

## **Committee Report**

**Item No: 3**

**Reference: 1574/13**

**Case Officer: Elizabeth Flood**

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**Description of Development:** Retention of wind turbine 24.8metres to tip (18.3 metres to hub) in current position (Turbine previously granted under Planning Permission ref 2777/10).

**Location:** Palgrave Community Centre, Upper Rose Lane

**Parish:** Palgrave

**Ward:** Palgrave

**Ward Member/s:** Cllr David Burn

**Site Area:** 0.01 hectares

**Conservation Area:** No

**Listed Building:** No

**Received:** 3 June 2013

**Expiry Date:** 16 August 2013

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**Application Type:** Full Planning Application

**Development Type:** Minor Development

**Environmental Impact Assessment:** Not required

**Applicant:** Palgrave and District Community Centre

**Agent:** Mr I Thorburn

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## **DOCUMENTS SUBMITTED FOR CONSIDERATION**

List of applications supporting documents and reports

- Application Form
- Letter from I Thorburn Commercial dated 29<sup>th</sup> May 2013
- Photographs
- Minutes of Site Meeting dated 28<sup>th</sup> July 2010
- Copy of letter from James Buckingham dated 15<sup>th</sup> February 2013
- Plans received 3<sup>rd</sup> June 2013
- Bat Activity Survey by Huckle Ecology
- Justification for not carrying out a Flicker Survey for small wind turbine at Palgrave Community Centre

The application, plans and documents submitted by the Applicant can be viewed online via the following link;

<https://planning.baberghmidsuffolk.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=ZZZW4MCMPM004>

Alternatively, a copy is available to view at the Mid Suffolk and Babergh District Council Offices.

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## **PART ONE – REASON FOR REFERENCE TO COMMITTEE**

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The application is referred to committee for the following reason/s:

- The application is considered to be of a significantly controversial nature to make reference to the Development Committee appropriate in this instance.

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## **PART TWO – APPLICATION BACKGROUND**

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### **History**

2. The history to this site is documented in the previous committee report which is appended to this update report. Further information is also contained within the 'Background' section of this report.

### **All Policies Identified as Relevant**

3. The local and national policies relevant to the application site are listed below and form part of the consideration of your officers. Detailed assessment of specific policies in relation to the recommendation and specific issues highlighted in this case will be carried out within the assessment:

#### **Summary of Policies**

NPPF - NATIONAL PLANNING POLICY FRAMEWORK  
CS3 - REDUCE CONTRIBUTIONS TO CLIMATE CHANGE  
CS4 - ADAPTING TO CLIMATE CHANGE  
CS5 - MID SUFFOLKS ENVIRONMENT  
FC1 - PRESUMPTION IN FAVOUR OF SUSTAINABLE DEVELOPMENT  
FC1.1 - MID SUFFOLK APPROACH TO DELIVERING SUSTAINABLE DEVELOPMENT  
CL24 - WIND TURBINES IN THE COUNTRYSIDE  
H16 - PROTECTING EXISTING RESIDENTIAL AMENITY  
CL11 - RETAINING HIGH QUALITY AGRICULTURAL LAND  
CL12 - THE EFFECTS OF SEVERANCE ON EXISTING FARMS  
E12 - GENERAL PRINCIPLES FOR LOCATION, DESIGN AND LAYOUT  
E10 - NEW INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE COUNTRYSIDE  
HB1 - PROTECTION OF HISTORIC BUILDINGS  
T10 - HIGHWAY CONSIDERATIONS IN DEVELOPMENT

- GP1 - DESIGN AND LAYOUT OF DEVELOPMENT
- HB13 - PROTECTING ANCIENT MONUMENTS
- CL8 - PROTECTING WILDLIFE HABITATS
- RT12 - FOOTPATHS AND BRIDLEWAYS

### **Details of Previous Committee / Resolutions**

4. On the 6<sup>th</sup> November 2013, the Development Committee considered this proposal and resolved to grant planning permission subject to a number of criteria being met.

A full copy of the minute of that item is contained later within the text of this report.

### **Details of member site visit**

5. Members undertook a site inspection on 2<sup>nd</sup> May 2018.

### **Details of any Pre-Application Advice**

6. There has been an ongoing dialogue between the applicant's, the planning enforcement team, Cllr Burn and the planning team. This is set out in more detail later in this report.

### **List of other relevant legislation**

7. Below are details of other legislation relevant to the proposed development.
  - Human Rights Act 1998
  - Town & Country Planning (Listed Buildings & Conservation Areas) Act 1990
  - Natural Environment and Rural Communities (NERC) Act 2006 (any rural site)
  - The Conservation of Habitats and Species Regulations 2010
  - Localism Act
  - Consideration has been given to the provisions of Section 17 of the Crime and Disorder Act, 1998, in the assessment of this application but the proposal does not raise any significant issues.

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## **PART THREE – ASSESSMENT OF APPLICATION**

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### **Summary of Consultations**

8. The original consultation responses are included within the committee report that was presented to the Development Committee in November 2013. This is appended to this report and should be read in conjunction with this update report. Since that time, further responses have been received which can be summarised as:

**Palgrave Parish Council** – Objects as contrary to the development plan, specially policies: CL24, H16, E12, GP1, CL8, and RT12.

**BMSDC Planning Enforcement** – Confirm that there is an open enforcement investigation in relation to this matter.

**BMSDC Strategic Leisure Advisor** – No comments to make.

**BMSDC Land Contamination** – No objection.

**BMSDC Heritage** - The proposal would cause no harm to a designated heritage asset because it would not detract from the setting of nearby listed buildings or from the character or appearance of the Conservation Area.

**BMSDC Ecology (Place Services)** – No objection. The submitted Bat Activity Survey (Huckle Ecology, November 2017) includes sufficient ecological information to assess the impacts of development to bat species. Bats are active on both sides of the hedgerow located to the east and north of the turbine in its current location and the operation of the turbine does not pose a significant risk to individual bats or the conservation status of local bat populations. The risks to bats from the turbine operating in its current location are not considered sufficient to require mitigation measures relating to the alteration of the turbine operation; bats have been shown to be actively flying close to and around the corner of the field both when the turbine is active and inactive. Movement of the turbine to the consented location, approx. 6m closer to the hedgerow, would decrease the distance between the turbine blades and the edge of the vegetation present in the hedgerow. This would increase the risk of displacement of bats from using these habitats and potentially increase the risk of mortality of bats due to collision with the turbine blades. The consented location would therefore require mitigation measures to reduce the risks to bats arising from the turbine being closer to the hedgerow. This should be removal of the horse chestnut tree present in the corner of the field, management of trees and hedgerow species eg. reduction in height and width of the hedgerow potentially to a maximum height of ca. 4m. or relocation of the hedge line, subject to landowner consent.

**BMSDC Landscape (Place Services)** – No comments to make.

**BMSDC Environmental Protection (Other Issues)** - In respect of noise issues my advice to the planning case officer dated 26 June 2013 remains the same, in so far as the fractional change in noise levels (plus or minus) as stated will have no perceivable impact on the noise climate and noise sensitive receptors. I can also confirm that since that date I am unaware that the Council has received any further noise complaints.

In respect of light issues and shadow flicker, government guidance at that time was Planning for Renewable Energy, A Companion Guide to PPS22, which advised that shadow flicker has only been proven to occur within a distance of ten times the rotor blade length (for this turbine, 120 metres) and within 130 degrees either side of north relative to the turbine position.

All the premises in Lows Lanes and Upper Rose Lane are either outside the 120-metre radius or 130-degree arc, with one exception in Common Hill. This premise is within the arc and at 117 meters, is within the radius, but does not appear to have any windows to habitable rooms directly facing the turbine. Neither has the Environmental Protection team received any complaints from this property regarding light issues.

I note the additional information supplied by the Applicant dated January 2018, “Justification for not carrying out a Flicker Survey for small wind turbine....”. The information, in my opinion, is reasonable and acceptable. The likelihood of flicker occurring within the parameters above will be rare and if they are perceived to occur, short-lived so as not to have any significant adverse impact. It is possible that some residents witness flashes of reflected light from the turbine, which can be visible for some distance, but this is not the same thing as shadow flicker and the reflections have already been minimised in this case by the choice of a light-coloured turbine blade.

The current technical advice is that a shadow flicker assessment is not justified for this small sized turbine – either in its current location or the approved location.

## **Representations**

9. The original representations received on this proposal are set out in the committee report that was presented to the Development Committee in November 2013. This is appended to this report and should be read in conjunction with this update report. Since that time, further representations have been received which can be summarised as;
- I think that there have been worries about the effects of moving the turbine nearer to the hedge. I am of the opinion that the nearer, the more disturbance there is likely to be.
  - In its present position, I have observed plenty of birds etc. in the numbers one would expect on the edge of a village. I have also seen bats, when taking the dogs for their dusk walk.
  - Look at how far away the houses are from the turbine, and consider for how long, on one of the few truly sunny days, with the sun at the right elevation and direction to throw a shadow on a window, that such a condition will exist to be relevant. No more than a few minutes. There is no requirement for a person to stand and stare.
  - Considering the great benefits which have already accrued to the community, and the cost of any moving operations, what on earth can the argument be that makes it so imperative to move the turbine a mere 6M, in a field hundreds of metres long.
  - Surely, the Council is above the dog in a manger attitude of 'I said it, so it must be', especially as the original proposed location was so poorly specified.
  - I urge the Council to save everybody's time and money, and draw a line under this storm in a teacup, and take no further action.
  - Is disappointed not to have been informed of the recent activity on this case.
  - Cannot see how the author of the bat survey reached their conclusions given Natural England and Suffolk Biodiversity Partnership advice on bats and wind turbines.
  - It is incredible to believe that there is a low risk of the criminal act of killing a bat when the blades are less than 20m from the hedgerow and there is significant bat activity.
  - There have been various attempts by the PDCC or people who are not inconvenienced by the flicker to avoid providing the shadow flicker survey.
  - Suspects that this is due to the clear evidence of a problem for houses along Lows Lane.
  - Attaches some of the letters of complaint previously submitted, and as far as they are aware the sun still rises in the same places with respect to those houses despite what the PDCC and others might think.
  - Refers to evidence gathered by camera from Goulds Close.
  - Questions why the enforcement notice has not been enforced.
  - Please do inform me of any attempts to push the application through on the quiet.
  - Asks again that the material evidence should be put in front of councillors in order to fully inform them of the situation.
  - Reproduces a note produced in 2013 by the Turbine Working Party – (*Officers Comment – this is considered in more detail in the text of this report*).
  - They are in the unusual position of having 20:20 hindsight with respect to the problems the turbine has caused here.
  - If the document is not disclosed then there may not be full disclosure, and I want there to be transparency for those making a decision (*Officer's Comment – The submission has been treated as any other representation on a planning application, has been available to view on the website and is part of the bundle of documents associated with this committee item. It is unclear why the objector considers this would not be revealed to any parties*).

## **The Site and Surroundings**

10. The playing field forms part of the eastern edge of Palgrave. To the north and east are fields that in part form part of a Special Landscape Area. To the north the land drops away from the playing fields to form part of a shallow valley and far north is the town of Diss. North west there are out shots of the built up area of Palgrave, mostly screened by trees. To the south is a mainly linear pattern of residential development with gardens backing onto the playing field, with the exception of a recent affordable home development. West is the Community centre, parking and access. Beyond this is an industrial estate. The playing field is flat and at the same level as the development south and west.
11. The siting of the wind turbine is in the north corner of the playing field but 6 metres to the south of the position approved under planning application 2777/10. The playing field itself is designated as a visually important open space (VIOS) and is subject to policy SB3 of the Local Plan. The field is enclosed by mature trees and hedges with some gaps and areas in need of restoring, but overall represents a reasonable buffer between the playing field and agricultural fields beyond. Additional planting has been undertaken in accordance with the conditions set out in application no. 2777/10 which, once established, will remove the gaps.
12. The site is outside the Conservation Area that mainly covers the core of the village and is also not within the Special Landscape Area.

## **The Proposal**

13. The proposal is for the retention of a wind turbine on a tube mast, with a hub height of 18.3 metres and 24.8 metres to the tip when at its highest point. The turbine is located within the north corner of the playing field, 6 metres to the south of the approved site location.
14. This is the second time this application has been referred to the Development Committee. The background to this is set out later in this report.

## **Main Considerations**

15. The following are identified as the main considerations in assessing this application.

## **Background**

16. The history to this matter is set out in the original committee report, which is appended to this report as Appendix 1.
17. Following the original grant of planning permission for the turbine in 2010, this planning application was submitted for the retention of the turbine as the turbine was not erected in the approved location.
18. This was referred to the Development Committee, who considered this application at their meeting on 6<sup>th</sup> November 2013. As detailed above, the report to that committee is attached as Appendix 1 and should be read in conjunction with this report as it contains a full breakdown of the responses received to that proposal.

19. The minutes for that Development Committee meeting on 6<sup>th</sup> November 2013 record that;

*“Valerie Pudney, Parish Council, advised the Committee that in previous public meetings residents had opposed the development and were disappointed that permission was granted to install the wind turbine. Shortly after the turbine being installed complaints were made to the environmental health team about the noise and flicker of the turbine. The parish council felt that the turbine inhibited residents enjoyment of the environment and was affecting the health and wellbeing of nearby residents.*

*Neil Weston, Objector, spoke to the committee about the large number of complaints that had been made regarding the noise and visual flicker from the turbine from properties surrounding the field. It was felt that the turbine had caused loss of amenity to neighbouring properties and it should be moved to a new location which was expected to be the subject of a new planning application and would not cause loss of amenity to any property. Concern was also expressed regarding the adverse impact on community cohesion which had been cause by the turbine.*

*John Kilgannon, Supporter, advised the Committee that the Community Centre apologised for the turbine being put up in the wrong place and that this was an error by the contractor installing the turbine. The money that the turbine had produced had gone to improve the access road and changing rooms within the community centre. He was aware that not all residents were happy with the turbine but said that it was not practical to move it a few metres at the present time when the funds could be used to relocate it to another area if a future application was approved.*

*Ian Thorburn, Applicant, advised that if this application was not approved then it would leave the Community Centre in a possible position of breaching the law and asked that the Committee take this into consideration when deciding this matter. The original consent would expire on 31 December 2013 although this could easily be met by moving the turbine 6 metres but this would not resolve the issue of neighbour complaints. He also advised that the Suffolk Wildlife Trust had said that no bat survey was required as there was not an issue in the area.*

*Councillor D M Burn, Ward Member, advised that since the installation of the turbine there had been considerable unrest from the neighbouring residents and that there had been a continuous stream of complaints made. He spoke on the effects that the flicker from the turbine had on neighbouring properties and showed the committee a diagram of the shadow on level ground and falling ground. Councillor Burn spoke about a working party that had been set up to look at relocating the turbine and confirmed that an application would be brought to a later committee.*

*Members expressed their concerns around the shadowing and flicker that the turbine was producing and asked if a condition could be included to ensure that everything was being done to reduce this.*

*By unanimous vote*

**Decision –**

*That permission be delegated to the Corporate Manager Development Management to grant permission subject to the receipt of information and evidence to demonstrate to his satisfaction that the turbine will not give risk of an offence to bat species and that full permission be granted.*

- 1) Planning Permission to be temporary and for 2 year duration after which removal of turbine and reinstatement of the land to be required.*

- 2) *Scheme to reduce/mitigate the effects of shadowing and shadow flicker on local amenity shall be submitted to and agreed in writing by the LPA before the turbine is operated as permitted and shall thereafter be adhered to at all times the turbine is in operation.*
- 3) *That such further information be provided to the Council by 30 June 2014 or if such further information reveals the risk of an offence to protected species that the Corporate Manager Development Management be authorised to refuse Planning Permission on appropriate grounds”.*

20. As can be seen, this resolution required a number of matters to be addressed by the applicants and also required that the permission be limited to two years, after which time the turbine should be removed and the land reinstated. The required bat survey and shadow flicker survey were not forthcoming and, instead, a working party was formed to look at an alternative siting for the turbine to relocate it from this site in its entirety. This culminated in an application for the turbine in November 2013 (reference 3435/13), where a decision to approve the turbine was issued on 2nd October 2014. This permission was accompanied by a Section 106 agreement which required a number of actions to be taken in respect of the existing turbine. However, this site ultimately did not come forward due to issues with the farmer/landowner and is now not a viable option for the resiting of the turbine. As such, that permission has lapsed.
21. As such, the Planning Enforcement Team issued an enforcement notice on 24 August 2015. This notice required that the wind turbine be decommissioned, dismantled and removed from the land, and provided a period of 18 months to allow this to occur (the length of this period reflected the ongoing discussions (at that time) with the adjacent landowner to try and relocate the turbine, with a view to allowing those discussions to resolve this issue through its relocation to the alternative site off the playing field).
22. The enforcement notice was appealed by the applicant. The Planning Inspector, in dismissing the appeal and upholding the notice, took account of the main issues (shadow flicker and bats) and found;

*“Issue 1: Shadow Flicker*

*The Council’s submissions appear to suggest it is unlikely that any residents in the vicinity of the wind turbine would be affected by shadow flicker, other than the occupiers of No’s 9 and 10 Common Hill. I find this surprising, as the appeal documents suggest these properties are roughly 117m to the southeast of the turbine. In any event, the Council’s stance is the appellant should provide details concerning the impact of shadow flicker and, if necessary, any mitigation that might be required.*

*The appellant contends that the Council’s request for a shadow flicker impact assessment is unreasonable having regard to the size of the turbine, its distance from the properties to the east and west and the lack of hard evidence that there is a problem.*

*However, it seems to me there is no ‘hard evidence’ to suggest there is not a problem albeit the magnitude of the problem is a matter of some dispute. The turbine has operated for about 4 years. Shadow flicker is a particular concern raised by some local residents, including the occupiers of properties in Lows Lane and Goulds Close to the northwest.*

*The Planning Practice Guidance suite (PPG)6 gives guidance on development involving renewable and low carbon energy, including wind turbines. The PPG indicates that although problems caused by shadow flicker are rare, applicants should provide an analysis which quantifies the impact. An interested person (who appears supportive of the scheme) has addressed the issue in some detail and comments ‘there is no very large problem that a*



reasonable approach can't surmount'. Nevertheless, the appellant has failed to provide a shadow flicker impact assessment or to explore what mitigation measures might be available to address the concerns of residents. Concerns have also been raised about the reflection of rotating blades. The PPG acknowledges that flashes of reflected light from turbines can be visible for some distance. However, the appellant does not appear to have addressed the extent to which this concern can be ameliorated.

Turning to the issue of noise, this is not one of the concerns identified in the Council's reasons for issuing the enforcement notice. Nonetheless, it is a particular concern raised by some local residents. The residents' submissions describe the noise from the turbine in various ways, including 'a swishing noise and metallic hum', a 'constant whine' and a 'whirring noise'. Some residents say the noise is not really loud, however, it is irritating. Other residents appear to suggest that it is audible 110m away through double glazing.

Noise complaints were evidently received by the Council shortly after the wind turbine was installed, which triggered investigations by the Council's Environmental Protection Team. According to the appellant, faulty components of the turbine were replaced and additional noise insulation was provided to the tower. The Council appears to have subsequently concluded that the noise from the turbine was within acceptable guidelines.

The Council's position appears to be summarised in the Planning Officer's report concerning the retrospective planning application. According to this report although the current installation has resulted in fractional change in noise levels at Upper Rose Lane and Lows Lane compared to the approved location (+ 0.6dB and - 0.4dB respectively), it would not have any perceivable impact upon the noise climate. The Council's assessment has evidently relied on the relevant government guidance for wind turbines ('The Assessment and Rating of Noise from Wind Farms' - referred to as ETSU-R-97).

The Council's approach appears to accord with the PPG, which requires local authorities to use ETSU-R-97 in wind energy developments. Compliance with these standards is considered to offer a reasonable degree of protection to wind farm neighbours without placing unreasonable restrictions upon wind farm development or adding unduly to the financial and administrative burdens upon wind farm developers or local authorities.

On the evidence before me, I conclude the noise from the wind turbine would not harm the living conditions of local residents to an unreasonable degree. However, in the absence of a shadow flicker impact assessment or any evidence that consideration has been given to ameliorating reflected light from the turbine, I conclude the appellant has failed to demonstrate that the planning impacts of the development have been fully addressed.

In this respect, it conflicts with the relevant development plan policies cited by the Council, including 'saved' policies H16 and CL24 of the Local Plan<sup>8</sup>, insofar as they seek to protect residential areas and to ensure that wind turbines do not result in a loss of amenity.

## *Issue 2: Implications for Wildlife*

The Council's stance is the blade tip of the turbine is less than 50m from a hedgerow and trees along the site boundary which may be used by bats, as identified in the publication: 'Recommended approach for bats and small wind turbines in Suffolk' (published in 2012 by the Suffolk Biodiversity Partnership Planning Support Group). This advises that if the blade tip is less than 50m from a habitat feature, then an evaluation of the impacts of the wind turbine is required, including cumulative effects. The status of the document is unclear; it does not appear to have been adopted as a Supplementary Planning Document. However, it appears to draw on published advice, including Natural England Technical Information Note TIN051 and I give it some weight.

*According to the appellant the operation of the turbine over the last 4 years has not shown any evidence of injuries or fatalities to bats. It is alleged that if a bat survey was now carried out, it would serve to support the view that the bat population is not affected as it exists alongside an operational turbine. However, at best, this is uninformed speculation.*

*In the context of the ecological risk of wind turbines, the PPG points out there is evidence to suggest that there is a risk of collision between moving turbine blades and bats. Other risks can include the disturbance and displacement of bats and the drop in air pressure close to the blades - this can cause barotrauma in bats (lung expansion) which can be fatal. Whilst the risk might often be low, it is greater in some situations, for example, in close proximity to habitats used by bats. The PPG states the impact should therefore be assessed and indicates that advice on assessing risks is available from Natural England.*

*However, in this instance there does not appear to have been any robust or expert evaluation of the potential risks to bats. As matters stand, it is not possible to ascertain the impact of this wind turbine on a protected species which might be present on or near the site. This factor alone constitutes a weighty objection to the development. In this respect, I find that it conflicts with 'saved' Local Plan policy CL8, insofar as it seeks to resist development likely to result in the loss or significant alteration of important habitats, or which might pose a threat to rare or vulnerable species, especially those protected by law".*

23. As set out earlier in this report, the Inspector determined to dismiss the appeal, and a summary of his conclusion is included below.

*"I conclude the appellant has failed to demonstrate the impact of this turbine can be made acceptable. With the precautionary principle in mind, there is a clear risk the adverse impacts of the development would significantly and demonstrably outweigh the benefits*

*Despite the age of the planning policies on which the Council relies, they broadly reflect the objectives of the NPPF. Paragraph 14 of the NPPF sets out the presumption in favour of sustainable development. The economic, social and environmental dimensions of sustainable development should be addressed. Paragraph 9 also makes it clear that pursuing sustainable development includes seeking positive improvements in the built and natural environment, as well as improving people's quality of life. I conclude the wind energy development attacked by the notice conflicts with these objectives".*

24. Subsequently, following further communication with the PCCC, a meeting was held with Officers from the Planning Department, Legal Team, Environmental Protection Team and the PCCC to look to identify a way forward. Within this meeting, reference was made to the previous committee resolution (to retain the turbine in its current position) and that it remained open to the applicants to submit the requisite bat survey and shadow flicker survey and have that application determined accordingly.
25. As such, the applicants determined to engage Huckle Ecology to conduct the requisite bat survey and this was submitted on 10<sup>th</sup> January 2018. The findings of this survey and the material planning considerations resulting from those findings are considered in detail below. The applicants, in conjunction with the Corporate Manager – Sustainable Environment, also discussed the requirement for a shadow flicker survey and the results of those discussions are also set out in detail below.
26. Furthermore, whilst this did not require action on the applicant's part specifically, the resolution of the Development Committee that this should be a temporary permission is also considered in detail later in this report.

27. As such, attention is now turned to these three areas of detail.

### Bat Survey

28. As detailed above, the Development Committee previously resolved that a bat survey should be provided, and this has now been submitted following discussions with the applicant.
29. The bat survey found that bats are present in the locality of the turbine. Its conclusion identifies that data from the hedge detectors that were installed show that bats use both sides of the hedge and do not appear to be displaced from the area by the presence of the turbine. This assertion is supported by the data from remote detectors located on the turbine itself, which showed a significantly greater level of activity to the north of the turbine, where bat activity in the northeast corner of the field was detected. These data suggest that bats are not displaced by the presence of the turbine with comparable levels of activity present to that recorded within the hedgerow itself. The lower level of activity recorded by the south-facing microphone is consistent with more open habitats associated with the central area of the playing field.
30. The report goes on to identify that the data collected and analysed indicates that the operation of the turbine in its existing location does not present a significant risk to bats. The bats observed during the transects were flying at relatively low heights, with most flights below 4m, and well below the minimum blade height of approx. 12m, and it may be that habituation to the presence of the turbine has occurred and that bats are able to use the hedge line for foraging and commuting.
31. The majority of bats observed were of common and soprano pipistrelle and other species were not recorded in sufficient abundance to make conclusions regarding the risk to these species. Noctule bats were regularly recorded, particularly in July and August and in the more open areas of the field – a single noctule bat was observed commuting across the southern half of the playing field away approx. 100m to the south of the turbine.
32. These conclusions are sufficient for Officers to conclude that the turbine does not give rise to a significant risk to bats which, in any event, appear to have become habituated to the turbine in its current location.
33. Notwithstanding this, objectors to the proposal consider that the turbine's location would bring about harm to bats due to its proximity to the hedgerow. They identify that the location of the turbine conflicts with the advice contained within the Natural England Technical Information Note entitled "Bats and Onshore Wind Turbines". This information is clearly relevant and was taken by the Inspector that considered the enforcement notice appeal to be material to that appeal and was given "some weight".
34. Whilst Officer's acknowledge that there is a belief from the objectors that their objections are not being listened to, this is not the case. The evidence submitted, whilst relevant and being given some weight, needs to be taken in the context of it being advisory guidance for turbines that are of a scale larger than this one, and the bat survey which has been carried out specific to this turbine and the bats that utilise the adjacent hedgerow/land. The objectors seek to cast doubt on the findings of that report but have not provided evidence that directly contradicts the evidence produced. Whilst the turbine does not comply with the guidance provided by Natural England in terms of its proximity to the hedgerow in particular, it has been evidenced that the turbine is not giving rise to harm to bats such that would warrant refusal and, on balance, your Officers do not consider that there is evidenced reasons why permission should be refused on this basis.

35. Furthermore, the report also considered the potential impacts on bats from relocating the turbine to the originally approved location. It states;

*“The risk associated with relocating the turbine to the consented location are associated with the movement of the turbine approx. 6m towards the north-east corner of the field. At this point, the hedgerow has been widened to create a thicker strip of vegetation around the corner, with gaps in the hedgerow planted up to comply with a planning condition attached to the original planning permission for the turbine. At this point, there is also a semi-mature horse chestnut tree present in the corner of the playing field, the trunk of which is on the edge of the planted corner and the crown of which extends approximately 5m into the playing field and to a distance that is currently approximately 12m from the turbine base”.*

*While it is evident from the surveys undertaken and the evaluation provided in this report, that the local bat population are currently co-existing with the turbine in its current position, were it to be moved closer to the hedge line, it is likely that there would be increased risk of the turbine affecting local bats. Although an increased risk of mortality cannot be ruled out, it is more likely that such effects would be characterised by an increased risk of displacement of bats from using the hedgerow around the north and east side of the playing field. The effect of such displacement may not actually affect local populations significantly, and speculatively may be expressed by bats preferring to use the far side of the hedgerow away from the turbine, or alternatively commute around the south and west side of the playing field; however, it is likely that the relocation of the turbine would result in a minor adverse effect on the habitats used by bats”.*

36. Therefore, whilst it has not been found that relocation may result in an increased risk of mortality, the Ecologist has found that there would be likely to be a minor adverse effect on the habitat used by bats.

37. This report was the subject of a consultation with the Council’s Ecology Consultant, who raised no objection and found that;

*“Bats are active on both sides of the hedgerow located to the east and north of the turbine in its current location and the operation of the turbine does not pose a significant risk to individual bats or the conservation status of local bat populations. The risks to bats from the turbine operating in its current location are not considered sufficient to require mitigation measures relating to the alteration of the turbine operation; bats have been shown to be actively flying close to and around the corner of the field both when the turbine is active and inactive.*

*Movement of the turbine to the consented location, approx. 6m closer to the hedgerow, would decrease the distance between the turbine blades and the edge of the vegetation present in the hedgerow. This would increase the risk of displacement of bats from using these habitats and potentially increase the risk of mortality of bats due to collision with the turbine blades. The consented location would therefore require mitigation measures to reduce the risks to bats arising from the turbine being closer to the hedgerow. This should be removal of the horse chestnut tree present in the corner of the field, management of trees and hedgerow species eg reduction in height and width of the hedgerow potentially to a maximum height of ca. 4m. or relocation of the hedge line, subject to landowner consent”.*

38. For these reasons, the applicant is considered to have met the (previous) requirement of the Development Committee and has demonstrated that the current location of the turbine would not result in significant impacts on bats such that would warrant a refusal of this application. Indeed, it has been found that the originally approved location would be likely to have a more detrimental

impact, albeit that Officers acknowledge that it is likely that the same habituation would have arisen had the turbine been located in the correct location to start with.

39. In this regard, the proposal is considered to result in no greater impacts than the approved location and is therefore in accordance with the provisions of policies CS5 and CL8.

#### Shadow Flicker

40. A shadow flicker survey has not been submitted to support the application, and the applicant has submitted a document setting out their reasoning why they do not consider a shadow flicker assessment is necessary or justified. This identifies that;

*“In considering the case of whether to carry out a Flicker Survey or not, it should be noted that in the Mid Suffolk Council Appeal Statement (APP/W3520/C/15/3134972) Sections 7 and 8 it was recorded that members of the committee acknowledged that they had viewed YouTube footage of the “flicker” and were advised by Phillip Isbell (Corporate Manager – Development Management) that they should not take this into account when considering the application and that Officer Recommendation as detailed in the Committee Agenda does not include either bat or flicker surveys as conditions.*

*The original application (2777/10), was approved without conditions either for a bat or flicker survey. It was unclear why the Planning Committee imposed the additional conditions on the 2013 Application. We would also like to draw attention to the Department of Energy and Climate Change research study, Shadow Flicker Evidence Base (2011) in particular:*

- *Shadow flicker only occurs inside buildings where the flicker appears through a narrow window opening;*
  - *Only properties within 130 degrees either side of north of the turbines can be affected at UK latitudes;*
  - *Shadow flicker has been proven to occur only within ten rotor diameters of a turbine position*
- Potential “Flicker” Effect*

*The wind turbine located in the Northern corner of the Community Centre Fields is a small scale turbine and should not be compared to the massive industrial turbines situated nearby on Eye Airfield. The turbine is 24.8 metres to the nacelle and the blade is 12 metres long. Any shadows cast by the sun falling on the blades of the turbine are therefore small and short lived in any one position on the ground. Whilst there have been historic claims of properties affected by “Flicker “ from the turbine, the reality is that only a few properties could be affected during a time period of shortly after sunrise on Lows Lane and shortly before sunset on Common Hill.*

*For Flicker to occur, a combination of uninterrupted sunlight must exist, in conjunction with a wind speed above 3.5 metres per second (the start up windspeed). Allowance has to be made for windless days and cloud obstruction. Once operating, the blades turn at a constant 58 rpm. In addition, any impacted property must be in a direct line of the turbine and sun, and be within the quadrants and distances listed above. For maximum breadth of blade shadow the wind direction would need to be ESE or WNW, the prevailing wind is from the SW.*

*In summary; any duration of any flicker would be very short, and potentially affect a very limited number of properties on very rare occasions, due to the necessity of all the criteria occurring simultaneously.*

#### Historic Reports of “Flicker”

*In three years of occupation the residents of 9 Common Hill only experienced shadow flicker on two occasions for 3-4 minutes, in the late evening in May and June. When it occurred the experience lasted just a few minutes as the sun was quickly setting in the sky, and the shadows moved across the field. The experience was described as being similar to that on a train when sat in the sun and the rays are interrupted by trees adjacent to the track, but without the strobe effect the speed of the train causes, and of much shorter duration.*

*It is our understanding that since the interviews carried out in 2013 for the Palgrave Wind Turbine Working Party, where 7 of the properties reported having some experience of reflection or shadow flicker, there have been no further reports or complaints of flicker. And these 2013 claims were not challenged and there was no supporting evidence.*

### Assessment of Nuisance

*In assessing possible nuisance our understanding is that officers must assess the severity of the experience, the duration of the experience, the frequency of occurrence and if appropriate the practicalities and cost of remedial measures. As discussed above, we believe that any flicker effect, should it occur, is not severe, is of a very small duration and occurs very infrequently and only under "ideal" weather and wind conditions coinciding with a brief time window at the beginning and end of the day. Our experience has shown that whilst those people who have objected to the siting of the turbine may make claims of being affected by "Flicker" these claims have remained unsubstantiated and as stated above, we know of no claims since 2013.*

*Ideally, as per documented industry mitigation measures, we would try and anticipate the few occasions when flicker might affect any property, and take preventative action, such as shutting down. However, we do not have the facility to turn the turbine off at any set times. If the brake was applied when the blade was in motion it is likely to activate the emergency braking system and activate the blade tip, necessitating an expensive call out from our service engineers in Devon, to restart.*

### Conclusion

*In the light of the above and the supporting documentation indicating the unlikelihood of flicker effect being a problem we do not see any justification for expending more of our limited funds undertaking a survey, when for six years the turbine has operated with no substantiated complaints of flicker and no complaints at all since 2013".*

41. In response, objectors have provided a document which sets out the following;

*"1) Turbine Evidence collated from 14 properties in Lows Lane and Upper Rose Lane. All these properties are DIRECTLY impacted by the turbine. These properties are between 110 and 160 meters from the turbine.*

*2) All of them experience noise problems and 9 experience flicker and visual irritation*

*3) A major problem is that no-one will believe these residents – not the PDCC, not the MSDC Officers, and many Palgrave residents who live outside the impact cannot understand and often do not wish to understand those affected.*

*4). In July 2010 Officers from the MSDC, including Planning officers, agreed with PDCC reps on the siting of the turbine. They failed to conduct an impact assessment of the turbine. Consequently committee members were misinformed about the likely impact.*

5) Even now, MSDC Officers are still unwilling to conduct an impact assessment and consequently exacerbate community cohesion in Palgrave because the justified grievances of a minority of residents are systematically ignored.

### Noise Impact

- 140 meters: a swishing noise and a metallic hum that fills up the whole of the garden. Can't sit in garden quietly any more, after a bit have to go inside to get away from the background noise. Also at night makes a squeaky noise like an old washing machine
- 160 meters – a metallic noise, like tinnitus in your ears all the time. Can hear on still nights even with windows shut. Sometimes makes a whining noise. Would call it irritating even though it's not loud – a constant distant noise that never stops
- 160 meters – when you arrive home late the noise hits you as soon as you get out of your car • Worse time for noise is early in the morning
- A house at 110 meters reported the noise is audible through double glazing
- "Noise not really loud but obtrusive like an annoying wasp"
- "It has spoiled the enjoyment of my garden 100%" (resident, 130 meters way)
- Not so noticeable in the day but more noticeable in evenings, mid mornings and weekends, especially Sat afternoon and Sundays when the traffic is less.
- Occupant of bedroom at back of house cannot sleep with window open (110 meters away)

### Visual Impact

- 140 meters - Clearly visible from kitchen sink. A continuous visual irritation, like a television flicker, worse in winter when there is less foliage to screen it
- 160 meters – shadow flicker noticeable in autumn and spring mornings
- Reflection of rotating blades seen in houses opposite
- Can no longer enjoy sitting in conservatory (this property only 110 meters away)
- Flicker effect in kitchen sometimes really strong (118 meters away)
- When sitting in front room are irritated by reflection of turbine in windows opposite the house.
- When eating at table there is the effect of constant movement from window".

42. Both this information and the response from the applicant have been considered by the Council's Environmental Protection (EP) Team. Their response is set out below;

*"In respect of noise issues my advice to the planning case officer dated 26 June 2013 remains the same, in so far as the fractional change in noise levels (plus or minus) as stated will have no perceivable impact on the noise climate and noise sensitive receptors. I can also confirm that since that date I am unaware that the Council has received any further noise complaints.*

*In respect of light issues and shadow flicker, government guidance at that time was Planning for Renewable Energy, A Companion Guide to PPS22, which advised that shadow flicker has only been proven to occur within a distance of ten times the rotor blade length (for this turbine, 120 metres) and within 130 degrees either side of north relative to the turbine position.*

*All the premises in Lows Lanes and Upper Rose Lane are either outside the 120-metre radius or 130-degree arc, with one exception in Common Hill. This premise is within the arc and at 117 meters, is within the radius, but does not appear to have any windows to habitable rooms directly facing the turbine. Neither has the Environmental Protection team received any complaints from this property regarding light issues.*

*I note the additional information supplied by the Applicant dated January 2018, "Justification for not carrying out a Flicker Survey for small wind turbine....". The information, in my opinion, is*

*reasonable and acceptable. The likelihood of flicker occurring within the parameters above will be rare and if they are perceived to occur, short-lived so as not to have any significant adverse impact. It is possible that some residents witness flashes of reflected light from the turbine, which can be visible for some distance, but this is not the same thing as shadow flicker and the reflections have already been minimised in this case by the choice of a light-coloured turbine blade.*

*The current technical advice is that a shadow flicker assessment is not justified for this small sized turbine – either in its current location or the approved location”.*

43. As set out earlier, this matter (and that of noise) was also considered by the Planning Inspector who considered the appeal against the enforcement notice. He found that;

*“On the evidence before me, I conclude the noise from the wind turbine would not harm the living conditions of local residents to an unreasonable degree. However, in the absence of a shadow flicker impact assessment or any evidence that consideration has been given to ameliorating reflected light from the turbine, I conclude the appellant has failed to demonstrate that the planning impacts of the development have been fully addressed.*

*In this respect, it conflicts with the relevant development plan policies cited by the Council, including ‘saved’ policies H16 and CL24 of the Local Plan8, insofar as they seek to protect residential areas and to ensure that wind turbines do not result in a loss of amenity”.*

44. The Inspector’s decision is a material consideration in the determination of this application, and it is apparent that the most favourable outcome here would have been the submission of a shadow flicker survey that would have provided evidence as to the extent of any shadow that does/does not occur. However, the applicant has set out their reasons why they consider this to be unnecessary, which is set against the information provided by objectors as to the impacts of the turbine. This has been assessed by the Council’s EP Team who have determined that such a survey is not required in this instance. What follows is, therefore, an assessment of the resulting issues raised by these parties.
45. It is not contested that issues have been raised by third parties that they are experiencing shadow flicker. Application of the guidance set out for shadow flicker (PPS22) highlights that what is being experienced by these properties is unlikely to be shadow flicker, and the EP Officer suggests that what is being experienced is not shadow flicker but a differing issue related to reflection of light off the turbine blades. However, this experience is/was giving rise to an affect on local residents such that they had reason to raise concerns as to the impacts on their residential amenity, irrespective of whether this was/was not shadow flicker itself.
46. Set against this is the absence of any complaints regarding shadow flicker from the one property that falls within the defined area where shadow flicker could occur (according to the guidance in PPS22). Furthermore, the relocation of the turbine would not take the turbine out of the area where flicker could (according to the guidance) occur to this property, thereby meaning that relocation of the turbine to the approved location is unlikely, on the balance of probabilities, to improve this situation and the experiences of other residents.
47. The relocation of the turbine to the approved location is considered to be a valid fallback position, irrespective of the position taken by the Planning Inspector who was not provided with all of the evidence pertaining to this matter.
48. Therefore, it is the view of your Officers that the absence of a shadow flicker survey is not a defensible reason for refusal in this case. Whilst it may be desirable, there is no statutory provision upon which such a request would be justified, albeit that the Council’s policies H16 and



CL24 are referenced by the Planning Inspector in his conclusions on this matter. In particular, policy H16 relates to 'residential amenity' but is set within the Housing section of the Local Plan and follows preceding text that discusses "*Making sure house extensions pay proper attention to neighbours' amenity*". Therefore, it is considered that requesting a shadow flicker survey on the basis of policy H16 would be tenuous and unlikely to withstand challenge on appeal.

#### Temporary Permission

49. The National Planning Practice Guidance considers the situation when conditions can be used to grant planning permission for a use for a temporary period only. It should be noted that the guidance refers to limitations upon 'use' for a temporary period, not on physical structures/buildings.
50. The guidance advises that "*Under section 72 of the Town and Country Planning Act 1990 the local planning authority may grant planning permission for a specified temporary period only. A condition limiting use to a temporary period only where the proposed development complies with the development plan, or where material considerations indicate otherwise that planning permission should be granted, will rarely pass the test of necessity.*

*Circumstances where a temporary permission may be appropriate include where a trial run is needed in order to assess the effect of the development on the area or where it is expected that the planning circumstances will change in a particular way at the end of that period.*

*A temporary planning permission may also be appropriate on vacant land/buildings to enable use for a temporary period prior to any longer term regeneration plans coming forward (a meanwhile use) or more generally to encourage empty property to be brought back into use. This can benefit an area by increasing activity".*

51. It is unclear how the issuing of a temporary permission in this case would meet the relevant tests, nor what it is that would be achieved by the grant of a temporary permission. The turbine has been in situ for a number of years and does not result in harm to bats, and the Council is not receiving complaints regarding shadow flicker that require monitoring or mitigation at this time.
52. In this regard, the issuing of a temporary permission is considered to be unnecessary and unjustified, and would fail to meet the conditions tests set out in the NPPF.

#### The Enforcement Notice

53. As detailed above, there is an extant enforcement notice in place requiring the decommissioning, dismantling and removal of the wind turbine (but not its services and foundations) from the land. As the turbine remains in situ contrary to this enforcement notice, it is open to the Council (subject to such actions being in the public interest) to seek a prosecution for the failure to comply with this notice.
54. However, it is your Officers opinion that such actions are inappropriate at this time whilst there remains an undetermined application for the retention of the turbine in that location. The enforcement notice was issued, primarily, to ensure that the turbine did not become lawful by virtue of the passage of time, thereby effectively 'stopping the clock' to allow both the exploration of alternative sites (which has now been exhausted) and subsequently the determination of this application. It is at the Council's discretion to extend the time limits prescribed by the enforcement notice, and this is considered reasonable given the circumstances which exist here.

55. For these reasons, dependent upon the outcome of this application, the position with regards to the enforcement notice can be revisited and remains in effect should Members determine that this application should be refused.

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## **PART FOUR – CONCLUSION**

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### **Planning Balance**

56. This application has previously been considered by the Development Committee, who resolved that planning permission could be granted subject to a number of criteria being met (including a temporary permission, bat survey and shadow flicker assessment). Subsequent to that decision, the planning history of the site has evolved to include the issuing of an enforcement notice, a dismissed appeal against that notice, the submission of a bat survey and a requirement to reconsider this application given the change in circumstances.
57. Paragraph 97 of the NPPF indicates that in order to help increase the use and supply of renewable and low carbon energy, local planning authorities should recognise the responsibility on all communities to contribute to energy generation from renewable or low carbon sources. Paragraph 98 indicates that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions; proposals should be approved, if their impacts can be made acceptable. However, the encouragement given to the provision of 'green energy' does not automatically override the concern to protect the environment and other planning objectives, including the protection of wildlife.
58. Despite the age of the planning policies which form the principle policies against which this application should be determined, they broadly reflect the objectives of the NPPF. Paragraph 14 of the NPPF sets out the presumption in favour of sustainable development. The economic, social and environmental dimensions of sustainable development should be addressed. Paragraph 9 also makes it clear that pursuing sustainable development includes seeking positive improvements in the built and natural environment, as well as improving people's quality of life.
59. There remain vehement objections to this development from third parties on a number of grounds. Officers have, therefore, sought to balance the impacts of the development against the benefits, considering the 'tilted balance' produced by the presumption in favour of sustainable development. Whilst it is considered that the turbine does result in some impacts, these are not considered to significantly and demonstrably outweigh the benefits. The proposal does not give rise to harm to bats as perhaps some parties considered that it might do, and the guidance provided in national policy guidance (formerly PPS22 and now the NPPG) does not demonstrate that there is a likely significant impact of shadow flicker (only one property falling in the likely 'zone').
60. In this regard, Officers have balanced the resultant issues and consider that planning permission should be granted for the retention of the turbine.

### **Statement Required By Article 35 Of The Town And Country Planning (Development Management Procedure) Order 2015.**

61. When determining planning applications, the Town and Country Planning (Development Management Procedure) (England) Order 2015 requires Local Planning Authorities to explain how, in dealing with the application they have worked with the applicant to resolve any problems or issues arising. In this instance the applicant has worked to address problems and has sought to resolve these wherever possible.

## **Identification of any Legal Implications of the decision**

62. The application has been considered in respect of the current development plan policies and relevant planning legalisation. Other legislation including the following have been considered in respect of the proposed development.

- Human Rights Act 1998
- The Equalities Act 2010
- Town & Country Planning (Listed Buildings & Conservation Areas) Act 1990
- Natural Environment and Rural Communities (NERC) Act 2006 (any rural site)
- The Conservation of Habitats and Species Regulations 2010
- Localism Act
- Consideration has been given to the provisions of Section 17 of the Crime and Disorder Act, 1998, in the assessment of this application but the proposal does not raise any significant issues.

## **RECOMMENDATION**

That the Corporate Manager – Growth and Sustainable Planning be authorised to grant planning permission subject to the following conditions;

- Approved Plans
- Scheme of decommissioning to be agreed
- Landscape scheme to be retained
- No lighting
- No changes to the external appearance or colour of the wind turbine without planning permission