

CABINET (LOCAL DEVELOPMENT FRAMEWORK) COMMITTEE

17 DECEMBER 2012

NOTICE OF MOTION: POTENTIAL PREPARATION OF A SUPPLEMENTARY
PLANNING DOCUMENT ON RENEWABLE ENERGY DEVELOPMENTS

REPORT OF HEAD OF STRATEGIC PLANNING

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RECENT REFERENCES:

[Council Notice of Motion - 27 September 2012](#)

EXECUTIVE SUMMARY:

A Notice of Motion was submitted to Council on 27 September 2012 by Councillor Wright, which sought agreement of the Council:-

"That additional guidance be prepared in the form of a Supplementary Planning Document to support the implementation of Local Plan Part 1 Policy CP12 (renewable and decentralised energy). This should ensure that planning decisions are taken based on the best available evidence, relevant government advice, case law and appeal decisions. The guidance should help to secure appropriate development, thereby safeguarding the District's residents and landscape."

Council resolved that this Notice of Motion be referred to the next meeting of the Cabinet (LDF) Committee and it be authorised to determine the matter, taking into account the issues raised during the meeting.

This report to Cabinet (LDF) Committee considers whether the Council's existing policies, together with national legislation and guidance, are sufficiently robust to deal with such applications.

RECOMMENDATION:

1. That the officers' recommendation, after taking into consideration Councillor Wright's Notice of Motion, is that a Supplementary Planning Document to provide additional guidance on renewable energy developments in Winchester District is not needed, however the Committee should discuss and reach a view on the Notice of Motion, taking account of the content of the report.

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1. Introduction

- 1.1. A Notice of Motion (Appendix 1) requesting a Supplementary Planning Document (SPD) on renewable energy developments, to support policies in the Local Plan Part 1 (LPP1), was submitted to Council on 27 September 2012 by Councillor Wright, following three recent energy development proposals in his Ward, Wonston and Micheldever.
- 1.2. This report considers whether the Council's existing policies, together with national legislation and guidance, are sufficiently robust to deal with any such applications that may come forward.
- 1.3. The purpose of SPD is to supplement existing policy; it is not the right tool to introduce new policy or replace existing, and Government guidance requires that it follows a due process including public consultation. An SPD will only be beneficial if it adds clarification of policy and legislation which are needed to guide development within Winchester District.
- 1.4. The process of producing a SPD requires technical background work to provide a robust evidence base, followed by a period public consultation and consideration of any comments made. A SPD could therefore not be produced in time to influence decisions on planning applications which may be received over the coming months.

2. Planning Applications

- 2.1. The number of applications for renewable energy projects within Winchester and neighbouring districts has increased in recent years. Only three domestic solar panel schemes were approved in 2009/10, whereas in 2010/11 there was a rapid rise in renewable energy schemes approved (14 in total); these were mostly solar panels on domestic properties linking in with the Government's higher feed-in tariff rates (and many others will have been developed as 'permitted development'). The Council also approved the development of 3 wind turbines at Kirton Farm, Crawley and a wind turbine at Sparsholt College.
- 2.2. This year, there have been a number of significant renewable energy planning applications including for a Hydropower Scheme in Winchester (permitted), an Anaerobic Digestion Plant at the former oil terminal at Micheldever Railway Sidings; an EIA Scoping submission for 17 wind turbines on land East Of Bullington Cross, covering land in three local planning authorities and an application neighbouring the district at Woodmancott Down in Basingstoke and Deane Borough for 8 turbines.

3. Approach taken by other Local Authorities

- 3.1. Hampshire County Council is considering whether to adopt a position statement which would not support large wind turbines and wind energy development on its rural landholdings. The County Council is considering this approach as a major landowner; it is not the Local Planning Authority for this type of development. This approach is being considered because of the 'adverse impact on the special qualities and character of Hampshire's landscapes' ([HCC Executive Member – Environment and Transport Decision Report Annex C, 06/11/12](#)).
- 3.2. The South Downs National Park is undertaking work looking at the opportunities for, and sensitivity of the landscape to various types of renewable energy and the implications of such development. The SDNP has not yet adopted a particular stance to commercial wind energy developments. At present, policy guidance for development within the Winchester District part of the National Park falls under the 2006 Winchester District Local Plan Review, and emerging policies in Local Plan Part 1 – Joint Core Strategy, due to be adopted in early 2013.
- 3.3. Other Planning Authorities vary in their responses to this matter. Some produced SPD prior to the existing legislation or Government guidance to provide local guidance, whilst others consider that it is unnecessary for more detail at the local level due to the extensive guidance and advice as detailed in section 4 of this report below. However, two authorities, [Milton Keynes and Rutland County Council](#) have produced SPD this year to set out guidelines for the development of large wind turbines within set distances of residential dwellings and also to cover noise and shadow flicker. The High Court has recently granted the wind energy company [RWE npower renewables](#) permission to proceed with its claim for judicial review of the SPD produced by Milton Keynes, on the grounds of its compliance with the NPPF.

4. Existing Legislation and Guidance

- 4.1. Renewable energy developments generally require planning permission, but there are exceptions for some small scale, generally domestic installations that benefit from permitted development rights. For example, there are permitted development rights for a single, standalone domestic turbine for microgeneration not within a safeguarded area and up to 11.1m total height¹. Large scale, commercial installations require planning permission, and would be judged against existing planning policies and government guidance.
- 4.2. There is a wide range of national, regional and local policies and strategies which currently apply to renewable energy developments. The key consideration is therefore whether additional protection is needed for Winchester that is not covered in these policies and strategies.
- 4.3. Targets for renewable energy production have been set through the European Renewable Energy Directive 2009 and in the [UK Renewable Energy Strategy 2009](#). Renewable energy includes the consideration of energy from wind turbines and any SPD would not therefore be able to prohibit wind energy development 'in principle'. The Council has its own climate change target, which aims for aims for a 30% CO2 emissions reduction (on 2004 levels) by 2015² and

¹ Part 40 of the Town and Country Planning (General Permitted Development Order) (Amendment) 2011

² Live for the Future: Tackling Climate Change – WCC 2008

the Local Plan Part 1 is supportive of renewable energy schemes, subject to various criteria.

[National Planning Policy Framework \(NPPF\) 2012](#)

- 4.4. The NPPF requires local planning authorities to ‘...recognise the responsibility on all communities to contribute to energy generation from renewable or low carbon sources...’ and have a positive strategy to promote renewable energy sources. (Paragraph 97 NPPF). Paragraph 98 of the NPPF requires planning authorities to approve planning applications for renewable energy if its impacts are (or can be made) acceptable, unless material considerations indicate otherwise.

[National Policy Statement for Renewable Energy Infrastructure 2011](#)

- 4.5. This statement sets out guidance for decisions made by the Infrastructure Planning Commission (IPC). Although the IPC is only likely to deal with very large schemes, the NPPF requires this document to be used “In assessing the likely impacts of potential wind energy development when identifying suitable areas and in determining planning applications for such development” (NPPF footnote 17). This Policy Statement provides guidance on assessing appropriate separation distances based on noise pollution and impacts to visual amenity.

[Town and Country Planning \(Environmental Impact Assessment\) \(England and Wales\) Regulations 2011](#)

- 4.6. Most commercial wind energy developments and other renewable projects will be Environment Impact Assessment (EIA) development due to their inherent scale and potential environmental impacts. For example, wind energy development proposals for 2 or more turbines, or if the structure exceeds 15m in height, is EIA development where the development is likely to have significant effects on the environment.
- 4.7. EIA regulations require proposals to first be screened and any impacts then addressed in detail in an Environmental Statement submitted with a planning application. The Environmental Statement must identify any mitigation required to ensure that the environmental impacts are appropriately managed.

[Draft Energy Bill 2012](#) and [The Wind Turbines \(Minimum Distance from Residential Premises\) Bill 2012-13](#)

- 4.8. There are two Bills going through parliament which will provide legislation to guide wind energy developments, once approved. The draft Energy Bill 2012 is currently waiting to be introduced to parliament as a formal Bill. This sets out the Government’s commitment to achieving its climate change and renewables targets.
- 4.9. A second, Private Member’s Bill: The Wind Turbines (Minimum Distance from Residential Premises) Bill is due to go for its second reading in the House of Lords. If it becomes law, this would set clear guidance on distances between turbine development and residential housing based on the size of the turbine. At present it is not a Government Policy document and therefore will carry little or no weight in planning decisions. However, a [Commons Library Standard Note](#) published in July 2012 provides a useful summary of the Government’s position on these issues. It states that:
- ‘England has no separation distance, although noise limits suggest a minimum separation distance of 350 metres for a typical wind turbine. The Government has rejected the idea of a separation distance for England.

- An independent study concluded in 2011 that flicker was not a serious problem and Government guidance has been left unchanged. An independent study on noise has supported their approach on noise.
- Some councils, such as Lincolnshire, are trying to have their own minimum distances between a wind turbine and housing. Milton Keynes' minimum distance may be challenged in court.'

[South East Plan 2009 Policies](#)

- 4.10. The South East Plan remains in force for the time being until it is formally revoked. There are a number of policies which provide policy guidance for renewable energy developments including the following:- Policy NRM11 (on-site renewables), NRM13-14 (renewal energy targets) and NRM15 which requires renewable energy development to be 'located and designed to minimise adverse impacts on landscape, wildlife, heritage assets and amenity', and directs proposals to less sensitive areas of countryside. NRM16 sets out renewable energy development criteria for policies to support the principle of renewables subject to environmental considerations.

[Winchester District Local Plan Review 2006 Saved Policies](#)

- 4.11. The saved policies in the WDLPR 2006 provide guidance on the suitability of development proposals which may affect the character of an area, the landscape setting, public views, protected nature conservation sites or cause noise pollution (DP.3, DP.4, DP.7, DP.11, CE .5, CE.8 and CE.9)
- 4.12. These policies are saved until Local Plan Part 1 (LPP1) is adopted, at which time DP.7 will be deleted, CE.5 will be replaced by LPP1 Policy CP20, and CE.8 and CE.9 replaced by LPP1 Policy CP16. The remaining policies are saved until they are replaced by policies in Local Plan Part 2

[Winchester Local Plan Part 1](#) (Examination Report Due January 2013)

- 4.13. LPP1 policy CP12 (Appendix 2) is particularly relevant to this matter and supports the generation of renewable and decentralised energy in the District. Policy CP12 is designed to set out those matters which renewable projects will be assessed against, whilst maximising renewable energy development and ensuring that adverse impacts are addressed satisfactorily, including landscape and visual impacts in line with the requirements of the NPPF.
- 4.14. There are also a number of other Policies in LPP1 which control the location and impact of development such as CP16 to protect sites of nature conservation importance and CP20 on landscape protection.

[Evidence Base Studies](#)

- 4.15. There are a number of evidence base studies that have been used by the Council in the development of Local Plan policies, and that will also provide background information for future planning applications.
- [Winchester District Renewable & Low Carbon Energy, An Assessment of Opportunities Issue:5, Ecoup Ltd 2012](#) (Winacc Study). Identifies opportunities for renewable and low carbon energy solutions within Winchester District.
 - [Low Carbon Planning Policy Viability Study, Element Energy 2010](#) – assesses the impact of various sustainable construction requirements on development viability.
 - [Renewable Energy Study for Winchester District, ESD 2008](#) – Sets out the technical potential for renewable energy projects in the District.

- 4.16. It can be seen that there are a wide range of planning policy documents, guidance and legislation which can be used to address the key concerns about renewable energy developments, particularly large-scale wind turbines, which are primarily around:
- Visual amenity;
 - Impacts on landscape and character of an area;
 - Impact on heritage and cultural assets;
 - Noise and odour pollution, and 'flickering' light pollution;
 - Impact on wildlife and protected areas;
 - Impact on radar, flight paths and communication networks; and
 - Traffic impacts from operational facilities.
- 4.17. These issues are addressed fully in the policy documents, guidance and legislation listed above and the summaries below set out examples of how the various policies and legislation address each of the potential impacts.
- 4.18. **Visual amenity / landscape impact / character of area** - addressed in WDLPR policies such as DP.3, DP.4 and CE.5, which require that development responds positively to the character, appearance and variety of the local environment; does not have an unacceptable adverse impact on adjoining uses; protects important public views and skyline features; and protects landscape character.
- 4.19. Impacts on landscape and on designated areas such as Gaps and the South Downs National Park must also be taken into account under LPP1 Policies CP12 and CP20.
- 4.20. **Heritage and cultural assets** - must be taken into consideration under the suite of policies in Chapter 5 of the WDLPR. LPP1 Policies CP12 and CP20 also address the impacts of renewable energy schemes on conservation areas and heritage assets, including their settings;
- 4.21. **Noise, odour and 'light flicker'** - are considerations in WDLPR policies DP10 and DP.11 which regulates development which may cause pollution, and also in LPP1 CP12 where assessments of effects must take account of avoiding harm to existing development and communities. For wind farms, the NPPF requires planners to follow the approach set out in the National Policy Statement for Renewable Energy Infrastructure, which requires the consideration of visual amenity and noise when considering the appropriate distance from residential properties.
- 4.22. **Wildlife and protected areas** - are addressed in WDLPR policies CE.8 and CE.9, and LPP1 Policy CP12 where account must be taken of the impact on areas designated for their local, national, or international importance. LPP1 CP16 also specifically protects sites of nature conservation importance.
- 4.23. Legislation including the Wildlife and Countryside Act and the Conservation of Habitats and Species Regulations 2010 also provide rigorous protection for designated sites and protected species. Renewable Energy projects in which are subject to the EIA Regulations would also require detailed environmental assessments if they are likely to have significant effects on the environment by virtue of factors such as their nature, size or location.

- 4.24. **Radar, flight paths and communication networks** – WDLPR policy DP.7 sets out consultation requirements with Southampton Airport and NATS. For wind farm developments, the NPPF requires planning authorities to follow the approach set out in the National Policy Statement for Renewable Energy Infrastructure, including the relevant sections on aviation impacts in the Overarching National Policy Statement for Energy Infrastructure.
- 4.25. **Traffic** - WDLPR policies in Chapter 11 address transport issues; LPP1 policy CP10 sets out the Council's approach to seeking to reduce demands on the transport network. For wind farms, applicants will need to consider the suitability of the access routes to the proposed site for both the construction and operation of the wind farm.

5. Conclusion

- 5.1. A SPD on this matter will only be of any benefit if it addresses gaps in policy and legislation which need to be filled to guide development within Winchester District. As demonstrated in this Report, there is a significant amount of existing legislation and policy guidance to regulate renewable energy developments which set out a range of considerations against which planning proposals must be judged.
- 5.2. It is considered that the LPP1 policy CP12 takes a positive approach (as advised by the NPPF) to planning for renewable energy schemes whilst taking account of potential adverse impacts. The policy lists the relevant criteria for assessing impacts. These would enable all of the potential impacts listed in paragraph 1.4 above to be taken into account in determining any future planning applications. There is already substantial guidance at the local, regional or national level on how impacts should be assessed and this makes it unnecessary for a Winchester District SPD to repeat this guidance and means it would be very difficult to justify different assessment criteria.
- 5.3. In view of the policies and guidance already existing, it is not considered that failure to have SPD on this very specific topic would put the Council in a more vulnerable position when determining planning applications, as all potential impacts are likely to be material planning considerations which would need to be assessed and taken into account. Indeed, any SPD would be likely to merely repeat existing policies unless it went into a considerable amount of technical detail, to consider matters such as noise disturbance, light flicker, etc. If such detail were assessed and it were concluded that Winchester District warranted different standards or policy to those applying nationally, it would necessary to have very strong justification in order to apply such requirements.
- 5.4. As noted above, there is draft legislation emerging which is relevant to this issue and there is also expected to be a planning application for a large windfarm on the northern edge of the District. Given that any SPD could not be produced in time to influence the forthcoming planning application, or the decision on it, it may be best to let these events run their course and consider whether any further guidance is actually needed in the light of experience. These applications will be required to produce their own technical studies which will need to be tested by the Council. This information could help inform decisions on whether SPD or further policy guidance in Local Plan Part 2 is needed. This could save potentially substantial expenditure on the production of SPD which may prove not to have been necessary.

- 5.5. However, it is recognised that there are significant concerns about such proposals amongst Members. Members may, therefore, conclude that further detailed guidance is needed and, if so, it would be recommended that specialist consultants be appointed to undertake the work. The Council will need to look at commissioning the technical work needed to produce the SPD and, given the likely costs involved (£20,000 - £30,000?), this would need to be put out to tender. The SPD could not be produced in time to guide the applications due in over the coming months.
- 5.6. It is, therefore, recommended that the Council should continue to take the approach of judging each application on its own merits, in accordance with the policies, guidance and legislation already available. Production of a SPD of this technical nature would be resource intensive, as noted above, and its production has not been factored into the short-medium term work programme for the Strategic Planning team or other parts of the Council which would need to have an input (environmental protection, landscape, transport, etc).
- 5.7. If however, it was felt that more detailed technical work should be commissioned, this could potentially be used to inform the development of policies in Local Plan Part 2, as well as or instead of SPD. Local Plan Part 2 would be statutory and able to expand on policy already established by Policy CP12 in LPP1.
- 5.8. Under the Duty to Co-operate, policy formulation of this nature would be more effective if undertaken jointly with neighbouring authorities to address the cross-boundary impacts of renewable energy schemes, particularly given recent proposals on the District's boundaries. This would also need to include the South Downs National Park Authority if it were intended that any guidance should cover the whole District.

6. OTHER CONSIDERATIONS:

SUSTAINABLE COMMUNITY STRATEGY AND CHANGE PLANS:

- 6.1. Planning policies on renewable energy are relevant to the High Quality Environment outcome of the Sustainable Community Strategy, both in terms of the need to encourage renewable energy development and to protect the environment of the District.

RESOURCE IMPLICATIONS:

- 6.2. Planning policy formulation within the District is undertaken by the Council's Strategic Planning Team. A SPD of this nature would require input from other Council resources particularly landscape, environmental protection, etc officers, and may also need the appointment of consultants depending on the technical elements of the guidance. Budget provision for this does not currently exist within Strategic Planning budget or the Local Plan Reserve.
- 6.3. The preparation of SPD is required to follow due processes as set out in the Town and Country Planning (Local Planning) (England) Regulations 2012, which includes a formal public consultation process. It is unlikely that the process of developing, consulting on and adopting guidance could be completed in less than 1 year given that, in order to warrant having SPD, it would need to go into substantial technical detail.

RISK MANAGEMENT ISSUES

- 6.4. It is not considered that failure to have SPD on this very specific topic would put the Council in a more vulnerable position when determining planning applications. As stated above, there is a comprehensive range of both policy guidance and legislation covering this matter to provide the necessary detail to determine local planning applications.

BACKGROUND DOCUMENTS:

Links to relevant background documents are provided within the report.

APPENDICES:

Appendix 1: Copy of the minutes from Council 27/09/12 on the Notice of Motion

Appendix 2: Policy CP12 - Renewable and Decentralised Energy

APPENDIX 1

Copy of the minutes from Council 27 September 2012 on the Notice of Motion

The following Notice of Motion had been submitted by Councillor Wright:-

"That additional guidance be prepared in the form of a Supplementary Planning Document to support the implementation of Local Plan Part 1 Policy CP12 (renewable and decentralised energy). This should ensure that planning decisions are taken based on the best available evidence, relevant government advice, case law and appeal decisions. The guidance should help to secure appropriate development, thereby safeguarding the District's residents and landscape."

The motion was seconded by Councillor Godfrey.

Councillor Wright explained that, following three recent energy development proposals in his Ward, he considered that the Council urgently needed to review its position regarding such development and update its planning guidance. Important decisions regarding wind farms etc were now being taken in various parts of the country and, if the City Council did not review its policy in the light of those landmark cases, its planning decisions would become vulnerable to challenge and risk having them overturned on appeal.

After consideration, the Mayor ruled that the matter was not sufficiently urgent to require a decision at Council tonight. Instead, it would be more appropriate to refer it to the next meeting of the Cabinet (LDF) Committee where Members would have the benefit of a full report from the officers. The Corporate Director (Governance) added that, if Members wished to hasten the process to some extent, the LDF Committee could be authorised to determine the matter (including whether any additional planning guidance was required) without the need for it to come back to full Council.

The Mayor then invited the Council to discuss the Motion for up to 20 minutes.

During debate, some Members considered that the Council must agree tonight, at least in principle, the need for a Supplementary Planning Document and then request LDF Committee to settle the detail. They added that the Motion was not suggesting that all green energy systems should be refused, but simply that the Council must have the best policies and procedures in place as soon as possible, to protect the District. However, other Members considered that the Council's existing policies were sufficiently robust to deal with such applications. Therefore, they would prefer to see the whole matter (including relevant emerging case law) assessed and determined by LDF Committee, rather than take even a decision in principle at this stage.

RESOLVED:

That the Notice of Motion be referred to the next meeting of the Cabinet (LDF) Committee and it be authorised to determine the matter, taking into account the issues raised above.

APPENDIX 2

Extract from Winchester District Local Plan Part 1 – Joint Core Strategy

Policy CP12 - Renewable and Decentralised Energy

The Local Planning Authority is supportive of the generation of renewable and decentralised energy in the District. It will support the creation of CHP/district heating/cooling systems and the development of larger-scale renewable energy developments, especially where there is a strong degree of community benefit and/or community ownership. When assessing proposals for large-scale renewable energy and decentralised energy schemes, account will be taken of:

- impact on areas designated for their local, national, or international importance, such as Gaps and the South Downs National Park, conservation areas and heritage assets, including their setting;
- contribution to national, regional & sub-regional renewable energy targets and CO2 savings;
- potential to integrate with new or existing development, whilst avoiding harm to existing development and communities;
- benefits to host communities and opportunities for environmental enhancement;
- proximity to biomass plants, fuel sources and transport links;
- connection to the electricity network;
- effect on the landscape and surrounding location.