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12 August 2013

Also at:

Planning  
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Phoenix House  
Phoenix Lane  
Tiverton  
Devon EX16 6PP

5th Floor, Bewlay House  
2 Swallow Place • London • W1B 2AE  
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environment@aardvarkem.co.uk  
www.aardvarkem.co.uk

Dear Sirs

**APPEAL APPLICATION REFERENCE APP/Y1138/A/13/2203528 MUREX ENERGY LTD - PROPOSED WIND TURBINE ON LAND AT HAWKRIDGE FARM, COLDRIDGE, CREDITON, DEVON**

Please find enclosed a copy of the submitted documents for the above Planning Appeal application that has been submitted via the planning portal to the Planning Inspectorate.

We also enclose a hard copy of the Appeal application form

Yours faithfully

**Nicholas C Leaney BSc Hons MRICS FRGS**  
For Aardvark EM Limited

Enc.

Directors  
Andy Ollie - Chairman • Mark Clayton - Managing Director •  
Nicholas Leaney



Aardvark EM Limited Registered in England at  
21 Silver Street, Ottery St Mary, Devon EX11 1DB  
Company Registration Number 3473012  
VAT Registration Number 709 8450 13



Client: Murex  
 Title: Hawkrige Wind Turbine Appeal – Document Compendium  
 Project: 1329



Documents submitted post application			
Reference (where applicable)	Title on Document	Date (as appears on doc or file date where not on doc)	Electronic File Name
n/a	Email Aardvark & MDDC correspondence re noise matters	24/05/2013	2013-05-24 Email correspondence re noise
n/a	Decision Notice	16/07/2013	2013-07-16 MDDC Hawkrige Decision Notice
n/a	Appeal Certificate B	13/08/2013	Hawkrige Appeal - Certificate B
n/a	Appeal application form	13/08/2013	Hawkrige appeal application form
n/a	Grounds of Appeal	13/08/2013	Hawkrige Grounds of Appeal



Client: Murex Energy Limited

Title: Grounds for Appeal

Project: Erection of a 275kW wind turbine with maximum blade tip height of 71m, hub height of 55m, and formation of new vehicular access track and associated infrastructure on land at NGR 270511 109020 (Hawkridge Farm) Coldridge Devon (Planning App ref: 13/00645/FULL)

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## Introduction

This document sets out Murex Energy Limited's (MEL) (the Appellant) Grounds of Appeal against the Decision of Refusal of a full planning application by Mid Devon District Council (MDDC) for the Erection of a 275kW wind turbine with maximum blade tip height of 71m, hub height of 55m, and formation of new vehicular access track and associated infrastructure on land at NGR 270511 109020 (Hawkridge Farm) Coldridge Devon (Planning App ref: 13/00645/FULL)

Three reasons for refusal was provided by MDDC as detailed in the Decision Notice issued, which were;

1. *In the opinion of the Local Planning Authority the proposal, by reason of its location, scale and appearance is considered to have an unacceptable and detrimental landscape and visual impact. The proposed wind turbine will form a substantial vertical and alien structure within the landscape which would have a significant harmful effect on the visual amenities and character of the surrounding landscape. It is recognised that the visual impact of the turbine, and its effect on the landscape, would be moderated within some long distance views. However, given its proximity to receptors within a distance of 1500 metres from it, the turbine when seen in this context, would form an overly dominating and negative visual feature to the detriment of public amenity and environmental quality in the area.*

*In terms of balancing the harmful impact to the landscape character and visual qualities of the area against the public benefits associated with the application scheme, it is the view of the Local Planning Authority that the harm that would be caused to the landscape character and to the visual amenities of the area (and the other impacts as referred) outweigh the public benefits, and therefore it is considered that the application scheme is contrary to Policies S5, S6 and ENV2 of the Adopted Mid Devon Local Plan (Local Development Framework), Policies COR2 and COR5 of the Mid Devon Core Strategy (Local Plan Part 1), Policies DM/1, DM/2 and DM/5 of the Mid Devon Local Plan Part 3 (Development Management Policies) Proposed Submission and Government policy as set out in the National Planning Policy Framework (NPPF).*

2. *In the opinion of the Local Planning Authority it is considered that the application scheme because of its height, scale and massing would result in harm to the setting of a number of listed buildings in the vicinity of the proposed turbine.*

*In terms of balancing the harmful impacts to the heritage assets within the vicinity of the proposed turbine against the public benefits, it is the view of the Local Planning Authority that the harm that would be caused to the setting of the heritage assets (and the other impacts as referred) outweigh the public benefits, and therefore it is considered that the application scheme is contrary to Policy COR2 of the Mid Devon Core Strategy (Local Plan Part 1), Policy S5 of the Adopted Mid Devon Local Plan (Local Development Framework), Policy DM/28 of the Mid Devon Local Plan Part 3 (Development Management Policies) Proposed Submission and Government policy as set out in the National Planning Policy Framework (NPPF).*

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3. *In the opinion of the Local Planning Authority the proposed turbine because of the height of it in relation to the curtilage and dwelling at Little Hawkridge, it is considered that it would create a dominating and oppressive outlook for the occupiers of this property and would create an unacceptable noise climate. It is therefore concluded that it would be detrimental to the environmental and residential amenities of existing and future occupiers of Little Hawkridge.*

*In terms of balancing the harmful impacts to the environmental and residential amenities affected by the proposal, it is the view of the Local Planning Authority that the harm that would be caused to the environmental and residential amenities within the vicinity of the proposed turbine (and the other impacts as referred) outweigh public benefits, and therefore it is considered that the application scheme is contrary to Policy S5 of the Adopted Mid Devon Local Plan (Local Development Framework), Policies DM/1, DM/5 and DM/7 of the Mid Devon Local Plan Part 3 (Development Management Policies) Proposed Submission and Government policy as set out in the National Planning Policy Framework (NPPF).*

## **Main Issues**

The Appellant contends that planning permission ought to be granted for the development as:

- (a) The development is in accordance with the relevant Development Plan, and national policy and guidance;
- (b) The significance of the possible impacts is disputable and the benefits arising from the development through the generation of renewable energy and farm diversification would outweigh any adverse landscape impacts, impact on residential amenity or harm to the setting of heritage assets within the landscape; and
- (c) It can be demonstrated that the turbine can operate within the parameters of 'The Assessment and Rating of Noise from Wind Farms' (ETSU-R-07) and the 'Good practice guidance on noise assessment of wind farms' (Institute of Acoustics) and can be adequately controlled via a suitable condition attached to a planning consent such that it would not have an unacceptable impact on the residential amenity at the nearest non-financially involved property, namely Little Hawkridge.

## **Grounds of Appeal**

It is clear that the contribution which the wind turbine would make towards the provision of renewable energy and diversified farm income (being the benefits), when afforded appropriate weight, would outweigh the potential adverse impacts and therefore demonstrate that the scheme is not unacceptable.

In addition to considering the scheme in the context of the Development Plan and national planning policy, it should now also be assessed against the recently released 'Planning practice guidance for renewable and low carbon energy' (DCLG July 2013).

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The guidance can be a material consideration in planning decisions and should generally be followed unless there are clear reasons not to. When read in conjunction with Development Plan policy and national planning policy, it is apparent from para. 3 of the guidance that there is a clear and important role for planning decision makers to deliver new renewable and low carbon energy infrastructure in locations where the local environmental impact is acceptable.

Residential amenity, save for recognition in consideration of appropriate separation distances/buffer zones, is not specifically addressed in the new guidance but it is within the NPPF and Development Plan policy. In the reasons for refusal, it is the opinion of the Council that the 'proposed turbine because of the height of it in relation to the curtilage and dwelling at Little Hawkridge, it is considered that it would create a dominating and oppressive outlook for the occupiers of this property'. Little Hawkridge lies 545m to the south of the proposed turbine site. Whilst the turbine would be prominent in the landscape it is hard to conceive that it would be dominant or be an unavoidable presence in the landscape. Magnitude effects of moderate/substantial significance may occur at Little Hawkridge and the proposal would possibly be considered as an adverse change, but this is recognised in the LVIA and does not necessarily mean that these effects would be overbearing or oppressive and make the property an unsatisfactory place to live.

The technology-specific considerations set out in the guidance provide a suitable checklist against which the reasons for refusal can be tested and therefore provide justification as grounds for appeal.

Taking each of the considerations in the Guidance relating to wind turbine development in turn;

- Para. 30 sets out the criteria for assessing noise. It is demonstrated within the application that the turbine can operate within the parameters of 'The Assessment and Rating of Noise from Wind Farms' (ETSU-R-07) and the 'Good practice guidance on noise assessment of wind farms' (Institute of Acoustics) and adequately controlled via a suitable planning condition attached to a planning consent, such that it would not have an unacceptable impact on the residential amenity at the nearest non-financially involved property, namely Little Hawkridge.
- Paras. 31 & 32 sets out the criteria for safety and telecommunications. The turbine is sited at a sufficient fall over distance from the nearest buildings, public highways and power lines. Consultee responses demonstrate that it is acceptable in respect of radar, defence, telecommunications and air traffic control.
- Para. 33 considers ecology. The application was supported by an Extended Phase 1 Habitat Survey, which found that the proposal was unlikely to have an effect on protected species or habitats. The findings of the report were found by MDDC to be considered reasonable.
- Para. 34 sets out the criteria for assessment of heritage assets. The LVIA submitted with the application considered heritage assets within both the text and in the context of viewpoints.

The Planning Officer states that the proposal fails to preserve or enhance the Coldridge Conservation Area, parish church or other heritage assets in the locality such as grade I and II listed buildings. It could be argued that by its very nature, a wind turbine would always fail to preserve or enhance such assets and therefore it is more of a balancing exercise between the benefits from the scheme and the likely effects. In reaching their decision, it is clear that

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considerable weight has been given by the Council to these likely effects, but little regard in terms of the likely benefits, save for the generation of renewable energy.

For example, little has been made of the social and economic benefits such as local job creation opportunities, raising the quality of life in rural areas through diversification of agricultural land, generating an alternative income for farmers, and the education for local people about energy issues.

In their consultation response, English Heritage found that although heritage assets were assessed within the LVIA submitted with the application, they concluded that they were not convinced that the erection of a turbine would not cause an unacceptable impact on the local heritage assets. However, they also state that they had not visited the site to assess the intervisibility and impact on setting of the assets and therefore also not had the advantage of using the photomontages submitted to assess the possible impacts. Had they done so then a more considered response may have been forthcoming.

- Paras. 35 to 37 considers shadow flicker. The application was supported by a plan showing the potential are of shadow flicker which demonstrated that there is no potential incidence of shadow flicker on local properties. Accordingly, the proposed development will not have any adverse impacts arising from potential shadow flicker effects that cannot be dealt with by planning condition.
- Para. 38 requires an assessment of the likely energy output of the wind turbine. This forms one of the main grounds of appeal in that the benefit of generating electricity from renewable energy through the proposal would outweigh any potential adverse impacts, including amenity, harm to the character and appearance of the rural landscape, and harm to the setting of heritage assets.

The 275kWp installed capacity of the turbine would generate approximately 516MWh of energy per annum based on the site's average wind speed. Under the NPPF, local planning authorities (LPAs) should, when determining planning applications, *'not require applicants for energy development to demonstrate the overall need for renewable or low carbon energy and also recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions'*. They are further directed to *'approve the application (unless material considerations indicate otherwise) if its impacts are (or can be made) acceptable'*.

The Planning Officer in a statement of positive working in the Decision Notice referred to discussions during the determination period with the Appellant's agent regarding an offer to discuss alternative renewable energy options that may be more acceptable to satisfy key policy tests.

This included a request to the Appellant to withdraw the application and resubmit on the basis of a smaller turbine such as an Endurance E-3120 50kW turbine. This alternative turbine, whilst being shorter, at 60% of the application tip height, would only produce 30% of the generational output of the candidate turbine based on the site's average annual wind speed. Similarly, another alternate smaller turbine, the Gaia-Wind 133 11kW turbine is also shorter being 35% of



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the application tip height but it will generate only 7.75% of the generational output of the candidate turbine based on the site's average annual wind speed.

The Appellant considered that this significant reduction in benefits from the proposal would not represent good design in terms of optimising the renewable and low carbon energy generation potential for the site.

- Paras. 39 to 44 set out the criteria required to undertake an assessment of landscape and visual impact including cumulative assessment. These requirements are considered to have been adequately addressed within the LVIA submitted with the application.

It should be noted that the proposal was not considered EIA development by the Council; however, the LVIA has adopted the same approach in completing the LVIA as would be done in preparing an Environmental Statement in terms of assessing any likely effects within the EIA meaning of significance.

- Para. 45 proposes that LPAs use planning conditions as a mechanism for ensuring redundant turbines are removed when no longer and in use and that the land is restored to an appropriate use. The Appellant agrees that this can be adequately dealt with via planning condition.

The Planning Officer in his delegated report cites two appeal cases where it was found by the inspector that a 25 year operational lifespan of the turbine is not considered a temporary period and that its likely effects should be assessed irrespective of the time period within which it may be operating. Both of the decisions cited pre-date the NPPF and the recently published Guidance. This approach is also contrary to the National Planning Statement EN-3 which in Para 2.7.17 states that the time limited nature of wind turbine applications (which can be a condition of consent) is likely to be an important consideration when assessing impacts such as landscape and visual effects and potential effects on heritage assets.

There is strong policy support for the proposal and it will deliver much needed new renewable energy generating capacity. It is considered that the possible impacts of the proposal are limited when balanced against the need and the valuable contribution this project will make, therefore the balance falls in favour of the proposed development.



From: [REDACTED]  
To: [REDACTED]  
Cc: [REDACTED]  
Subject: 13/00645/FULL - Noise Assessment  
Date: 24 May 2013 11:53:50  
Attachments: m006001.png

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Dear Mr Trafford,

Further to our phone call of Monday 20 May with regard to the submitted Noise Assessment for application **13/00645/FULL - Erection of a 275kW wind turbine with maximum blade tip height of 71m, hub height of 55m, and formation of new vehicular access track and associated infrastructure, Land at NGR 270511 109020 (Hawkridge Farm) Coldridge Devon**, please see below. a response from Peter Ashford of Ian Sharland Ltd with regard to the issues you raised:

*'I write with reference to the issue raised by Mr Trafford regarding the location of the MET mast referred to in my noise assessment report. Mr Trafford is correct that the MET mast was positioned at the originally proposed location, south of the road and closer to Clotworthy Farm. The new location for the proposed turbine is some 450m further to the NE. Mr Trafford can be assured that the wind data relied upon in my assessment is compliant with the ETSU requirement as wind speeds have been assessed on the same hill at the same height. Mr Trafford needs to keep in mind that ETSU is primarily focused on assessing noise from wind farms, which would have many turbines where a single MET mast would be used to infer the wind/background noise relationship across the whole site, where there would be separation distances between the MET mast and the turbines of considerably more than the 450m we have here.*

Best regards,

Peter Ashford  
Ian Sharland Ltd  
[REDACTED]

I trust that this response is sufficient to answer your query. If you require any further information or clarification, please do not hesitate to contact me.

Kind regards

Sara McDiamond for Aardvark EM Ltd

Sara McDiamond LLB (Hons)  
Graduate Consultant

**AARDVARK EM Limited**

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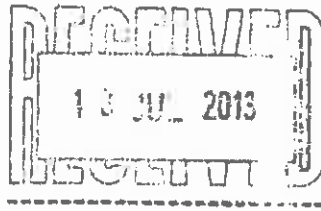
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Reference No: 13/00645/FULL  
Parish: Coldridge 16



**MID DEVON DISTRICT COUNCIL**

**TOWN AND COUNTRY PLANNING ACT 1990**

**REFUSAL FULL PLANNING APPLICATION**

**Name and Address of Applicant:**

Murex Energy Limited  
Mells Park  
Mells  
Somerset  
BA11 3QB

**Name and Address of Agent:**

Mr Nick Leaney  
Aardvark EM Ltd  
Higher Ford  
Wiveliscombe  
Taunton  
Somerset  
TA4 2RL

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Date Registered : 10th May 2013

**Proposal:** Erection of a 275kW wind turbine with maximum blade tip height of 71m, hub height of 55m, and formation of new vehicular access track and associated infrastructure

**Location:** Land at NGR 270511 109020 (Hawkridge Farm) Coldridge Devon

**Site Vicinity Grid Ref:** 270490/109009

**MID DEVON DISTRICT COUNCIL HEREBY REFUSES FULL PLANNING PERMISSION FOR THE ABOVE DEVELOPMENT**

**Reasons for Refusal:**

1. In the opinion of the Local Planning Authority the proposal, by reason of its location, scale and appearance is considered to have an unacceptable and detrimental landscape and visual impact. The proposed wind turbine will form a substantial vertical and alien structure within the landscape which would have a significant harmful effect on the visual amenities and character of the surrounding landscape. It is recognised that the visual impact of the turbine, and its effect on the landscape, would be moderated within some long distance views. However, given its proximity to receptors within a distance of 1500 metres from it, the turbine when seen in this context, would form an overly dominating and negative visual feature to the detriment of public amenity and environmental quality in the area.

In terms of balancing the harmful impact to the landscape character and visual qualities of the area against the public benefits associated with the application scheme, it is the view of the Local Planning Authority that the harm that would be caused to the landscape character and to the visual amenities of the area (and the other impacts as referred) outweigh the public benefits, and therefore it is considered that the application scheme is contrary to Policies S5, S6 and ENV2 of the Adopted Mid Devon Local Plan (Local Development Framework), Policies COR2 and COR5 of the Mid Devon Core Strategy (Local Plan Part 1), Policies DM/1, DM/2 and DM/5 of the Mid Devon Local Plan Part 3 (Development Management Policies) Proposed Submission and Government policy as set out in the National Planning Policy Framework (NPPF).

2. In the opinion of the Local Planning Authority it is considered that the application scheme because of its height, scale and massing would result in harm to the setting of a number of listed buildings in the vicinity of the proposed turbine.

In terms of balancing the harmful impacts to the heritage assets within the vicinity of the proposed turbine against the public benefits, it is the view of the Local Planning Authority that the harm that would be caused to the setting of the heritage assets (and the other impacts as referred) outweigh the public benefits, and therefore it is considered that the application scheme is contrary to Policy COR2 of the Mid Devon Core Strategy (Local Plan Part 1), Policy S5 of the Adopted Mid Devon Local Plan (Local Development Framework), Policy DM/28 of the Mid Devon Local Plan Part 3 (Development Management Policies) Proposed Submission and Government policy as set out in the National Planning Policy Framework (NPPF).

3. In the opinion of the Local Planning Authority the proposed turbine because of the height of it in relation to the curtilage and dwelling at Little Hawkridge, it is considered that it would create a dominating and oppressive outlook for the occupiers of this property and would create an unacceptable noise climate. It is therefore concluded that it would be detrimental to the environmental and residential amenities of existing and future occupiers of Little Hawkridge.

In terms of balancing the harmful impacts to the environmental and residential amenities affected by the proposal, it is the view of the Local Planning Authority that the harm that would be caused to the environmental and residential amenities within the vicinity of the proposed turbine (and the other impacts as referred) outweigh public benefits, and therefore it is considered that the application scheme is contrary to Policy S5 of the Adopted Mid Devon Local Plan (Local Development Framework), Policies DM/1, DM/5 and DM/7 of the Mid Devon Local Plan Part 3 (Development Management Policies) Proposed Submission and Government policy as set out in the National Planning Policy Framework (NPPF).

### **Statement of Positive Working**

In accordance with the requirements of Article 31 of the Town and Country Planning (Development Management Procedure (England) Order, 2010, as amended, in determining this application, the Local Planning Authority has worked proactively and positively with the applicant to attempt to resolve the planning related concerns the Council has with the application. This has included advice to the applicant in terms of the policy challenges that the scheme presents, and an offer to discuss alternative ways of achieving the renewable energy benefits at the site. However, the applicant's agent pursued the application scheme and was unable to satisfy the key policy tests in the submission and as such the application has been refused.

In accordance with paragraph 69 of the National Planning Policy Framework, the Local Planning Authority has also involved the community in the consideration of this application.

## **DEVELOPMENT PLAN POLICIES**

### **Adopted Mid Devon Local Plan (LDF)**

S5 - General Development Requirements

S6 - Design of New Development

E13 - Farm Diversification

ENV2 - Renewable Energy

ENV8 - Buildings of Special Architectural or Historic Interest

ENV16 - Protected Species

### **Mid Devon Core Strategy (Local Plan Part 1)**

COR2 - Local Distinctiveness

COR5 - Climate Change

COR18 - Countryside

### **Mid Devon Local Plan Part 3 (Development Management Policies) Proposed Submission**

DM/1 - Presumption in favour of sustainable development

DM/2 - High quality design

DM/5 - Renewable and low carbon energy

DM/7 - Pollution

DM/28 - Development affecting heritage assets

## **Relevant Plans**

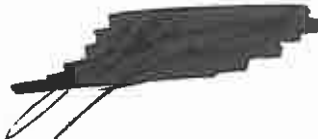
The plans listed below are those which were considered in determining the application:

1117-H-001 - Site Location Plan

ELEVATIONS - Dated: 14/12/2010 - Proposed

1117-H-002 - Block Plan

**Signed:**



**Head of Planning and Regeneration  
Mid Devon District Council**

**Date: 16th July 2013**

**Please refer to notes attached**

**NOTE – Failure to adhere to the details of the approved plans or to comply with the above conditions constitutes a contravention of the Town and Country Planning Act, 1990 in respect of which enforcement action may be taken.**

**GENERAL DEVELOPMENT PROCEDURE ORDER 1995  
PART 2  
TOWN AND COUNTRY PLANNING ACT 1990**

**Appeals to the Secretary of State**

- If you are aggrieved by the decision of your Local Planning Authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State under section 78 of the Town and Country Planning Act 1990.
- If you want to appeal against the Local Planning Authority's decision then you must do so within 6 months of the date of this notice.
- Appeals must be made using a form which you can get from the Planning Inspectorate at Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN or online at [www.planningportal.gov.uk/pcs](http://www.planningportal.gov.uk/pcs).
- 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 they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.
- In practice, the Secretary of State does not refuse to consider appeals solely because the local planning authority based their decision on a direction given by him.

**Purchase Notices**

- If either the Local Planning Authority or the Secretary of State refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor 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 (District Council, London Borough Council or Common Council of the City of London) 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.
- In certain circumstances, a claim may be made against the Local Planning Authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable is set out in Section 114 of the Town and Country Planning Act 1990.



# Town and Country Planning (Development Management Procedure) (England) Order 2010 NOTICE UNDER ARTICLE 11 OF APPLICATION FOR PLANNING PERMISSION

(Notice 1: This notice is to be printed and served on individuals if Certificate B or C is completed)

## Proposed development at:

Name or flat number	Land at Hawkridge Farm
Property number or name	
Street	
Locality	Coldridge
Town	Crediton
County	Devon
Postal town	
Postcode	

## Take notice that application is being made by:

Organisation name	Murex Energy Limited		
Applicant name	Title	Forename	Surname

## For planning permission to:

### Description of proposed development

Erection of a 275kW wind turbine with maximum blade tip height of 71m, hub height of 55m, and formation of new vehicular access track and associated infrastructure

Local Planning Authority to whom the application is being submitted: The Planning Inspectorate

Local Planning Authority address: The Square, Bristol, Avon BS1 6PN

Any owner of the land or tenant who wishes to make representations about this application, should write to the council within 21 days of the date of this notice.

## Signatory:

Signatory Title Mr Forename Nicholas Surname Leaney

Signature

Date (dd-mm-yyyy) 12-08-2013

Statement of owners' rights: The grant of planning permission does not affect owners' rights to retain or dispose of their property, unless there is some provision to the contrary in an agreement or lease.

Statement of agricultural tenants' rights: The grant of planning permission for non-agricultural development may affect agricultural tenants' security of tenure.

'Owner' means a person having a freehold interest or a leasehold interest the unexpired term of which is not less than seven years.  
'Tenant' means a tenant of an agricultural holding any part of which is comprised in the land.

Once completed this form needs to be served on the owner(s) or tenant(s)

Print Form

