

**From:** [REDACTED]  
**To:** [Triton Knoll Electrical System](#)  
**Subject:** 151005 EN020019 Nigel Greaves - Written rep  
**Date:** 04 October 2015 22:37:31  
**Attachments:** [Bicker BostonApplication Decision Notice.doc](#)  
[ICO investigation of Bicker FOI.doc](#)  
[Representation by N.Greaves for Triton Knoll.doc](#)  
[Shipdham noise condition.doc](#)

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Dear Sir/Madam

Please find attached my representation for the Triton Knoll Electrical System, Bicker Fen connection, plus relevant attachments.

Yours sincerely

Nigel Greaves      Registered ID   10031804

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I would like to make a representation against allowing the Triton Knoll electrical connection at Bicker Fen for the following reasons :-

The Bicker Fen area suffered major disruption during the wind farm construction, and now the proposal to bring the cables underground across a large area of Lincolnshire will cause widespread disruption to the countryside and the residents. There are other locations for this connection which would involve far less expensive and unnecessary excavation work, and in other areas the local authorities are better equipped to deal with regulation of the environmental impacts. Recent events have shown that Boston Borough Council does not have the resources or expertise to effectively regulate anything to do with wind energy and the environmental reasons are detailed below :-

A recent FOI request for information relating to Bicker Fen wind farm revealed that one of the planning conditions applied to this development had not been adhered to. This means that the wind farm should be officially classified as unlawful development, and from this it follows that the wind farm does not benefit from planning permission.

For a Nationally Significant Infrastructure Project such as Bicker Fen this is an environmental planning disaster, and to now attempt to build additional transformers and make the electrical connection here would only exacerbate the problems.

It has become clear that the reason for this situation is that the local authority lacks the capability to deal with anything to do with wind energy. The Environmental Health Department has little idea of how to go about the enforcement of planning conditions related to the noise impact of wind energy developments.

In the case of Bicker Fen, the planning condition applied to control the noise of the existing 13 electrical transformers is one normally applied to wind turbines, so it is of no use at all for transformers.

This means that for the eight years that these transformers have been in operation the nearby residents have had no protection at all from the noise they emit.

(Copy of noise condition attached)

As for the wind farm itself, a programme of noise monitoring was supposed to be submitted in writing by the developer and agreed by the Council Environmental Health Department. This did not happen and so the planning conditions have not been met, making Bicker Fen wind farm unlawful development.

The Information Commissioner conducted a lengthy investigation into this and his conclusion was that the Council did not hold the programme of noise monitoring. The fact that a noise condition was applied to this development implies that the noise it emits is something that the community needs to be protected from, and is a potential problem to health and amenity. Turbine noise will change as mechanical parts wear, and the noise increases, which is the reason for the requirement of an agreed programme of monitoring. Once again, the local residents have been denied the environmental protection that they are entitled to.

(FOI request, Council responses, and ICO investigation findings attached)

To construct more electrical transformers at Bicker Fen will only add to the overall cumulative noise impact, and there is very little hope of any protection for the local community from this new source of pollution. There have been noise complaints about the existing wind farm, but the Council have 'no memory or record of the outcomes' according to the ICO investigation. They do not appear concerned by the lack of a programme of noise monitoring, in fact the Officer in charge simply said that the existing methodology could be used as a substitute for the missing programme, further proof, if it were needed, that this LPA has no cognition of its role or responsibilities regarding environmental protection. By definition a programme is a schedule of future events, in this case noise monitoring. This does not exist. The methodology is an entirely different thing; it does not mention the frequency at which the monitoring should be carried out. As a consequence of this error the wind farm has been able to operate unchecked for eight years. The council 'think' that there was monitoring done as a result of a noise complaint, but they have 'no knowledge or record of the outcomes'.

Boston Borough Council recently won a High Court Case regarding a noise complaint concerning a wind turbine. (R v Greaves ex parte Boston Borough Council finally decided 2015). The judgment in this case effectively means that in future any noise complaints which require professional judgment (which is nearly all of them) will always be resolved in favour of the noise-maker. The noise condition at Bicker has very little detail or definition and clearly falls into this category. There is now no possibility of a complainant getting anything done about excessive noise, arguably at Bicker Fen there never was.

Following this judgment by the Law Lords, disputes between acousticians over noise conditions will now have to be resolved in court, and the judges will never overrule a professional opinion, no matter how absurd it may seem. The most benevolent interpretation will therefore prevail which will favour the wind farm operators in every case. There will be little point in a complainant bringing a case to court, which defeats the point of having a noise condition in the first place; planning conditions for noise are now ineffective before they have been written. Against such a background, to consent to a development of this nature without a way of protecting the public from environmental harm would be unlawful.

Furthermore, if there has ever been any noise monitoring at Bicker Fen wind farm in the past the results are shrouded in mystery; even the Information Commissioner was unable to access any data following the FOI/EIR request. What we do know for certain is that an identical noise condition was applied to a planning consent for wind turbines in Shipdham, Norfolk (copies of both conditions attached). In 2006 the Secretary of State quashed this planning consent, the reason given was that the noise condition was 'imprecise and unenforceable'. Since its inception Bicker Fen wind farm has been operating with the same imprecise and unenforceable noise condition, unsurprising then that noise monitoring data for Bicker Fen is impossible to access.

This is not the way a responsible and professional regulatory body should carry out its duty to taxpaying residents. If similar events had occurred in other areas of local government then the departments involved would be put into special measures. The

Council code of conduct calls for openness and transparency and the adherence to protocols, and yet for wind energy this is all just ignored and everything is covered up.

There is also the potential for noise levels to be far greater for these proposed transformers than that generated by the thirteen existing transformers. Generally the wind speeds offshore are much higher than inland areas, and so there will be times when the turbines at Triton Knoll are generating electricity when there is little or no wind at Bicker. Without the masking effect of background wind noise the transformers will appear far noisier, and, as described above, there is now no effective way of regulating this with a noise condition.

The Inspectorate should consider another location for this electrical connection as there are problems with environmental planning here. Vehicle manufacturers have concealed the truth about engine emissions for years and it is only now coming to light. Similarly, the noise immisions from this and other wind farm are unregulated and the data is not in the public domain. Even the Information Commissioner was unable to gain access to the data for Bicker Fen under the Freedom of Information Act, this despite the fact that Boston Borough Council have signed up to a policy that promises openness and transparency. The attached email extract from the Council to the ICO, on the 25th May this year, is indicative of how their regulatory powers are being used.

What has happened at Bicker Fen is tantamount to environmental crime and should be investigated by the Planning Inspectorate. The public does not have protection from noise pollution here, and to add more electrical sub-stations only adds to the cumulative impact and increases the existing problems.



# BOSTON BOROUGH COUNCIL

Town and Country Planning Act 1990

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## APPLICATION DECISION NOTICE

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Application Reference: **B/07/0252**

Applicant: Paul Grimshaw,

Agent:



In pursuance of the powers exercised by it as Planning Authority, Boston Borough Council, having considered your application to carry out the following development:-

**Erection of 13 external transformers associated with approved wind turbines at Land at Bicker Fen, Boston, Lincolnshire**

And in accordance with the plans appended with this notice and the particulars given in the application, do hereby give notice of its decision to **GRANT Full Planning Permission** for the said development subject to **compliance with the following condition(s):-**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990.

2. This planning permission is for a period not exceeding 25 years from the date that electricity from the development is first connected with the electricity grid. The Local Planning Authority shall be advised in writing within one month of the date connection is made.

Reason: To ensure that the structures are removed from the site at the end of their operational life, and to protect the character of the countryside and visual amenity of the area and to accord with the objectives of Local Plan Policies G1, G2, C01 and ED11.

3. **The noise emission (LA90, 10 minute) from the combined effects of all the transformers hereby approved, as measured in free field conditions at any dwelling (in existence at the time of the permission), shall not exceed the greater**

of 35dB(A) or 5dB(A) above background noise level (LA90, 10 minute) at wind speeds within the site not exceeding 10 metres per second. The noise emission values for the transformers shall include the addition of any tonal penalty as recommended in the ETSU-R-97 Report to the DTI. This condition shall apply for both day and night-time periods.

Reason: In the interests of protecting neighbouring occupiers from noise disturbance and to accord with the objectives of Local Plan Policies G1 and ED11.

4. The colour of the external finish of the transformer housing shall match that of the column of the turbines as approved under condition 7 of planning permission B/03/0189.

Reason: In the interest of appearance and to accord with Local Plan Policy G1

5. No construction traffic shall enter or leave the site between the hours of 1900 hours and 0700 hours Monday to Friday nor at any time on Saturdays, Sundays or Bank Holidays unless the Local Planning Authority agree in writing to any variation.

Reason: In the interests of residential amenity and to avoid noise disturbance from construction traffic at particular times and to accord with the objectives of Local Plan Policies G1 and ED11.

6. All construction vehicles shall use the haul road (provided under condition 19 of planning permission B/03/0189) road during the construction period and shall not use the roads leading through Bicker village.

Reason: To ensure that the construction vehicles do not need to pass through the village of Bicker to access the site, in the interests of road safety and amenity and to accord with the objectives of Local Plan Policies G1, G6 and ED11.

7. The applicant shall arrange for an archaeologist recognised by the Local Planning Authority to carry out an archaeological watching brief during all stages of the development involving ground disturbance in accordance with a scheme to be submitted to, and approved by that authority before development is commenced. Such arrangements shall include provision for the observation, recording and recovery of artefactual evidence and post-excavation analysis. Fourteen days notice shall be given to the Local Planning Authority prior to the commencement of works. A report of the archaeologist's findings shall be submitted to the Local Planning Authority within two months of the last day of the watching brief, or such longer period as may be agreed by the authority, and shall include arrangements for the conservation and long term storage or artefacts removed from the site.

Reason: In order to ensure that satisfactory arrangements are made for the investigation, retrieval and recording of any possible archaeological remains on the site and to accord with the objectives of Local Plan Policy C12.

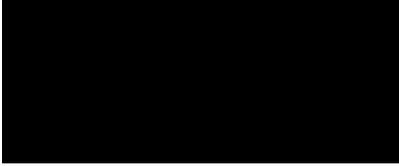
#### **Reason(s) for Granting Planning Permission:-**

Planning Permission has been granted because the development, subject to conditions, will not harm residential amenity, the character of the countryside or

highway safety and therefore accords with the objectives of Local Plan policies G1, G6, C01 and ED11 and Interim Plan policies G1 and C01

**B/07/0252**

Dated: 15-Jun-2007



**STEVE LUMB**  
**Assistant Director - Regeneration**

### IMPORTANT NOTES

This consent does not constitute permission under the Party Wall etc Act 1996, nor any Building Regulations approval under the Building Act 1984.

We may have attached other documents or copy letters to this decision notice. While these do not form part of the Council's formal decision they should be used or read in conjunction with it. They contain useful or essential information, which you require to be aware of and may necessitate further actions on your part.

### PLANNING APPEALS

If you are aggrieved by any of the conditions attached to this consent you may pursue an appeal to the Secretary of State for the Environment under Section 78 of the Town and Country Planning Act 1990. However, it is suggested that you speak, in the first instance, to the Planning Officer who dealt with your application for further advice.

If you want to appeal, then you must do so within six months of the date of this notice, using a form which you can get from the Planning Inspectorate, Room 3/15a Eagle Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN Tel: (0117) 3726372 or (0117) 3726027.

The Secretary of State can allow a longer period for giving notice of an appeal but he will not normally be prepared to use this power unless there are special circumstances, which excuse the delay in giving notice of appeal.

The Secretary of State need not consider an appeal if it seems to him that the Local Planning Authority could not have granted planning permission for the proposed development or could not have granted it without the conditions it imposed, having regard to the statutory requirements, to the provisions of the development order and to any directions given under the order.

In practice, the Secretary of State does not refuse to consider appeals solely because the Local Planning Authority based its decision on a direction given by him.

### PURCHASE NOTICE

If either the Local Planning Authority or the Secretary of State for the Environment refused permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonable beneficial use in its existing state nor can he render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.

In these circumstances, the owner may serve a purchase notice on the Council in whose area the land is situated. This notice will require the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.

**THIS IS A LEGAL DOCUMENT - PLEASE RETAIN IN A SAFE PLACE, PREFERABLY WITH YOUR DEEDS**

22/01/15

I would like to make a FOI request for details of the programme of noise monitoring that was agreed with the Planning Department for Bicker Fen Wind Farm. This programme is mentioned in the planning conditions attached to the consent for the development.

Yours faithfully

Nigel Greaves

18/02/15

Good Afternoon

Thank you for your information access request received on 22<sup>nd</sup> January 2015 were you asked:

I would like to make a FOI request for details fo the programme of noise monitoring that was agreed with the Planning Department for Bicker Fen Wind Farm. The programme is mentioned in the planning conditions attached to the consent for the development.

The information you have requested is exempt from provision under Section 40(2) of the Freedom of Information Act 2000.

Section 40(2) reads that any information to which a request for information relates is exempt if it constitutes personal data of which the applicant is not the subject. The information requested is subject to an absolute exemption and this exemption applies because the information requested would constitute a disclosure of personal data.

Disclosure of this information would result in a breach of the Data Protection Act 1998.

Section 1(1) of the Data Protection Act 1998 states that-

Personal data means data which relate to a living individual who can be identified -

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.

We trust that the information above completes your request in full, however if we can be of any further assistance, please contact us. If you are unhappy with the service you have received in relation to your request and wish to make a complaint or request a review of

the Council's decision, you should contact Michelle Sacks, Interim Head of Customer & Democratic Services on 01205 314292 or by email at [michelle.sacks@boston.gov.uk](mailto:michelle.sacks@boston.gov.uk)

If you remain dissatisfied with the handling of your request or complaint, you have a right to appeal to the Information Commissioner.

Kind regards

Paul Edwards

Boston Borough Council

25/03/15

Good afternoon

Following our response to your request dated the 18 February 2015, where you requested a copy of the programme of noise monitoring that was agreed with the Planning Department for Bicker Fen Wind Farm. Having reviewed the information provided by the Planning department and the information we supplied, it would appear that there has been a clerical error and that the wrong response had been issued. Please accept our sincere apologies for this error.

The correct response is as follows:

Regulation 5(1) of the Environmental Information Regulations 2005 states that a public Authority that holds environmental information shall make it available on request. Boston Borough Council can confirm that it does hold the information specified in your request and that your request.

Attached is a copy of the information held by the Council that falls within the scope of your request. Please note that some information has been redacted from the documents in accordance with the exception found at Regulation 13(1) of the Environmental Information Regulations.

Please be advised that the paper files in respect of these applications have not been retained, in accordance with the Council's Retention Policy. There is evidence on the register that a noise commissioning survey as required by condition 10 of B/03/0189 was carried out; and a letter was sent to complainants on the 19 November 2008 advising that this was planned to start on the 4 December 2008. However there is no record of the Council

receiving such a report and colleagues in Environmental Health similarly do not have any record of having seen the report and as such the Council holds no further information that falls within the scope of your request.

We have today received correspondence from the ICO which has coincided with this letter to you. A copy today's response has been sent them as per their request.

May we suggest that if you remain dissatisfied with this response, which is in effect your first substantive response because your original was a clerical error, you request an internal review. Due to the error on our part, if you do decide to request an internal review, this will be treated as priority.

Kind regards

Freedom of Information

Boston Borough Council

5 May 2015

**ICO reference: FER0574805**

Dear Mr Greaves

I am writing with an update about your complaint. I have now received the council's response to the queries you asked me to raise. As you know, your request asked for details of the programme of noise monitoring agreed with the Planning Department for Bicker Fen Wind Farm. The council has clarified the following points:

The information disclosed to you is the methodology for the programme of noise monitoring but, in line with its Retention Policy, the council has not kept other papers and it holds no records of the outcomes from that exercise. The council has confirmed that it also holds no records of anything that may have been submitted afterwards.

The council has confirmed that it received complaints about the noise from the turbines

and "...the investigation of that complaint led to it to seek to follow up on Condition 10 and request the applicants to carry out a noise monitoring exercise to comply with that condition....The applicant monitors the noise if requested to do so."

The council has further stated:

*"Despite another check of any retained records that we have, we have absolutely no record of the applicant's response to the monitoring that we have only assumed they carried out. We do not know what the results were, if any necessary mitigation was recommended, if a breach of the condition was identified or what. We have double checked in Environmental Health and they similarly have no records of ever having received anything after any monitoring by the applicant.*

*Boston Borough Council are not exempting anything or holding anything back, we simply do not have anything after the McKenzie document and that short email exchange which the complainant has already received. As far as we are concerned something must have been resolved as we do not appear to have received anything further or follow up complaints."*

The council has explicitly confirmed that further information is not held and I have no direct evidence to challenge this. If you consider that the council should have recorded/retained further relevant information this is something you may wish to take forward separately. The FOIA/EIR does not require authorities to create or retain specific information and the Commissioner can only assess whether, at the time of a request, information is held.

24 June 2015

**ICO reference: FER0574805**

Dear Mr Greaves

**Environmental Information Regulations 2004 (EIR)  
Boston Borough Council (the "council")  
Wind farm noise monitoring**

I have now received the council's response to my further enquiries which were prompted by your submissions.

In short, my view remains that the council does not hold any further information relating

to the programme of noise monitoring referred to in your request. Furthermore, as the programme of noise monitoring was a condition applicable to the developer / owner of the wind farm, in my view, it is not the case that any third party carrying out any monitoring was doing so on behalf of the council or in any way carrying out work of a public function on the council's behalf. In this sense then, I do not consider that any noise monitoring information held by a third party is held on behalf of the council for the purposes of the EIR.

More widely, the council has confirmed that its adopted Planning Enforcement Policy (as part of the Constitution) recognises that an authority may undertake enforcement action if there appears to have been a breach of (planning) control and if it is expedient (Section 172 of the 1990 Act). It is therefore a discretionary activity which the council is not obliged to follow and as such there is no statutory obligation to pursue enforcement action or to investigate an alleged breach.

Having considered the relevant facts, my view is that you may be best suited pursuing your concerns about the council's practice in relation to the wind farm via avenues other than the EIR. The narrative which has emerged makes it apparent that the council does not hold the outcome of any programme of noise monitoring, nor it have a statutory obligation to obtain such information, either imposed by planning law or the EIR. If you consider that the council has failed in its duty in respect of the substantive matter, this would be a matter either for the Local Government Ombudsman or (possibly) the Planning Inspectorate.

Shipdham Noise Condition (quashed by SOS 2006):-

11) The noise emission (LA90, 10 minute) from the combined effects of the two wind turbines, as measured in free field conditions at any dwelling (in existence at the time of permission), shall not exceed the greater of 35dB(A) or 5dB(A) above the background noise (LA90, 10 minute) at wind speeds within the site not exceeding 10 metres per second during the period 0700 hrs to 2300 hrs and shall not exceed the greater of 43 dB(A) or 5dB(A) above the background noise during the period 2300 hrs to 0700 hrs. The noise emission values for the wind turbines shall include the addition of any tonal penalty as recommended in ETSU-R 97.

Current Bicker Fen Noise Condition:-

9. The noise emission (LA90, 10 minute) from the combined effects of all the wind turbines, as measured in free field conditions at any dwelling (in existence at the time of the permission), shall not exceed the greater of 35dB(A) or 5dB(A) above background noise level (LA90, 10 minute) at wind speeds within the site not exceeding 10 metres per second. The noise emission values for the wind turbines shall include the addition of any tonal penalty as recommended in the ETSU-R-97 Report to the DTI. This condition shall apply for both day and night-time periods.

### **Shipdham High Court Appeal 2006**

The neighbours then appealed via the High Court for the decision at Shipdham to be quashed on the grounds that the noise condition was unenforceable, imprecise and did not include protection against AM noise. The Secretary of State and Ecotricity both conceded that the neighbour's case was correct and the planning permission was quashed by the High Court.