

Our Ref: SV/MCR/5546/040414  
Your Ref: 2013/0722/FUL

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**BY EMAIL AND POST**  
4<sup>th</sup> April 2014

Dear Mr Sunter

**APPLICATION NUMBER 2013/0722/FUL**

**ERECTION OF 1 X 60M (HUB) HIGH, 87M (TIP) HIGH WIND TURBINE PLUS  
ANCILLARY DEVELOPMENT ON LAND TO THE WEST OF BUTTS LANE, LUMBY,  
LEEDS, WEST YORKSHIRE**

I write following the publication of the Planning Committee Report relating to the above mentioned planning application which is scheduled for consideration by the Planning Committee at their meeting of 9<sup>th</sup> April 2014. Having reviewed the report, and being familiar with the application proposals and the site, I have a number of concerns with regard the assessment of the application provided to members.

This letter and its contents are not intended to replace the points made in my letter to you regarding this application of 7<sup>th</sup> October 2014.

I set these out under a number of sub-headings below:

***Consultation Reponses***

At paragraph 1.5.1, the officer's report provides for 38 consultation responses having been submitted by members of the public and various bodies with an interest in the application during the statutory 21 day period. The report then goes on to summarise the issues that are raised within these representations in a series of brief bullet points. There is no indication or analysis of the responses that have been submitted outside of this statutory period.

Unless these responses are included within the advice presented to the Committee members there is a high risk that legitimate concerns and issues, that are material to the decision making process will not be brought to the attention of members tasked with determining the proposal in a open and fair manner.

## ***Green Belt***

The officer's consideration of the impact of the proposal on the Green Belt appears to exclude a number of important impacts and their consequent harm, from the balancing exercise with regard Very Special Circumstances. The advice within the report fails to fully take account of 'other harms' that arises from the development. This harm is in addition to the harm that occurs as a result of the proposals inappropriateness.

Whilst a number of these issues are considered under different headings in the report, they are not identified as harm in the balancing exercise, which needs to be undertaken in considering whether the Very Special Circumstances identified are sufficient to clearly outweigh that harm. For example whilst the potential for the proposal to have an impact on residential amenity has been identified, the report fails to weigh this impact in the balancing exercise with regard Green Belt harm.

In addition, the text at paragraph 2.11.4 to 5 appears to try and provide advice to Committee Members with regard the amount of *weight* to be attached to harm to the Green Belt. Whilst the officer appears to advise that moderate weight should be afforded to the harm to the Green Belt, there is no consideration of the very clear advice with NPPF at paragraph 88, which reads:

*When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very Special Circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. [my emphasis]*

The officer provides no explanation as to why his advice has deviated from this aspect of national planning policy.

Further, the Officers report, in drawing the advice to a conclusion, continues to suggest at paragraph 2.22.3 that there is a 'judging' exercise with regard whether the proposal causes 'harm' to the Green Belt, or not. With reference to Development Plan policy, NPPF and indeed all preceding advice and guidance relating to the operation of Green Belt policy, there is no 'judging' exercise to be undertaken with regard whether the proposal is harmful or not. The proposal is 'inappropriate' and is therefore, by definition, 'harmful'. It is not for the decision maker to decide or judge whether it is harmful.

Within the same paragraph the officer repeats the view that the benefits of the scheme outweigh the harm by virtue of inappropriateness and impact upon the openness of the Green Belt. There is no mention or consideration of the various other harms that result from the proposal and, no attempt to balance the full harm of the proposal against the Very Special Circumstances that are purported to exist.

This example and the other similar points within the report fatally undermine the nature and quantum of impacts and harm that have been considered. This leads to a skewed and inaccurate assessment of the harms that are required to be assessed.

The conclusion of the report with regard these important considerations is therefore unreliable and, in my opinion, amount to misadvice to the Committee members. Such fundamental misadvice with regard the core policy that guides the determination of the application proposal, can but only result in a determination that is unsound and not based on a full and proper understanding of the relevant policies and requirements.

### ***Military Radar***

I note the approach adopted by the Applicant, Ministry of Defence (“MOD”) and the Council Officer in attempting to resolve the issue of the proposal interfering with Air Traffic Control radar equipment based at Linton-on-Ouse. It is clear from the information available that the MOD had, and currently maintains, the view that the proposal will interfere with this equipment. The MOD have however agreed that a condition preventing the installation of the turbine until such a time as suitable mitigation measures can be invented, demonstrated to be effective and added to the proposal. Whilst the MOD and applicant are clearly satisfied with this approach, it is for the Council to determine that the use of such a planning condition fulfils the requirements set out within Circular 11/95 ‘The Use of Conditions in Planning Permissions’, and is lawful in all other regards.

Such negatively worded ‘Grampian’ style conditions are discussed in the Circular and specific advice is provided at paragraphs 38 and 41. Paragraph 40 states that:

*“ It is the policy of the Secretaries of State that such a condition should only be imposed on a planning permission if there are at least reasonable prospects of the action in question being performed within the time-limit imposed by the permission (see endnote 3).”*

On this basis it is for the authority to determine whether there is a reasonable prospect of the applicant discovering, developing and testing a system of mitigating the radar signature of an 87m high (to tip) wind turbine from a military radar installation within three years of the grant of any planning permission. The officer provides no advice to members in this important respect, and appears to rely entirely upon the agreement apparently reached between the applicant and the MOD when recommending a grant of planning permission subject to such a condition. In this regard the advice at paragraph 42 of Circular 11/95 is pertinent:

*“An unreasonable condition does not become reasonable because an applicant suggests it or consents to its terms. The condition will normally run with the land, and may therefore still be operative long after the applicant has moved on; it must always be justified on its planning merits.”*

Unless and until the Council consider whether there are reasonable prospects of this occurring within the three year period from the grant of planning permission, any decision to approve the proposal subject to such a condition is, in my opinion, unlawful.

### ***Policy SPI9***

I note at paragraph 12.14.4 of the officer report that members are advised that the scheme complies with the requirements of policy SP13 of the Core Strategy. There is however no indication of how the proposal ‘contributes towards enhancing community cohesion’ as required by the policy.

Clearly the purpose of the report is to provide members with a full and comprehensive assessment of the proposal against relevant development plan policies and material considerations, and provided a reasoned justification for the recommended approach to the application. Merely stating that the proposal complies with a policy test such as this, without providing an indication of how this has been met, fails to ensure that Committee members are in possession of relevant information.

### ***Summary***

The Planning Committee Report that has been circulated to Committee members and the public contains a number of serious errors and omissions. The resultant advice to members is, as a

consequence, flawed to the extent that no reasonable authority can rely upon it or its advice in the determination of the application proposals.

Having regard to the extent and nature of these failings I am of the view that it is neither reasonable nor possible to rectify these points before the Committee consider the application, whilst providing members of the public with the opportunity to understand and comment upon the nature and reasoning of the advice provided.

I trust that the above is clear however please do not hesitate to contact ,me if you have any queries or wish to discuss any of the above points.

Yours sincerely

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