoption of the SPD through the publication of statutory notices.

6. RISK AND MITIGATION

6.1 Risk has been considered as part of this report and any specific high risks are included in the table below:

| Category Risk | Action / Controls |
|--|---|
| Reputational – perceived inconsistency in decisions concerning wind energy development | Preparation of Wind Energy SPD and monitoring and reporting of effectiveness through Annual Monitoring Report |

7. ISSUES ARISING FROM IMPACT ANALYSIS

- 7.1 A Stage 1 Equality Analysis was carried out prior to consultation on the SPD. There are not considered to be any changes proposed to the SPD that are likely to impact upon the outcomes of the Equality Analysis previously undertaken.

8. CRIME AND DISORDER IMPLICATIONS

- 8.1 None arising out of this report.

9. COMMENTS OF FINANCIAL SERVICES

- 9.1 All costs associated with the development of the Supplementary Planning Document will be met from existing budgetary provisions included in the 2013/14 financial framework.

10. COMMENTS OF LEGAL AND DEMOCRATIC SERVICES

- 10.1 The Planning and Compulsory Purchase Act 2004 established a system of local development planning in England. The Town and Country Planning (Local Planning) (England) Regulations 2012 make provision for the operation of that system. In respect of supplementary planning documents, regulation 14 states:

14 Adoption of supplementary planning documents

As soon as reasonably practicable after the local planning authority adopt a supplementary planning document they must —

- (a) make available in accordance with regulation 35 —
 - (i) the supplementary planning document; and
 - (ii) an adoption statement; and
 - (b) send a copy of the adoption statement to any person who has asked to be notified of the adoption of the supplementary planning document.
- 10.2 If adopted, this process must be followed in accordance with the regulations.

11. APPENDICES:

- 11.1 Appendix 1: Breakdown of Representations by draft Wind Energy SPD section
Appendix 2: Responses to consultation on draft SPD and proposed changes
Appendix 3: Responses to consultation on definition of small wind turbine
Appendix 4: Proposed changes to draft Wind Energy SPD