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	DEVELOPMENT CONTROL COMMITTEE A
DATE:	WEDNESDAY, 15 FEBRUARY 2023 9.30 AM
VENUE:	KING EDMUND CHAMBER, ENDEAVOUR HOUSE, 8 RUSSELL ROAD, IPSWICH

For consideration at the meeting on Wednesday, 15 FEBRUARY 2023, the following additional or updated papers that were unavailable when the Agenda was printed.

TABLED PAPERS

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b	DC/22/04021 LAND AT THE LEYS AND IVY FARM, MELLIS ROAD, YAXLEY, SUFFOLK, IP21 4BT	9 - 18

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Agenda Item 7a

Greenways
Little Blakenham
Suffolk
IP8 4NH

DC/20/05895

Bron Curtis
Case Officer
Mid Suffolk District Council
Endeavour House
8 Russell Road
Ipswich
IP1 2BX

Sent to: bron.curtis@baberghmidsuffolk.gov.uk and
planning@baberghmidsuffolk.gov.uk

12 February 2023

Dear Bron

Planning application DC/20/05895 - Land to the east of the Channel, Burstall, IP8 4JL in Suffolk: Committee Report Item 7A for 15 February 2023 Planning Committee meeting

At the 8 February meeting of the Babergh planning committee, at which the applicant's concurrent application for the above development was considered, a number of councillors appeared uncertain about whether to cast their vote for or against the proposal.

MSDC councillors may also feel uncertain about how to vote at the committee meeting on 15 February and might be inclined simply to follow Babergh's lead. I suggest, however, that Babergh's decision was procedurally flawed, making it vulnerable to challenge by way of judicial review, and that there is a different way forward that MSDC councillors might wish to follow.

The debate at the Babergh meeting addressed only the planning balance. It was opened by Cllr David Busby who suggested that it was a question of food or energy. He thought councillors should go for food. But in the vote they went six/five for energy.

Bron Curtis

12 February 2023

MSDC councillors will have been encouraged to determine the application in favour of grant by the officers' assessment of it in the Committee Report. That assessment, in line with other examples of what seems to be becoming common practice, discusses the relevant Policies only in terms of the planning balance, ascribing a variety of weights to the Policies mainly according to whether they accord with the NPPF, and not whether the application accords with the development plan.¹

The practice, however, of going straight to the planning balance in this way and giving primacy to the NPPF is not consistent with the statutory framework within which planning applications fall to be determined.

As the Report itself says, section 38(6) of the PCPA 2004 requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. So far, so good. But by focusing on the planning balance and the NPPF, the assessment proceeds on the basis of the balance of material considerations and leaves out what is needed for a proper performance of the prior duty imposed by section 38(6), which is to consider whether the proposal is in accordance with the development plan in the first place.

Neither the Babergh nor the MSDC Committee Report gives an account of the meaning and effect of their respective development plan as a whole and not surprisingly the debate at the Babergh committee meeting did not address the matter. Both Committee Reports identify a number of relevant Policies but the plans consist of much more than just the Policy wording.

It is well settled as a matter of legal principle that the meaning and true effect of a policy in a development plan is to be derived from the plan as a whole. Context is important. Further, its interpretation is not a matter of planning judgment, as the Committee Reports appear to assume with their references to weighting and the NPPF, but is a matter of law of which the courts are the ultimate arbiter. A planning committee may exercise planning judgment in identifying and weighing material considerations but that is an exercise which takes second place to the primary duty under section 38(6) which is to establish whether the proposed development accords with the plan, read as a whole.

I suggest with all due respect that the Babergh councillors and the Reports have gone astray, misled by a procedural practice that is not well founded, because the proposal does not accord with either the Babergh or the MSDC plan when read as a whole.

The relevant legal principles are conveniently summarised in two paragraphs of a unanimous judgment of the Court of Appeal in April 2019. Both paragraphs are set out in full (apart from citations of the relevant authorities) in the Appendix to this letter, along with a link to the full judgment so that that too can be read in context.

As will be apparent from the Appendix, it is well settled that the development plan has statutory primacy and a statutory presumption in its favour, which government policy in the

¹ See paragraphs 5.5 to 5.10 of Part Three – Assessment of Application.

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NPPF does not. The first duty in deciding an application is to establish whether or not the proposal accords with the plan, read as a whole, including not only the stated policies but also their objectives and the supporting text.

It is perhaps helpful to recall that the MSDC development plan is the fruit of many years' deliberations by councillors who, as they were bound by statute to do, took account of both government policy and local conditions to establish a plan that, in their words, aims to "strike an appropriate balance between the social, environmental and economic elements of sustainability in the local context."² Within the statutory scheme, the development plan embodies the result of a detailed balancing exercise by the Council and section 38(6) imposes on the Planning Committee a primary statutory duty to determine planning applications in accordance with it. Only if material considerations indicate otherwise can they depart from the plan, thereby providing a safeguard in the event that, for example, the plan is out of date.

In the present case, there is no evidence that the plan is out of date so far as renewable energy is concerned. The net zero agenda is new but the fundamentals have not changed, as the draft JLP illustrates by carrying forward similar policies for the future. The MSDC plan has focused on the challenge of climate change since at least 2008. Responding to the implications of climate change was set as a Core Strategy Objective³ and promoting renewable energy resources was one of its Strategic Policies.⁴ The Council has done all this in a way which aims to strike the appropriate balance of sustainability by tailoring the plan to the local Mid Suffolk context, including among other things:

- supporting decentralised renewable energy schemes, either as stand alone developments for homes and small businesses or integrated into the built environment;⁵
- recognising as a "key local consideration" in striking the balance of sustainability that grid-scale renewable energy schemes of the kind proposed by the applicant are unlikely to be capable of being acceptably accommodated in Mid Suffolk having regard to its environmental and landscape sensitivity;⁶ and
- protecting greenfield sites by firmly resisting any development on high quality agricultural land: "Development will be refused on high quality agricultural land".⁷

When considered against the true meaning and effect of the plan, it becomes apparent that the proposal is not remotely in accordance with it. I commend to members of the Committee the succinct summary of the relevant legal principles as set out in the Appendix below for any necessary confirmation of what I have said above about them.

The final question is whether a departure from the plan is justified. That is a matter of planning judgment for the Committee as discussed above but in the absence of any

² Focused Review paragraph 3.6.

³ Core Strategy Objective SO 3.

⁴ Core Strategy paragraph 3.5.

⁵ Policy CS 3.

⁶ Focused Review paragraph 3.7.

⁷ Core Strategy paragraph 1.40.

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compelling reason to substitute their view of the matter for that which is embodied in the development plan, I suggest the answer is clear. The application should be refused.

I should be grateful if you would bring the contents of this letter to the attention of the members of the Planning Committee.

Yours sincerely

Tony Ballard

12 February 2023

APPENDIX

Extract from the judgment of the Court of Appeal in *Gladman Developments Ltd v Canterbury City Council* [2019] EWCA Civ 669 at paragraphs 21 and 22.

To avoid overburdening the text, the lengthy lists of authorities have been omitted. They can be read in the original, which is readily available online:

<https://www.bailii.org/ew/cases/EWCA/Civ/2019/669.html>.

21. The correct approach to determining an application for planning permission has been considered several times at the highest level, and this court has amplified the principles involved. Section 38(6) of the 2004 Act requires the determination to be made "in accordance with the [development] plan unless material considerations indicate otherwise". The development plan thus has statutory primacy, and a statutory presumption in its favour – which government policy in the NPPF does not. Under the statutory scheme, the policies of the plan operate to ensure consistency in decision-making. If the section 38(6) duty is to be performed properly, the decision-maker must identify and understand the relevant policies, and must establish whether or not the proposal accords with the plan, read as a whole. A failure to comprehend the relevant policies is liable to be fatal to the decision [authorities cited].
22. If the relevant policies of the plan have been properly understood in the making of the decision, the application of those policies is a matter for the decision-maker, whose reasonable exercise of planning judgment on the relevant considerations the court will not disturb [authority cited]. The interpretation of development plan policy, however, is ultimately a matter of law for the court. The court does not approach that task with the same linguistic rigour as it applies to the construction of a statute or contract. It must seek to discern from the language used in formulating the plan the sensible meaning of the policies in question, in their full context, and thus their true effect. The context includes the objectives to which the policies are directed, other relevant policies in the plan, and the relevant supporting text. The court will always keep in mind that the creation of development plan policy by a local planning authority is not an end in itself, but a means to the end of coherent and reasonably predictable decision-making, in the public interest [authorities cited].

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Agenda Item 7b


Contact Us E-Form Submission



Submission Reference	BMCU484501755
Directed to	Planning
Complaints Reference	
Other Relevant Reference (if applicable)	
Customer's Message	<p>I'd like to make a complaint about planning application No: DC/22/04021. I live in Yaxley and regularly walk my dog along Leys lane, however I was unaware of a planning application to build a synchronous condenser on adjacent land until today. The planning application was submitted back in August. It seems that unless residence are actively searching planning applications online, we are not aware of what proposals are in the pipe line. Cranwicks is an example of this, many residence were unaware of the scale of the processing facility proposed or the impact light, noise and smell would have on them once built. I think with large scale schemes like Cranwicks and the Synchronous condenser proposed, written notification should be sent to all residence that may be affected. No (yellow) site notice has been posted along Leys lane, that would have made me and others who enjoy walking Leys lane and the adjoining Bridal track, aware of the proposed development. As the application is still awaiting a decision, i would like to see a site notice posted so that all interested parties are aware of the proposal and have the opportunity to comment.</p>
Customer's Contact Details	
Customer's Name	James Laughlin
Customer's Email	j.laughlin1975@gmail.com
Customer's Phone	01379788916
Customer's Address	Dukes Cottage Old Ipswich Road, Yaxley, Suffolk, IP23 8BP

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From: philip.c.freeman@btinternet.com <philip.c.freeman@btinternet.com>
Sent: 14 February 2023 08:08
To: BMSDC Planning Mailbox <planning@baberghmidsuffolk.gov.uk>; Bron Curtis <Bron.Curtis@baberghmidsuffolk.gov.uk>
Cc: David Burn (Cllr) <David.Burn@midsuffolk.gov.uk>; Jessica Fleming (SCC Councillor) <Jessica.Fleming@suffolk.gov.uk>
Subject: FW: Urgent Response of Yaxley Parish Council to Points made on the Clarification Document by Conrad Energy.

 **EXTERNAL EMAIL: Don't click any links or open attachments unless you trust the sender and know the content is safe. Click [here](#) for more information or help from Suffolk IT**

Further to the emails from Yaxley Parish Council sent on 13 February 2023. The Parish Council requires Mid Suffolk District Council to postpone the hearing of the planning application for the synchronous condenser made by Conrad Energy until Yaxley Parish Council has received the documents it has asked for under Freedom of Information and has had time to consider them. If Mid Suffolk District Council fails to notify me by midday today that the hearing has been postponed the Parish Council will have no option but to take legal advice about an injunction to prevent the hearing taking place on 15 February 2023.

Regards,
Philip Freeman
Clerk to Yaxley Parish Council

From: philip.c.freeman@btinternet.com <philip.c.freeman@btinternet.com>
Sent: Monday, February 13, 2023 5:18 PM
To: 'planning@baberghmidsuffolk.gov.uk' <planning@baberghmidsuffolk.gov.uk>
Subject: Urgent Response of Yaxley Parish Council to Points made on the Clarification Document by Conrad Energy.

From: philip.c.freeman@btinternet.com <philip.c.freeman@btinternet.com>
Sent: 13 February 2023 17:16
To: 'Bron Curtis' <Bron.Curtis@baberghmidsuffolk.gov.uk>
Cc: david.burn@midsuffolk.gov.uk; Jessica.Fleming@suffolk.gov.uk
Subject: FW: Response of Yaxley Parish Council to Points made on the Clarification Document by Conrad Energy.

Dear Ms Curtis,

Yaxley Parish Council is surprised to see that the application for a synchronous condenser, is going to be considered on 15 February 2023 when the Parish Council has not received the documents from its Freedom of Information request, and it is not clear what information this will give to support its objection to this application. In addition, it does not appear that all the information submitted by the Parish Council has been made available to the Committee as there is no reference to the 'Clarification' document, it is attached again.

Regards,
Philip Freeman
Clerk to Yaxley Parish Council

From: philip.c.freeman@btinternet.com <philip.c.freeman@btinternet.com>
Sent: 02 February 2023 09:09
To: 'Bron Curtis' <Bron.Curtis@baberghmidsuffolk.gov.uk>
Cc: 'david.burn@midsuffolk.gov.uk' <david.burn@midsuffolk.gov.uk>;
'Jessica.Fleming@suffolk.gov.uk' <Jessica.Fleming@suffolk.gov.uk>; Mellis Parish Council
<mellisparishcouncil@gmail.com>
Subject: FW: Response of Yaxley Parish Council to Points made on the Clarification Document by Conrad Energy.

Dear Ms Curtis,

As Yaxley Parish Council has stated the responses from the applicant are insufficient and thus the Council would not expect that an evidence-based decision can be made at the current time.

The Parish Council requests, all correspondence between the applicant and Mid Suffolk District Council that is not shown on the publicly accessible planning portal including time and dates of any pre-planning meetings between the two parties and minutes of those meetings both formal and informal. If you are unable to supply these documents the Parish Council will make a Freedom of Information request.

Regards,
Philip Freeman
Clerk to Yaxley Parish Council

From: philip.c.freeman@btinternet.com <philip.c.freeman@btinternet.com>
Sent: 27 January 2023 17:17
To: david.burn@midsuffolk.gov.uk; Jessica.Fleming@suffolk.gov.uk; 'Jonathan Cooper' <Jonathan.Cooper@conradenergy.co.uk>; 'Bron Curtis' <Bron.Curtis@baberghmidsuffolk.gov.uk>; Mellis Parish Council <mellisparishcouncil@gmail.com>
Subject: Response of Yaxley Parish Council to Points made on the Clarification Document by Conrad Energy.

Dear Ms Curtis,

Yaxley Parish Council was extremely disappointed with the timing of the delivery of the response from Conrad Energy to the document asking for clarification and the delay in it being sent. The responses are very general and descriptive rather than giving good scientific quantitative data from which the Parish Council can make judgements. Despite Conrad Energy being present at three meetings of the Parish Council and a site meeting Councillors are not satisfied with the responses given to the document sent for clarification, the information in other documents and from the representatives at the meetings on 31 August 2022, 12 October 2022 and 12 January 2023. The response to the document referred to above is attached and the Parish Council has no choice but to continue to object to the planning application by Conrad Energy for a Synchronous Condenser in Yaxley.

Regards,
Philip Freeman
Clerk to Yaxley Parish Council

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Key:

Black font – original comments by Yaxley Parish Council.

Green font – response by Conrad Energy

Red font – response and comments by Yaxley Parish Council.

Clarification is sought on the following:

Yaxley Parish Council was extremely disappointed with the timing of the delivery of the response from Conrad Energy and the delay in it being sent. The responses are very general and descriptive rather than giving good scientific quantitative data from which the Parish Council can make judgements.

1. At what stage of the planning application process for the synchronous condenser (SC) was Conrad Energy aware there was a bay available at the substation?
As part of Pathfinder 3 procurement and requirements for the East of England, National Grid identified Yaxley as a substation to connect into.
 - This is not a response to the question.
 - This application is not legitimate in that the fact that Conrad Energy revealed in a public meeting on 12th January 2023 that a connection portal for a synchronous condenser had been built into the Yaxley substation at its construction stage. This was not made public when the planning application for that substation was made; nor was it revealed in the subsequent submissions of Progress Power to the Planning Inspectorate and to the Secretary of State. The fact that it was always the intention to build a synchronous condenser close to the substation should have been a material part of the planning application for and planning enquiries into the Yaxley Substation. Given that fact how can the Parish Council be sure when considering the current application that connection facilities and plans do not exist for further electrical installations adjacent to this site?
2. A graph to show the proportionality of effect of increased distance (c. 500 metres) of the SC from Yaxley sub-station against efficiency of function.
The awarded contract is based on the delivery of the specific requirements made by National Grid. Any changes to the distance impact this.
 - This is not a response to the request for clarification.
 - Why is a more distant site is not feasible? Information on the effect of increased distance of this condenser from the substation on efficiency has been completely absent despite repeated requests.
3. What would be the cost and impact on an application for siting the SC on Eye Airfield?
Please refer to our answer to Question 1 “Site Location” in the response to comments raised by Yaxley Parish Council regarding siting of the project.
Again this not a response to the question asked.
 - Reasons other than proximity to the substation as to why this green field site in an area of natural beauty and historic significance has been chosen over suitable brown field locations.
 - The size of the proposed condenser site and of its equipment housing is out of all proportion to its surroundings.
 - It would be incongruous with the nearby listed Goswold Hall and even with the landscaped, gas cooled substation on the adjacent site designed and specified in the light of extensive planning enquiries.
 - It is being proposed for a green field site in an area of natural beauty near Iron Age hedge boundaries, yet other local feasible brown field sites in existing industrial locations have not been considered.
4. Quantitative data is required on the electromagnetic field from the SC.
Please see our answer in response to Question 16
 - See under Question 16.
5. A landscaping plan as there is not one in the documents the Clerk printed from the Planning Website.
A draft landscape plan has been submitted with the planning application and included in the landscape assessment.

- This response is not acceptable. Details of landscaping arrangements have not been given to the Parish Council despite frequent requests.
 - The plan: Proposed Planting with Yaxley Substation Planting shows that the area of the condenser extends beyond Leys Lane and will impact on access to the properties at the far end of the road. How will access to the properties be guaranteed?
6. Details of other SCs in rural areas – where/name?
Please find planning references to Synchronous Condensers projects awarded in the Pathfinder 2 tender:
1. Blackhillock – Ref: 21/01777/APP, Moray Council
 2. Gretna - 20/2071/FUL, Dumfries & Galloway Council
 3. Rothiernorman - APP/2019/0982, Aberdeenshire Council
- The Parish Council accepts that Conrad Energy can only give actual examples, but the locations are all in Scotland. However, plans of two of the sites are attached and they are not comparable to the proposed site at Yaxley.
7. How will the impact of the additional impervious surfaces on water runoff be mitigated?
This has been addressed within the Flood Risk & Drainage Assessment submitted with the planning application providing information on how surface water will be managed. Mitigation measures have been incorporated into the site design.
- What are the mitigation measures?
8. What is the size of the water tank that will be used to collect runoff from the site?
As detailed in our Flood Risk & Drainage Assessment, the attenuation tank will have a maximum volume of 1457.2 m3.
- The effect of water run off on an already existing severe flooding problem in the proximity of the proposed site. The capacity of the holding tank has been given but the adequacy of this is highly questionable given recent rainfall data and overflow arrangements have not been supplied.
9. How often will the water used for the colling process have to be changed and how will any pollution from it be prevented?
The water used for cooling is held within a sealed system and is monitored as part of a preventative maintenance system. Only small volumes of water will be required.
- Does this mean that the system is never emptied or flushed through?
10. How will the safety of horse riders and walkers be guaranteed during the construction process?
We consider health and safety, and the way we manage this within the local environment very important. In this regard, we implement measures that take account of various aspects to address concerns around this and requirements would be captured within a site-specific health and safety document.
- This does not answer the question as the safety implications of the construction and operation of this site for horse riders using an adjacent ancient bridle path have not been considered.
11. How will the stability of the equipment be guaranteed when it will be running continuously with no one on site? Remote monitoring is not an adequate answer.
Routine and preventative maintenance is undertaken to monitor and upkeep the equipment.
- Again this does not answer the question.
12. If there is a major equipment failure once the site is operating, and the access roads have been reinstated as farmland, how will a replacement be delivered to the site?
The principle equipment is designed to a lifetime exceeding our proposals. Other components can be replaced with van deliveries as needed.
- Conrad Energy is asking the Parish Council to accept that unexpected equipment failures never happen. The Parish Council wants to know how this will be managed. The designers of Apollo 13 did not expect equipment to fail!
 - The information on ongoing vehicle movements is paltry it does not give the Parish Council any idea what impact this would have on Leys Lane
13. There is concern from local landowners about the impact of additional impervious services on the runoff of water following rainfall and where the water will go. There is already additional

runoff from the substation and the hard surfaces on Eye Airfield which will be worsened by the plan for a filling station, lorry park and other buildings. Flooding is already taking place:

- For every 1 mm of rainfall on 1 square metre of surface 1 litre of water will result.
- On Eye Airfield, it is claimed, there are 7 hectares of hardstanding and roof therefore for every 1 mm of rainfall on 70,000 square metres of surface 70,000 litres of water results. The substation and the SC will create more impervious surfaces.
- It is not unusual for there to be 20 mm of rainfall in one day and this would result in 1,400,000 litres of water from 70,000 square metres of surface.
- This needs to be factored into any discussion on the development on the land in the Yaxley/Thrandeston area.

How will the water runoff be managed? The drainage system locally is already inadequate as can be shown by flooding on adjacent land.

Our submitted Flood Risk and Drainage Assessment addresses flood risk and the management of water runoff. This has been reviewed by the Flood and Water Engineer for Suffolk County Council and determined to be acceptable (dated 14.12.22).

- This does not respond to the points made above. The problem of additional water runoff is not acceptable to local landowners and people living in the area.
- As in 8 above: The effect of water run off on an already existing severe flooding problem in the proximity of the proposed site. The capacity of the holding tank has been given but the adequacy of this is highly questionable given recent rainfall data and overflow arrangements have not been supplied.

14. Is the SC necessary as the Parish Council understands that this technology is to maintain a constant current, but surely this is exactly what the Drax/Progress Power station is designed to do. Their FAQ's say: "**Gas peaking plants such as Progress Power are designed specifically to provide essential back-up power generation to intermittent renewable technologies such as wind turbines and solar farms.**" "We plan to use Progress Power to plug the gaps that intermittency creates – essentially flicking the switch on and off at very short notice ". So why is additional technology required?

The technologies operate in different ways. Gas peaking plants provide flexibility to the grid network which switch-on at times when renewables cannot provide power to the grid (e.g., situations of low light-levels or wind speed.) A synchronous generator provides stability to the transmission network, managing faults and maintaining frequency whilst renewables are operating.

- In an earlier document it was stated that the synchronous condenser does not generate electricity, but it appear in the answer above that it does.

15. There will be an ongoing requirement for vehicle movements for running and maintenance. What is the proposal for access in the long term? "*The proposed synchronous condenser development would be situated immediately east of the new substation and **would share the same access from Leys Lane, thus minimising further land take. (The temporary construction route connecting the Site to the A140 will be removed at the end of the construction period)***" What happens if large equipment is needed at the Site once the temporary construction route is removed?

Our Transport Statement submitted within our planning application details vehicle movements during operation under section 5.2. The Highways Consultee for Suffolk County Council has lodged no objection but requested a Construction Management Strategy to be provided post-consent.

- As in 12 above: Conrad Energy is asking the Parish Council to accept that unexpected equipment failures never happen. The Parish Council wants to know how this will be managed. The designers of Apollo 13 did not expect equipment to fail!
- As in 12 above: The information on ongoing vehicle movements is paltry it does not give the Parish Council any idea what impact this would have on Leys Lane

16. No information is available on the electromagnetic impact on the area and how widespread this would be.

The amount of EMF (electrical magnetic field) produced by a synchronous condenser would be negligible. An EMF is produced whenever a piece of electrical or electronic equipment (i.e. TV, food mixer, computer mobile phone etc.) is used. EMFs are static electric, static magnetic

and time-varying electric, magnetic and electromagnetic (radio wave) fields with frequencies up to 300 GHz. EMFs are present in virtually all workplaces.

The Original Equipment Manufacturer ('OEM'), has confirmed that their design for the complete Synchronous Condenser System including ancillaries is compliant, in terms of electromagnetic compatibility ('EMC'), with all the required legal regulations and standards inside and outside the EU. Any specific equipment which can generate EMF is located within the buildings and is assessed in accordance with health and safety requirements, which may involve zoning. As part of this, shielding can be incorporated into the design of the building to ensure compliance with relevant standards if required.

The Control of Electronic Fields at Work Regulations 2016 transpose the requirements of European Commission Directive 2013/35/EU. This Directive lays down the minimum requirements for the protection of persons from risks to their health and safety arising, or likely to arise, from exposure to electromagnetic fields.

These Regulations, place a duty on employers to assess potential exposure EMFs and to ensure that they are acceptable. Employers as part of managing the health and safety of their business already need to control the risks in the workplace. This is a requirement under the Management of Health and Safety at Work Regulations 1999 (MHSW).

- It would have been helpful for there to be figures to show the levels and set against them the levels which are considered to be safe and this should include the quantity, area of spread and effects of the inevitable EMF.
- Data on noise from the equipment is also required.