



## North Devon Council

Report Date: 12<sup>th</sup> April 2021

Topic: **Batsworthy Cross Windfarm**

Report by: Andy Cole, Environmental Protection Service Lead

### Legal advice

You are asking members to endorse a process that is contrary to the planning conditions.

That is to say, you are asking members to endorse assessing built wind turbine noise levels for compliance with their noise limits, by adjusting noise levels measured before noise reductions are made, by a predicted noise reduction.

It is inappropriate that this report does not explain whether legal advice has been sought on the approach you want members to endorse.

It is inappropriate that this report does not set out whether legal advice supports your proposal to use predictions rather than enforce the planning conditions which require that compliance is shown using direct physical noise measurements.

Your own noise consultant writes of the planning conditions that, "There is no reference to the use of predictions to adjust or correct measured noise data." Can the legal advice on this matter be any different to that on the use of an alternative wind speed location whereby officers wrote, "the wording of the planning condition does not allow RES to utilise an alternative wind speed location at this time"?

### Discharge of Condition 37

This report makes no reference to the discharge of planning Condition 37. If your intention is to treat member endorsement of your proposal as endorsement of the discharge of Condition 37 then this must explicitly be made clear to members.

That said, it would be highly inappropriate and premature to seek endorsement to discharge Condition 37 at this point because of a number of serious and outstanding issues, for example:



The turbine noise levels have still not been assessed for compliance at 2 m/s wind speeds measured at 10 meter height above at the permanent on site mast.

Predictions informed officers conjecture on compliance at all locations when further measurements should have been taken; and these predictions understate the turbine noise levels because they do not take account of the cumulative wind shear i.e. the enhanced wind shear plus the more sheltered location of the on site mast when compared to the original wind shear mast location as exposed by Dr Bass and explained by Mr Davis and Mr Coles in their attached report.

Tonal assessments still need performing according to the planning conditions to resolve the wildly different tonal penalties reported for the same wind speeds and location.

The failure of the assessments to apply the agreed process when turbine noise levels plus background noise level are reported, bizarrely, as lower than background noise levels alone.

The failure of the assessments to use the lowest background noise levels ever recorded at each location and the failure to explain the hugely increased background noise levels at the critical wind speeds and especially for properties to the south of the site where the dominant background noise levels are the natural environment.

## 1. INTRODUCTION

1.1 This paper seeks to update the Strategy and Resources Committee on the current status of the Council's regulation of the noise related planning conditions associated with Batsworthy Cross Windfarm.

It is inappropriate that this report does not provide the caveat that it relies on predicted noise levels when "The Planning Conditions ... require the noise levels to be determined by noise measurements." and when "There is no reference to the use of predictions to adjust or correct measured noise data." [Mr Davis 06/11/2020].

1.2 This is a follow up report to a paper which was considered by this Committee on the 1<sup>st</sup> March 2021.

## 2. RECOMMENDATIONS



2.1 It is recommended that the Strategy and Resources Committee endorses the approach outlined in section 4.12 of this report.

Without the security of knowing and understanding the legal advice in respect of your approach, how can the Strategy and Resources Committee safely endorse it?

### 3. REASONS FOR RECOMMENDATIONS

3.1 To provide the Committee with confidence that the process of regulating Batsworthy Cross Windfarm is transparent and happening as efficiently as possible

How can you claim that this site is being regulated as efficiently as possible when known exceedances of the noise limits have been allowed to continue unabated for 21 months and counting. You knew about these exceedances in June 2019; what have you been doing for the last 21 months? Measuring of the reduced noise levels could have started shortly after June 2019 had you followed and enforced the planning conditions.

On the matter of transparency, please see the comments below on 4.3

### 4. REPORT

4.1 The planning conditions for this site require noise compliance monitoring to be undertaken at three locations close to Batsworthy Cross Windfarm.

4.2 The Operator has previously agreed with the Council to expand this monitoring exercise - and undertake monitoring at six locations.

The site has since been sold and you are dealing with a different operator so the relevance of this point is mute. Besides you completely negated the benefit of this agreement because 3 of these locations were dropped from the monitoring exercise before the process was completed i.e. insufficient measurements were collected to permit an assessment of compliance or non compliance with the noise limits.

4.3 Monitoring has previously confirmed compliance with the noise related planning conditions at five of these six locations.



The statement above is false:

- So far, noise compliance measurements for Batsworthy demonstrate compliance with the noise limits at just one (The Ridge) of the agreed six locations.
- The compliance assessment at Birchwood is ongoing.
- Statements of compliance at the other four locations are conjecture.

4.4 Exceedance of the noise limits in the sixth location (representing properties in the vicinity of Birchwood House) has been confirmed.

This point would be more transparent and pertinent if it stated "Exceedance of the noise limits in the sixth location (representing properties in the vicinity of Birchwood House) was confirmed in June 2019.

4.5 The Council has previously advised the operator of this situation, and requested them to provide details of a proposed further mitigation strategy for properties in the vicinity of Birchwood House.

4.6 This proposed mitigation strategy has been received and reviewed in full by Officers' and the Council's acoustic advisor

4.7 The findings of the Council's acoustic advisor are attached as Appendix 1 to this report.

It is inappropriate that the acoustic advisors' findings are not summarised here so that members are aware that the operator's proposal is not predicted to stop further breaches of the noise limits.

4.8 The conclusions set out in paragraphs 20 – 22 of this report suggest that the proposed mitigation strategy will result in compliance being achieved at the location in question.

It is noted that the acoustic advisor only "suggests" compliance with the noise limits.

4.9 The report highlights a secondary effect of the proposed mitigation - a further reduction of up to 2dB at lower wind speeds at other dwellings - including Dickens and All Angels.

It would be discriminatory to Birchwood should there be any suggestion or even perceived suggestion that a predicted reduction in noise levels at other locations should provide some form of validation of acceptance of exceedances at Birchwood.



Besides, this is not a secondary effect or some sort of accidental bonus for residents, this is the way the noise limits work i.e. compliance with the noise limits at one location impacts residents at other locations. This emphasises the importance of compliance in as much as it impacts residents all around the site. Indeed non compliance at Birchwood results in higher noise levels elsewhere around the site.

Reductions in noise levels elsewhere around the site, especially to the south of the site and especially in lower wind speeds, could mean that any tonal noise is more pronounced resulting in a tonal penalty or a greater tonal penalty. This needs addressing.

4.10 Officers are therefore satisfied that implementation of the mitigation strategy will result in compliance with the noise related planning conditions.

How can officers be satisfied that compliance will be achieved when in point 4.8 above they note that their acoustic consultant only "suggests" compliance will be achieved.

Explanation is needed on how this leap of faith from 'suggested compliance' to 'actual compliance', has come about; on what is it based?

4.11 Considering the relatively small levels of exceedance involved, it is not considered necessary or reasonable for the Council to require the Operator to undertake an additional noise monitoring exercise to further verify the results of this mitigation.

The idea that "the relatively small levels of exceedance involved" make it "unnecessary and unreasonable" to require the operator to take measurements does not stand up to scrutiny because measurements were taken previously to assess the mitigation for even smaller exceedances than those being addressed now so this rationale is inconsistent and contradicted by evidence from the last set of measurements.

Further the government's Planning Inspector finds the taking of measurements reasonable in such circumstances and so does the operator in as much as they have made preparations to take measurements.

While it may be considered that the exceedances are "relatively small", no context or evidence is provided to support this view; and there is no reference to the fact that the unit of noise measurement (the decibel) is logarithmic and there is no



acknowledgement of the fact that residents are exposed to the noise from the wind turbines 24 hours a day, 365 days of the year for the next 20 years.

Besides, the acoustic advisor has written that "the ETSU limits themselves are recognised as being at or close to the threshold of acceptability" .This means that there is no room for error i.e. this means there is no room for 'predicting' or 'suggesting' that the noise limits will be met; the noise levels need measuring.

It is noted that time to collect further measurements is no longer being touted as a reason not to take further measurements. This is sensible because it would have been completely unreasonable for officers to spend 21 months achieving very little only to say there isn't time to take more measurements. Last time measurements took less than 3 months.

4.12 Officers intend to confirm this position to the Operator, ask them to implement the proposed mitigation strategy in full, and provide written confirmation to the Council (within 21 days of the request having been made of them) that this has been done.

The predicted noise reductions show continued exceedances of the noise limits and despite attempts to dismiss these exceedances by tampering through averaging and rounding, they cannot be eliminated. As such, the only way to know whether the noise reductions are sufficient to eliminate further breaches of the noise limits is to measure the reduced turbine noise levels.

If compliance with the noise limits is not tested through noise measurements, where will the council stand should it become apparent in dealing with a complaint, that the site was not compliant with its noise limits.

You have told us that the planning conditions require that compliance is shown through measurement. You have told us that your actions have not fettered your ability to require the operator to test their noise reductions through direct measurements.

So what have you got against requiring the operator to follow the planning conditions? What have you got to lose? If you are not going to enforce the planning conditions then you have to rationally justify not doing so; you have not done this.

## RESOURCE IMPLICATIONS

- 1.1. This development will necessitate further investment in the regulation of this consent which cannot be quantified at this time.

## 2. EQUALITIES ASSESSMENT

2.1. There are no equalities implications anticipated as a result of this report.

## 3. CONSTITUTIONAL CONTEXT

3.1. Part 3, Annexe 1

3.2. Delegated power

When was delegated power issued and to who is it issued.

## 4. STATEMENT OF CONFIDENTIALITY

4.1. This report contains no confidential information or exempt information under the provisions of Schedule 12A of 1972 Act.

## 5. BACKGROUND PAPERS

5.1. The following background papers were used in the preparation of this report:

- Batsworthy Cross Windfarm. Report to Strategy & Resources Committee 1st March 2021.
- Batsworthy Cross Windfarm. Report to Strategy & Resources Committee 1st February 2021.
- Batsworthy Cross Windfarm. Report to Strategy & Resources Committee 6th January 2020.
- Batsworthy Cross Windfarm. Report to Strategy & Resources Committee 5th October 2020.
- Batsworthy Cross Windfarm. Report to Strategy & Resources Committee 2nd November 2020.

5.2. The background papers are available for inspection and kept by the author of the report.

## 6. STATEMENT OF INTERNAL ADVICE

6.1. The author confirms that advice has been taken from all appropriate Councillors and Officers.



**Appendix 1**

**Memorandum from Bob Davis, 24**

**Acoustics Ltd**

Please click on link below:

Batsworthy Cross  
Noise - 24 Acoustics ↑



