



Policy & Resources Committee – 9 September 2013

Lyveden wind farm legal case

Purpose of report: To update the Committee on the progress of the Lyveden wind farm case and to seek approval to continue to fight that case.

Attachment(s)

Appendix One – Member Briefing – Lyveden Wind Farm Appeal, 23 August 2013

1.0 Background

1.1 As set out in the Member Briefing attached at Appendix 1, the planning application originally considered by this Council's Development Control Committee in 2011 has now been through a legal process which is expected to culminate in an appeal to be heard at the Court of Appeal later this year.

2.0 Legal process and costs

2.1 From the point at which we gained the agreement of English Heritage (EH) and the National Trust (NT) to fight the case jointly, there has been an agreement to be represented by one QC and to share the costs equally between the three parties. When we won the Judicial Review in February 2013, we were awarded costs against the developer.

2.2 Having been successful so far in fighting the planning inspector's decision to approve the application, we believe that there is a very good chance of success at appeal and EH and NT are committed to continuing our efforts to win the case. There is no specific budget for any legal costs arising from the latest appeal, although we would hope to be awarded costs should we win. We are therefore seeking the Committee's approval to continue with the case and, if the case is not successful, to fund any costs from the projected underspend on the Council's overall revenue budget for 2013/14.

3.0 Equality and diversity implications

3.1 There are no equality implications arising from this proposal.

4.0 Legal implications

4.1 We could not continue with the case without approval to meet the costs that may arise from it.

5.0 Risk management

5.1 We are fighting this case along with EH and NT because we all believe that the Planning Inspector's decision poses a very real threat to the setting of Lyveden New Bield and potentially of any other similar listed building anywhere in the country.

6.0 Financial implications

6.1 The possible financial implications are set out in 2.2 above. We are awaiting confirmation of the Council’s share of the anticipated legal costs and will update the Committee at the meeting, although it is hoped that we will win this appeal and that costs will again be awarded against the developer.

7.0 Corporate outcomes


7.1 The revised policy links to the following corporate outcomes:

- Good Quality of Life – Sustainable
- Effective Partnership Working
- Strong Community Leadership

8.0 Recommendation

8.1 The Committee is recommended to approve the funding potentially required to continue to fight the Lyveden legal case.

(Reason – to ensure that East Northamptonshire Council can continue to fight the Lyveden legal case)

Legal	Power:					
	Other considerations:					
Background Papers:						
Person Originating Report:						
Date:						
CFO			MO		CX	

(Committee Report Normal Rev. 22)



Date:	23 August 2013
Ref no:	CMT-13-036 – Lyveden Wind Farm Appeal

Member Briefing

Title:	Lyveden Wind Farm appeal
Summary:	<p>The judge's decision at Judicial Review to quash a Planning Inspector's decision to approve an application for a wind farm next to Lyveden New Bield is to go to the Court of Appeal later this year.</p>
Further Information:	<p>In January 2011 our Development Control Committee refused permission for a wind farm to be built by Barnwell Manor Wind Energy (BMWE) Limited next to Lyveden New Bield.</p> <p>BMWE appealed against our decision and in December 2011 a Planning Inspector, Mr Paul Griffiths, overturned it.</p> <p>Mr Griffiths' decision received national newspaper coverage and English Heritage (EH) and the National Trust (NT) were outspoken in their condemnation of it, noting that it set a precedent such that even Hampton Court Palace would not be safe from wind farm development if the Inspector's decision was allowed to stand.</p> <p>We arranged for a meeting with EH and NT at our offices in April 2012 to consider a Judicial Review (JR) and lodged the 'Details of Claim' with the High Court in May. A JR was held in December but abandoned after the first day when the judge revealed that he was a member of the National Trust and that this might be deemed to be a conflict of interest. A second JR was held in February 2013 and the new judge found in our favour and quashed the Inspector's decision. We were also awarded costs.</p> <p>BMWE has now been given leave to appeal and the case will be heard at the Court of Appeal, probably later this year.</p>
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Approved by CMT	
Approved by Leader	22 August 2013