



Department for  
Communities and  
Local Government

Mr Martyn Earle  
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H J Banks & Co Ltd,  
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St Johns Road  
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Durham DH7 8XL

Our Ref: APP/Z0923/A/13/2191361

Your Ref:

4 December 2013

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY BANKS RENEWABLES (WEDDICAR RIGG WIND FARM) LTD  
LAND TO THE WEST OF STEEL BROW ROAD, ARLECDON, FRIZINGTON,  
CUMBRIA  
APPLICATION REFERENCE 4/11/2485/0F1**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, R P E Mellor BSc DipTRP DipDesBEnv DMS MRICS MRTPI, who held a public local inquiry which opened on 9 July 2013 into your appeal against a decision of Copeland Borough Council to refuse planning permission for the construction and operation of a wind farm consisting of 6 (No.) wind turbines, control building, anemometer mast and associated access tracks for an operational period of 25 years in accordance with application reference 4/11/2485/0F1, dated 6 October 2011.
2. On 5 June 2013, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 to Schedule 6 to, the Town and Country Planning Act 1990 because the appeal relates to proposals of major significance for the delivery of the Government's climate change programme and energy policies.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal be dismissed and planning permission be refused. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, and agrees with his recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

### **Procedural Matters**

4. In reaching this position, the Secretary of State has taken into account the Environmental Statement (ES) which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. He has also taken account of the Inspector's comments on the ES at IR175. The Secretary of State is content that the ES complies with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.
5. At the inquiry a costs application was made by Banks Renewables (Weddicar Rigg Wind Farm) Ltd against Copeland Borough Council. That application is the subject of a separate decision issued today.

### **Matters arising after the close of the inquiry**

6. Following the close of the inquiry, The Department of Communities and Local Government (DCLG) published the 'Planning Practice Guidance for Renewable and Low Carbon Energy' (PPGRLCE) in July 2013, and cancelled 'Planning for Renewable Energy: A Companion Guide to Planning Policy Statement 22'. The Planning Inspectorate wrote to the parties on 31<sup>st</sup> July 2013 inviting comment on the PPGRLCE and the cancellation of the PPS22 Companion Guide. In reaching his recommendation on this appeal, the Secretary of State has taken into account the parties' responses to that letter.

### **Policy considerations**

7. In deciding the appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
8. In this case, the development plan comprises of the saved policies of the Copeland Local Plan 2001-2016 (2008). The Secretary of State considers that the development plan policies most relevant are EGY 1, EGY 2 and ENV 6 (IR10-11).
9. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework); the PPGRLCE; the National Policy Statements (NPS) for Energy (EN-1) and Renewable Energy (EN-3); the Community Infrastructure Levy (CIL) Regulations 2010 as amended; and Circular 11/95: The Use of Conditions in Planning Permissions. The Secretary of State has also taken into account Ministerial Written Statements on renewable energy published in June 2013 by the Secretary of State for Energy and Climate Change and by the Secretary of State for Communities and Local Government, the Cumbria Wind Energy Supplementary Planning Document (2007); and the Cumbria Landscape Character Guidance and Toolkit 2011. However he has not taken into account Planning for Renewable Energy: A Companion Guide to PPS22, which was cancelled by the PPGRLCE.

10. The Secretary of State has had regard to the fact that on 28 August 2013 Government opened a new national planning practice guidance web-based resource. However, given that the guidance has not yet been finalised, he has attributed it limited weight.
11. Having had regard to the Inspector's comments about Copeland's emerging development plan (IR13), the Secretary of State agrees that this is now at an advanced stage. In determining this case the Secretary of State has taken account of the proposed modifications to the plan (IR15), but he has not had regard to the Inspector's Report dated 7 September 2013. The Secretary of State shares the Inspector's view that policies ER2 and DM2 are the main emerging policies for renewable energy development (IR14) and that policy ENV 5 seeks to protect landscapes from inappropriate change (IR16).

## **Main issues**

### **Landscape Character**

12. The Secretary of State has taken account of the Inspector's comments about the policy context for the consideration of landscape character (IR183 – 184) and he shares the Inspector's view that the wording of relevant policies in the emerging development plan is more consistent with the Framework than is the LP (IR15 – 16 and IR184). In line with paragraph 216 of the Framework, the Secretary of State has given weight to the emerging plan in his determination of this case. The Secretary of State agrees with the Inspector that both the Cumbrian Landscape Character Guidance and Toolkit and the Cumbrian Wind Energy Supplementary Planning Document are generally consistent with the approach advocated in the Framework and in the PPGR LCE (IR186).
13. In common with the Inspector, the Secretary of State concludes that the work of Scottish Natural Heritage does not invalidate the visualisations that have been submitted for this proposal (IR188) and that it has not been demonstrated that all or part of any turbine would be more or less visible from any location if different visualisation techniques were adopted (IR189).
14. The Secretary of State sees no reason to disagree with the Inspector's analysis at IR190 – 217. He also takes the view that the turbines would be the dominant and defining characteristic of the landscape within an area extending up to 600m in each direction away from the turbines and that the turbines would inevitably detract from the landscape's wild and open character (IR217). In common with the Inspector, the Secretary of State considers that there would be a particularly severe adverse effect on landscape character in views from the west (IR217).
15. Turning to the scheme's cumulative effects, for the reasons given by the Inspector at IR218-227, the Secretary of State agrees with the Inspector that the development would result in substantial cumulative harm to the landscape character of the area in which it would be located. He agrees that it would considerably extend the modest area of wind farm landscape already created by the Fairfield Farm Wind Farm and would occupy an excessive proportion of this Landscape Character Area (IR228).
16. The Secretary of State accepts the assessment of the Inspector (IR228) that the two wind farms and the Watch Hill turbine would appear from some angles as a

single group which would be much larger than the small group identified by the adopted SPD as appropriate in this landscape character area. He agrees with the Inspector that from other angles they would appear as three too-closely-related groups of different and conflicting designs, scale and spacing (IR228). The Secretary of State concurs with the Inspector's view that this would appear incoherent and confusing to the viewer (IR228). The Inspector describes specific harm to important perceptual characteristics of the defined landscape area and the Secretary of State agrees that the proposal would intrude into views of the moorland ridge, reducing its wildness, blurring the outline of the ridge and intruding into views of the ridge with its valued backdrop of the Lakeland Fells, especially as seen from the west (IR228).

### **Visual Amenity**

17. The Secretary of State has had regard to the Inspector's comments at IR229 -231, including the fact that the Council did not claim that the turbines would be so close to any dwellings as to be unacceptably dominant or overbearing in the outlook from those dwellings or to make them unpleasant places to live (IR229). The Secretary of State agrees with the Inspector (IR231) that there would clearly be a change in the views available from numerous dwellings and from other private places and that these are relevant to considerations of the effect on landscape character as described in the preceding paragraphs. The Secretary of State has had regard to the Inspector's comment that the turbines would be sufficiently remote from all dwellings other than those occupied by financial beneficiaries of the development that they would not have unacceptable affects on the visual amenity of their occupiers (IR230). In relation to the question of the impact on dwellings occupied by financial beneficiaries of the development the Secretary of State considers that, given his conclusions at paragraphs 23 - 24 below, it is not necessary for him to consider this matter further. The Secretary of State agrees with the Inspector that the views available from many private dwellings, buildings and land in the settlements are relevant to considerations of the effect on landscape character but that they do not here result in other unacceptable visual amenity impacts on occupants of individual dwellings that are separate from his considerations of landscape character (IR231).

### **Benefits**

18. The Secretary of State has carefully considered the Inspector's assessment (IR232-235) of the benefits of renewable energy production and the contribution that the appeal scheme would make towards such production. He notes that there is no significant dispute between the parties about this issue. He has had regard to the fact that the development would contribute about 12MW of installed capacity and would contribute to an associated reduction in carbon emissions (IR232). The Secretary of State agrees with the Inspector that, given the strong national policy support for renewable energy and the contribution which the development could make towards the local production of renewable energy, these are significant benefits to weigh in the planning balance (IR235).
19. The Secretary of State agrees with the Inspector that the proposed wildlife habitat enhancement would be a positive benefit albeit of modest scale (IR236). Having considered the Inspector's comments at IR239-240, the Secretary of State concludes that the development's contribution to economic growth and

employment and its financial benefits to local farmers are positive benefits to weigh in the planning balance. As set out at paragraph 22 below, like the Inspector (IR238), the Secretary of State considers that the community benefits offered through the planning obligation should not be taken into account in the planning balance.

### **Other Matters**

20. The Secretary of State agrees with the Inspector's reasoning and conclusions on other matters at IR241-244 and shares his view that these are not of sufficient weight to be significant in the overall planning balance (IR241). With regard to the proposed noise control conditions, the Secretary of State agrees with the Inspector that the suggested conditions suitably reflect guidance (IR244).

### **Conditions**

21. The Secretary of State has considered the Schedule of Conditions at the end of the Inspector's report and national policy as set out in Circular 11/95 and the Framework. He is satisfied that the proposed conditions are reasonable and necessary and would meet the tests of Circular 11/95 and paragraph 206 of the Framework. However, the Secretary of State does not consider that they overcome his reasons for dismissing the appeals because the impacts cannot be made acceptable.

### **Planning Obligation**

22. The Secretary of State notes that the proposal is accompanied by a planning obligation which will provide for community benefit payments including an initial £50,000 contribution to support apprenticeships (IR176). Having had regard to the Inspector's comments at IR177 - 176 and at IR237 - 238, the Secretary of State agrees with the Inspector that the community benefits on offer are not a requirement of planning policy and that they would not be directly related to the development (IR238). The Secretary of State concludes that the contributions do not meet the tests set out at Regulation 122 of the Community Infrastructure Levy Regulations and at paragraph 204 of the Framework and, like the Inspector, he has not taken account of them in the planning balance (IR238).

### **Planning Balance and Overall Conclusions**

23. The Secretary of State has given very careful consideration to the Inspector's balancing exercise at IR245 - 249. He accepts the Inspector's conclusions that the development would cause significant adverse harm to landscape character both in its own right and cumulatively with the Fairfield Farm and Watch Hill turbines, and agrees with the Inspector's conclusion that there would be a literal conflict with LP Policies EGY 1, EGY 2 and ENV 6 (IR245). Like the Inspector, he notes that the LP is inconsistent with the Framework in its lack of regard to the benefits of development which are an important material consideration (IR245). The Secretary of State has noted too that draft DPD Policies ER2, DM2 and ENV 5 are more consistent with national policy in the Framework in that they do provide that the benefits of development are to be considered before concluding whether or not a development is acceptable (IR246). As set out at paragraph 11

above, emerging policies are now at an advanced stage and the Secretary of State has given weight to them.

24. The Secretary of State accepts the Inspector's conclusion that to develop the wind farm here would be in conflict with the landscape capacity guidance in the adopted SPD because of its close proximity to the existing Fairfield Wind Farm and permitted Watch Hill Turbine and because it would have a confused design relationship with those developments owing to the different scale, height and spacing of those developments (IR248). He agrees with the Inspector too that the positioning on the ridge and west facing slope of Weddicar Rigg would cause substantial harm to key perceptual characteristics of the landscape character area and Landscape of County Importance in which it would be located (IR248).
25. In the terms of the Framework, the Secretary of State agrees with the Inspector's conclusion that the adverse impacts would in this case significantly and demonstrably outweigh the benefits (IR249). Having had particular regard to paragraph 98 of the Framework, the Secretary of State does not consider that the landscape impacts are or could be made acceptable. Furthermore, in the terms of the emerging DPD the Secretary of State agrees that the proposal would be in conflict with emerging Policy DM2(C) in that there would be unacceptable adverse effects on landscape character and distinctiveness because the identified landscape harm is not outweighed by the other benefits (IR249).

### **Formal Decision**

26. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal for the construction and operation of a wind farm consisting of 6 (No.) wind turbines, control building, anemometer mast and associated access tracks for an operation period of 25 years in accordance with application reference 4/11/2485/0F1.

### **Right to challenge the decision**

27. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.
28. A copy of this letter has been sent to Copeland Borough Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

**Christine Symes**

Authorised by Secretary of State to sign in that behalf





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# Report to the Secretary of State for Communities and Local Government

by R P E Mellor BSc DipTRP DipDesBEnv DMS MRICS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 7 October 2013

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**Town and Country Planning Act 1990**

**Copeland Borough Council**

**Appeal by**

**Banks Renewables (Weddicar Rigg Wind Farm) Ltd**

Inquiry held on 9-12 & 15-16 July 2013

Land to the west of Steel Brow Road, Arlecdon, Frizington, Cumbria

File Ref: APP/Z0923/A/13/2191361

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**File Ref: APP/Z0923/A/13/2191361****Land to the west of Steel Brow Road, Arlecdon, Frizington, Cumbria**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Banks Renewables (Weddicar Rigg Wind Farm) Ltd against the decision of Copeland Borough Council.
- The application Ref 4/11/2485/0F1, dated 30 September 2011, was refused by notice dated 17 October 2012.
- The development proposed is the construction and operation of a wind farm consisting of 6 (No.) wind turbines, control building, anemometer mast and associated access tracks for an operational period of 25 years.

**Summary of Recommendation: That the appeal be dismissed.**

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## Abbreviations used in this Report

AOD	Above Ordnance Datum
CBC	Copeland Borough Council
CD	Core Document
CO2	Carbon Dioxide
CS	Submission Core Strategy
DL	Decision Letter Paragraph
DPD	Copeland Core Strategy and Development Management Policies Development Plan Document
EN-1	National Policy Statements for Energy
EN-3	National Policy Statements for Renewable Energy
ES	Environmental Statement
ETSU	The assessment and rating of noise from wind farms (ETSU-R-97)
EU	European Union
Framework	National Planning Policy Framework
GLVIA	Guidelines for Landscape and Visual Impact Assessment, Third Edition' (The Landscape Institute) 2013
ha	hectare
HMP	Habitat Management Plan
IR	Inspector's Report
km	Kilometre
LCA	Landscape Character Assessment
LDF	Local Development Framework
LP	Copeland Local Plan 2001-2016 (2008)
LPA	Local Planning Authority
LVIA	Landscape and Visual Impact Assessment
m	Meter
MW	Megawatt
PPGRLCE	Planning Practice Guidance for Renewable and Low Carbon Energy
RSS	Regional Spatial Strategy
LCGT	Cumbria Landscape Character Guidance and Toolkit
LDNP	Lake District National Park
LDNPA	Lake District National Park Authority
LOCI	Landscape of County Importance
S106	Section 106 of the Town and Country Planning Act 1990 (as amended)
SoS	The Secretary of State for Communities and Local Government
SoCG	Statement of Common Ground
SNH	Scottish Natural Heritage
SPD	Cumbria Wind Energy Supplementary Planning Document
XIC	Evidence in Chief
XX	Cross examination
ZTV	Zone of Theoretical Visibility

## Procedural Matters

1. At the Inquiry an application for costs was made by Banks Renewables (Weddicar Rigg Wind Farm) Ltd against Copeland Borough Council. This application is the subject of a separate Report.

## The Site and Surroundings

2. The appeal site is on Weddicar Rigg in West Cumbria. This is a ridge of high ground in open countryside between the settlements of Moresby Parks (to the west), Frizington (to the south east) and Arlecdon (to the north east). These are former pit villages which have been extended by more recent development. Although many of the 19<sup>th</sup> century miners' houses remain in the villages, regeneration and landscaping works have removed most other visible evidence of the area's mining history including that of recent open cast mining.
3. The appeal site lies about 2-3km from the eastern edge of the Whitehaven and 4km from the town centre. Moresby Parks is divided from the built-up area of Whitehaven by an intervening partly-developed ridge on which stands both the hamlet of Scilly Banks and the Whitehaven Golf Course. A busy class 3 road known as Red Lonning runs along this ridge. The small settlement of Keekle lies to the south of Scilly Banks. Local views of Weddicar Rigg are available from the nearby settlements, from local roads and footpaths and from the surrounding countryside within 2-3km. Longer views are available from other small settlements and roads and from long distance footpaths and cycle routes. Still longer views are also available from the western edge of the Lake District National Park in the vicinity of Ennerdale and more especially from high ground in that area, from where it is also possible to see other existing wind farms and coastal development.
4. In the reverse direction, striking views of Ennerdale and the Lakeland Fells within the National Park are available from the higher parts of Weddicar Rigg. Similar views of the Fells are also available from the parallel ridge to the west across and above the ridge at Weddicar Rigg. This includes views from Scilly Bank, Whitehaven Golf Course, Red Lonning Road, and from some streets, dwellings and gardens within Moresby Parks on its higher western side. Closer views of Weddicar Rigg and more limited views of the Fells above the ridge are available from lower ground and dwellings on the eastern side of Moresby Parks
5. The appeal site is a mixture of grass and rough moorland, which is wet in parts, and is used for low intensity grazing. In the Cumbria Landscape Character Guidance and Toolkit prepared by Cumbria County Council (Doc 6) (the LCGT) the site lies within a landscape that is characterised as 'Type 9 Intermediate Moorland and Plateau'. The guidance further sub-divides the Type 9 Landscape around the appeal site into Sub Type 9a 'Open Moorlands' to the west and Sub Type 9d 'Ridges' to the east. There would be 3 turbines within each sub area. The Type 9 landscape type is modest in extent both locally and within Cumbria. The subject area only extends about 6km north-south and a similar distance east-west. By contrast the Type 5 Lowland which adjoins the Type 9 area to the north, west and south/south east is much more extensive and stretches almost unbroken across northern and western Cumbria from south of Whitehaven to north east of Carlisle (See Doc 6 page 66). That area includes numerous wind turbine developments.

6. The existing Fairfield Farm wind farm with 5 turbines stands within the Sub-Type 9a landscape about 1km to the north of the appeal site. An additional single turbine has recently been permitted at Watch Hill close to Fairfield Farm but has not yet been erected. There are also numerous wind farms and single turbine developments over a wide area of West Cumbria to the north of Fairfield Farm within the areas administered by Copeland and Allerdale Borough Councils. There is a large offshore wind farm of 60 turbines at Robin Rigg in the Solway Firth which can be seen in the distance from the coast and from high ground. When travelling around the area it is often possible to see 2 or more onshore wind farms in the same views. However there are no wind farms within the broad valley that lies between Weddicar Rigg and the Lake District National Park to the east of the appeal site.
7. The Landscape and Visual Impact Assessment (the LVIA) submitted with the application includes a wide variety of visualisations from viewpoints which are numbered 1-25. These are found in Volume 3 of 3 in the application documents. Key viewpoints from where local landscape character would be perceived are Viewpoint 11 from the south east (Frizington), Viewpoint 14 from the south (Keekle), Viewpoint 16 from the west (Moresby Parks), Viewpoint 18 from the north (Watch Hill) and Viewpoint 25 from the north east (Arlecdon). Viewpoints 14, 16 and 18 include views towards the Lake District National Park. Representative views of the site from the National Park include Viewpoint 10 from high ground (Flatt Fell) and Viewpoint 6 from lower ground (Lamplugh Church). Many of the other viewpoints are at distant locations from which the turbines might be visible, at least in part, but from which the local landscape character around the appeal site would not be readily appreciated.
8. Additional visualisations from viewpoints A-E were provided in evidence from the Appellant's landscape witness (Document APP/BD/4). These include further views from Moresby Parks, Keekle and Arlecdon.

## **Planning Policy**

### *The Development Plan*

9. At the date of the Council's decision in October 2012, the development plan included the Regional Spatial Strategy for the North West (the RSS) and the saved policies of the Cumbria and Lake District Joint Structure Plan 2001-2016 (the SP). Both have since been revoked. However the main parties do not dispute that the evidence base which underpinned the RSS in relation to targets for renewable energy capacity remains relevant. That was also the view expressed by the Secretary of State in his recent decision concerning Hallbarn Farm and Beck Burn Peat Works Carlisle (Refs APP/E0915/A/12/2170838 & APP/E0915/A/12/2177996) (Document CD26r).
10. At the time of writing the relevant development plan comprises only the saved policies of the Copeland Local Plan 2001-2016 (2008) (the LP) (CD14). LP Policies EGY 1 and EGY 2 are referred to in the decision notice. EGY 1 sets criteria for any form of renewable energy development which include '(1) *That there would be no significant adverse visual effects*' and '(2) *That there would be no significant adverse effects on landscape or townscape character and distinctiveness*'. EGY 2 further provides that wind energy schemes are to be subject to a '*scheme for the removal of the turbines and associated structures and the restoration of the site to agriculture when the turbines become*

*redundant*'. The development plan is accorded statutory weight in decision making by Section 38(6) of the Planning and Compulsory Purchase Act 2004 but this is subject to any other material considerations. In that regard the National Planning Policy Framework (2012) (the Framework) provides at paragraph 215 that due weight should be given to policies in such existing development plans according to their degree of consistency with the Framework. The Council accepts that the above LP Policies are not fully compliant with the Framework since they do not provide for the balancing of adverse impacts with the benefits of the development.

11. The 3 eastern turbines would be within a 'Landscape of County Importance' (LOCI) as defined by LP Policy ENV 6 and illustrated on the Proposals Map by green stipple (Document 3). The decision notice did not refer to Policy ENV 6. However, amongst other things, Policy ENV 6 provides that such landscapes are to be protected from *'inappropriate change'*. The policy similarly lacks the balancing provisions in paragraph 14 of the Framework whereby adverse impacts are to be weighed with the benefits of the development. Moreover the Framework specifically refers in Footnote 17 to the National Policy Statement for Energy EN-1 (2011) (CD76) which provides amongst other things at paragraph 5.9.14 that, where a local development document in England has policies based on landscape character assessment, these should be paid particular attention. It continues: *'However local landscape designations should not be used in themselves to refuse consent as this may unduly restrict acceptable development'*. Nevertheless landscape character remains material. Within Copeland Borough the LOCI coincides with LCGT Landscape Character Sub-Type 9d, albeit that the LOCI designation preceded the preparation of the LCGT.
12. The 3 western turbines would be within an area which the LP Proposals Map designates as a Tourism Opportunity Site (TOS2). That is one of several large areas allocated by saved Policy TSM2 and which are intended to allow for the development of large scale tourism facilities (See LP at CD14 pages 115-116 and the Proposals Map extract at Document 3).

#### *The Emerging Development Plan*

13. At the date of the Council's decision the emerging 'Copeland Core Strategy and Development Management Policies Development Plan Document' (the DPD) (CD15) was at an early stage. It was not referred to in the decision notice. However it has since been subject to a public examination by an Inspector. The Council has recently consulted on proposed modifications which have been drafted in order to respond to issues raised at that examination. The results of that consultation were not yet available at the Inquiry. The DPD is nevertheless now at an advanced stage. The Council's website indicates that the Inspector's Report was submitted on 27 September 2013 (after the close of this Inquiry), and that the DPD is expected to be considered by the Full Council for adoption on 5 December 2013. Some LP policies will then be superseded. The Inspector's Report is not before me and has not been taken into account.
14. DPD Policies ER2 and DM2 are the main emerging policies for renewable energy development. ER2 seeks to support and facilitate new renewable energy generation at locations which best maximise renewable energy resources and minimise environmental and amenity impacts. The supporting text refers to the national target for 15% of UK energy from renewable resources by 2020 and to

the Cumbria Renewable Energy Capacity and Deployment Study 2011 (Inquiry Document 9). Based on that study DPD paragraph 4.3.8 sets out an *'aspiration to deliver 46MW from renewable sources by 2030'*. This includes existing installed or permitted capacity which the parties estimate at about 17MW.

15. Whereas the originally submitted policy criteria DM2(B) and (C) used similar wording to LP Policy EGY 1 criteria (1) and (2), the proposed modifications would replace the word *'significant'* in each criterion with *'unacceptable'* (CD87). This modification is explicitly proposed so as to be consistent with Framework paragraph 98. The changed wording allows for the weighing of harm judged to be significant with other considerations including the benefits of the development before concluding whether the identified harm is acceptable or otherwise.
16. DPD Policy ENV5 seeks to protect all landscapes from inappropriate change. It also includes provisions which allow that the benefits of development may outweigh the potential harm. The policy wording does not explicitly refer to the LOCI designation. However the supporting text to that policy suggests that the Council *'will continue to use the LOCI designation in development management decisions'* pending a more detailed landscape character assessment than that provided in the County Council's Landscape Character Assessment and Guidance and Toolkit 2011. This suggests an intention to retain LP Policy ENV 6 and its accompanying proposals map notation after the DPD is adopted. However DPD Policy ENV5 would also be in effect in these areas. It would be a more up-to-date policy and one that is more consistent with the Framework in its inclusion of balancing provisions. It should therefore attract more weight where there is conflict with LP Policy ENV 6. DPD Policy DM2 would be the main policy of relevance to wind energy and that also contains balancing provisions.

#### *Supplementary Planning Document*

17. The Cumbria Wind Energy Supplementary Planning Document (2007) (the SPD) has been adopted by Copeland Borough Council as a Local Development Document and part of the Local Development Framework. The SPD is consistent with new national guidance in Planning Practice Guidance for Renewable and Low Carbon Energy (PPGRLCE) in that it is based on landscape character assessment. It is thus an important material consideration even though it is not part of the adopted development plan for the purposes of Section 38(6). SPD Part 1 is at Document CD16. Part 2 is bound separately as Inquiry Document 4. The accompanying maps are at Document 5.
18. The SPD builds on earlier landscape character assessment work and refines this in relation to wind energy. Of particular relevance are the assessments of the capacity of different landscapes to accommodate groups of wind turbines and the advice on the assessment of cumulative impacts. The SPD predates the latest version of the Cumbria Landscape Character Guidance and Toolkit prepared by Cumbria County Council (Doc 6) (the LCGT) which is also a material consideration. The SPD and LCGT are broadly consistent with each other.
19. In the SPD the appeal site lies wholly within Landscape Type 9ii – 'Moorland Hills and Low Plateaus'. That area is further subdivided to include 9a 'Open Moorlands' and 9d 'Ridges'. At Weddicar Rigg the 3 proposed turbines on lower ground to the west would lie within Area 9iia. The 3 turbines on higher ground to the east would be within Area 9iid. The latter area 9iid is consistent with the LOCI defined in the LP and referred to in the SPD.

20. At page 68 of the SPD Part 2 the Type 9i area (or LOCI) is described as *'distinct land form of ridge, natural moorland land cover, striking views of adjacent fells, coast or estuary, absence of detractors and woodland and stone wall features of interest creating a strong positive response'*. Such areas occupy only 1.1% of Cumbria. In the capacity statement at page 69 it is stated that *'Whilst the ..... West Cumbria (9d) area [has] moderate/high landscape value as LOCIs on balance the attributes recognised are considered unlikely to be significantly compromised by wind energy development'*. At Table 1.1 on page 4 of SPD Part 2 the landscape capacity of the Type 9ii area is described as *'Moderate'* and the *'Appropriate Scale of Development'* as *'Up to a small group'*. A small group is defined elsewhere in the SPD as 3-5 turbines. It is notable that in many other landscape areas Table 1.1 prefers a small group but also allows exceptionally for the development of a large group. However the SPD subdivides Landscape Type 9 into Type 9i and Type 9ii areas. It is notable that the exception which allows for large groups of groups only applies in Type 9i area and not in the Type 9ii area that includes the appeal site. This appears to be the main reason why the SPD designates Type 9 areas as either 9i or 9ii. The LCGT does not make this distinction.
21. The LVIA that was submitted with the planning application notes at paragraph 5.706 that an earlier draft of the SPD had concluded that the local landscape around the appeal site would support larger numbers of turbines. However that was revised in the finally published 2007 edition of the SPD. The main factors which led to this change are described in the same paragraph of the LVIA as linked to *'views to the adjacent fells, the context of historic mining villages and the scale of the landscape.'*
22. Advice on the consideration of Cumulative Landscape and Visual Effects is included in the SPD at Part 2 paragraphs 1.22-1.42. This includes advice at paragraph 1.23 that *'cumulative effects may present an eventual limit to the extent of wind energy schemes in some parts of Cumbria, particularly in landscape terms.'* Also paragraph 1.42 includes the advice that *'A succession of schemes with different designs and relationships to the landscape can appear confusing as well as raise questions about visual rationale and suitability of each development'*.

#### *National Policy and Guidance*

23. The decision notice claims that the development would contravene provisions in the National Planning Policy Framework (the Framework). This is disputed by the Appellant.
24. For the purposes of paragraph 215 of the Framework, the main parties do not dispute that the adopted LP Policy EGY 1 is not consistent with national policy in the Framework owing to the lack of balancing provisions. In these circumstances greater weight may be accorded to the policies of the Framework. The LP is also out of date for the purposes of paragraph 14 of the Framework which requires that where the development plan is out of date (as above) planning permission should be granted unless:
- *'any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this framework taken as a whole, or*

- *specific policies in this Framework indicate development should be restricted*’.

25. Specific policies in the Framework of relevance to renewable energy are set out in Section 10. In particular paragraph 97 includes the provision that local planning authorities should :

*‘design their policies to maximise renewable and low carbon energy development while ensuring that adverse impacts are addressed satisfactorily, including cumulative and landscape impacts’.*

26. Paragraph 98 includes the provision that when determining planning applications local planning authorities should:

*‘approve the application [unless material considerations indicate otherwise] if its impacts are or can be made acceptable.’*

27. Other material considerations include National Policy Statements for Energy (EN-1) and for Renewable Energy (EN-3). Ministerial written statements on renewable energy were published in June 2013 by the Secretary of State for Energy and Climate Change and by the Secretary of State for Communities and Local Government. The Companion Guide to the withdrawn former Planning Policy Statement 22 ‘Renewable Energy’ was in effect at the time of the Inquiry but was subsequently withdrawn when new national ‘Planning Practice Guidance for Renewable and Low Carbon Energy’ (PPGRLCE) was published in July 2013, after the Inquiry closed.

28. The PPGRLCE amplifies national policy. As it is guidance it does not change policy. However whereas paragraph 5 of the Framework explains that all communities have a responsibility to help increase the use and supply of green energy, the PPGRLCE confirms that this does not mean that the need for renewable energy automatically overrides environmental protections and the planning concerns of local communities. The document also includes specific guidance at paragraphs 39-44 on the assessment of cumulative landscape and visual impacts from wind turbines. The main parties commented in writing on the implications of the new guidance after the close of the Inquiry.

29. The PPGRLCE also reaffirms at paragraph 30 that the document: *‘The assessment and rating of noise from wind farms’ (ETSU-R-97) (ETSU)* should be used when assessing and rating noise from wind energy developments. The Department of Energy and Climate Change also endorses the ‘Good Practice Guide on the Application of ETSU-R-97 for the Assessment and Rating of Wind Turbine Noise’ that was recently published by the Institute of Acoustics.

#### *Other Guidance*

30. The Landscape Character Assessment on which the Cumbria Wind Energy SPD (2007) (the SPD) is based was updated in 2011 as the Cumbria Landscape Character Guidance and Toolkit (LCGT) (Doc 9). The updated assessment locates the appeal site within Landscape Type 9 ‘Intermediate Moorland and Plateau’. It also describes the Sub-Type 9a and 9d landscapes within that area. In particular the perceptual character of Sub-Type 9d is described on page 127 as *‘... generally open large scale landscapes. The unenclosed moorland gives a feeling of wildness. Views are often wide and expansive and uninterrupted and striking views of the Lakeland Fells ... provide drama and reinforce a sense of*



*wildness. Changes in weather conditions accentuate the sense of wildness.'*

Similarly the perceptual character of the Sub Type 9a area at page 118 includes the statement that: *'Despite the row of pylons it retains large expansive views of the Lakeland Fells which provide a dramatic backdrop to the landscape.'*

31. An identified development issue for landscape Sub Type 9d on page 127 of the LCGT is that: *'The Government's commitment to an increase in renewable energy could see increased interest in large scale wind energy schemes. The cumulative effects of schemes could have a significant adverse effect on the character of the area.'* In relation to Sub Type 9a the development advice includes to *'Minimise adverse effects of tall and vertical structures such as pylons and turbines through careful siting and managing numbers of turbines to prevent them becoming a dominant feature of the landscape.'*
32. The Inquiry also considered other guidance including: 'Siting and Designing Windfarms in the Landscape, Version 1' (Scottish Natural Heritage 2009) (CD57); and 'Guidelines for Landscape and Visual Impact Assessment, Third Edition' (The Landscape Institute 2013) (GLVIA) (Doc 27).

## Planning History

33. There have been no relevant planning applications or appeals on the appeal site itself. However it is relevant to consider the planning history of other renewable energy developments in the vicinity.

### *Fairfield Farm Appeal 1997*

34. In 1997, and in a different local, regional and national policy context, there was an appeal in respect of a refusal of permission for a development at Fairfield Farm of 10 x 61.5m high wind turbines (Doc CBC/RT/4). That appeal was dismissed on visual impact grounds. No plan of that 10 turbine appeal scheme has been submitted in evidence but it is likely to have covered a wider area than the scheme for 5 turbines that was subsequently allowed on appeal and it may have extended closer to the current appeal site. The appeal decision also refers to the refusal by the Council of another earlier scheme for 13 turbines at Fairfield Farm which apparently was not appealed.

### *Fairfield Farm Appeal 2008*

35. The 2<sup>nd</sup> appeal decision concerning Fairfield Farm wind farm was issued in May 2008 (Appeal Ref APP/Z0923/A/07/2056148) (Doc CD26z). It allowed the 5 turbines that were erected there in 2011. The turbines are about 80m high to blade tip. The closest distance between those turbines and the Weddicar Rigg turbines would be about 977m.
36. Character and appearance were main issues at that appeal. At paragraph 13 of the decision letter (DL13) the Inspector referred to the comment of landscape advisors to the Council (Axis) that this part of Cumbria is a landscape where wind turbines are a key characteristic and that some additional cumulative impact would result. The Inspector noted that Fairfield Farm lies wholly within Landscape Character Sub Type 9a which had been assessed as of medium landscape quality and adjacent to the Sub Type 9d area that had been assessed as of high landscape quality. The Inspector concluded at DL20 that the Fairfield Farm development would not intrude on adjacent major valleys, the coastal strip or the setting of important towns or routes or harm fells of national value.

However the Inspector also concluded that the proposal would have significant local visual effects, and would have a significant impact on the character of the surrounding area within 3km of the site (as also then advised by Axis). At DL43 he concluded that these would be significant adverse visual effects for the purposes of LP Policy EGY 1. He did not identify any harm in respect of other issues that were raised. He then applied the balancing tests in Policy R44 of the then extant Cumbria and Lake District Joint Structure Plan and national Planning Policy Statement 22 Renewable Energy. At DL45 he commented that the degree of local visual intrusion would not be dissimilar to that at other wind farms he visited, that it would not have a significant cumulative visual impact, and that the identified limited harm would be more than outweighed by the important contribution to emerging regional and national targets for renewable energy. Finally at DL45 he commented that any future proposals for turbines in the wider area would have to be determined in the light of the prevailing circumstances and relevant policy.

#### *Watch Hill Turbine 2012*

37. In 2012 the Council permitted the single 74m turbine proposed at Watch Hill 531m to the west of the Fairfield Farm wind farm and must then have judged the cumulative landscape and visual impact of that development with the Fairfield Farm wind farm to be acceptable. The location is shown at Document APP/BD/6 together with the respective locations of the Fairfield Farm and Weddicar Rigg turbines.

#### *Other Wind Farm Decisions*

38. Numerous other wind farm appeal decisions are listed in the Core Documents at CD 26. These include schemes that were allowed and others that were dismissed. One recent Cumbria wind farm decision that dealt directly with the cumulative landscape and visual impacts was CD26y Broughton Lodge (APP/G0908/A/11/2156118). The Broughton Lodge appeal concerned a site in Allerdale between Workington and Cockermouth. It was dismissed because of the cumulative harm to the landscape with other windfarms in that area. The Inspector concluded that: *'Broughton Lodge occupies a location where the proposed wind turbines would combine with others in the locality and tip the balance from a landscape with wind farms to a landscape with wind turbines as a defining and dominating element'* and that it would: *'create the impression of a swathe of turbines across this segment of the landscape character type'*. The separation distance between that scheme and other existing and proposed wind farms would have been greater than that proposed between Fairfield and Weddicar Rigg.
39. Another Cumbria decision that dealt directly with cumulative landscape and visual impacts was CD26cc Sillfield (APP/M0933/A/09/2099304). That site is in South Lakeland to the east of the National Park and close to the M6 motorway. Amongst other identified harm the Inspector there concluded at DL88 that the *'adverse cumulative impact [on the landscape] with the Armistead scheme would be severe and in my view a compelling objection'*. The Armistead scheme at Old Hutton had been allowed previously on appeal (Doc AP/ME/2) (Appeal Ref APP/M0933/A/08/2090274). It stands 1.8km to the north east of the Sillfield site. The Inspector acknowledged that the already permitted Armistead wind

farm would have been seen from both the Lake District and Yorkshire Dales National Parks.

#### *Other Undecided Wind Farm Proposals*

40. A transferred decision by an Inspector is awaited on a recent appeal for a wind farm with 3 turbines at Potato Pot about 3km to the north of Fairfield Farm wind farm within Allerdale Borough (Appeal Ref 2189934). That decision was deferred for reconsultation on the June 2013 Ministerial Statements and the July 2013 Planning Policy Guidance. However it is likely that the Potato Pot decision will be issued before the Secretary of State determines this Weddicar Rigg appeal.
41. There is a current undetermined planning application for 4 turbines at Lillyhall, also about 3km to the north of Fairfield Farm wind farm and less than 1km from the Potato Pot site.
42. A scoping request is reported to have been submitted to Copeland Borough Council for a further wind farm known as Blackwood Beck on a site to the south of Moresby Parks and the appeal site and closer to Keekle.

#### **The Proposals**

43. The appeal scheme is for 6 turbines, each 115m to blade tip, in a grid layout. It is succinctly described at Section 3 of the Statement of Common Ground (Doc 2). The wind farm would provide an installed capacity of about 12MW.
44. The Appellant Company selected the site in 2006 after a sieve mapping technique (See Environmental Statement Drawing 01 in Volume 1 of 3). Initial proposals were for a wind farm of up to 24 turbines on one site and for 9 turbines on a site to the north east at High Park on the same ridge. These schemes preceded the Fairfield Farm proposals and overlapped with that site.
45. In relation to the Landscape Character Guidance the current proposal for 6 turbines would include 3 eastern wind turbines that would stand on or close to the highest point of the Weddicar Rigg ridge within Sub Type 9d 'Ridges'. However the 3 western turbines would be lower on the west-facing slope of the ridge within Sub Type 9a 'Open Moorlands'.
46. The planning application was accompanied by a Landscape and Visual Impact Assessment (LVIA) that was prepared by SRL Consulting Ltd as part of the Environmental Statement. It is included in Volume 1 of 3 dated September 2011. The Council commissioned a Review of the LVIA from independent consultants Axis (CD8). This criticised some aspects of the LVIA but found it sufficient to draw robust conclusions in respect of landscape and visual impacts. Axis noted that in combination with Fairfield Farm there would be 11 turbines in total (the LVIA did not take into account the subsequently permitted Watch Hill turbine which would add a 12<sup>th</sup> turbine). They suggested at paragraph 6.1.4 that the SPD does not 'rule out' such larger scale development. However I consider that to be a misinterpretation of the SPD given that it notably does not allow for such exceptions in this (Type 9ii) landscape area but explicitly does so in other areas including in other (Type 9i) landscapes. Axis concluded that there is a fine balance between acceptable and unacceptable effects. They concluded that this proposal is acceptable although additional development on the same ridge would not be. The Axis Report clearly informed the Officer Report to the Council's Planning Panel which went on to recommend approval.

47. The site lies within a hen harrier bird sensitivity area as defined by the RSPB. It is close to an area used by wintering hen harriers. Hen harriers are listed on Annex 1 of the EU Birds Directive. In response to initial concerns from RSPB and Natural England, the proposals are accompanied by a package of mitigation and enhancement measures in a Habitat Management Plan to be secured by a planning condition. These measures include:

- 138ha of off-site mitigation land;
- 96ha of enhancement land;
- controls on shooting;
- land management measures to benefit a range of species in addition to hen harriers;
- a management committee to include representatives from Natural England and the RSPB; and
- management funding from wind farm revenue for the 25 year life of the wind farm (this funding would thus extend beyond the current publicly funded agri-environmental schemes in the area that are only guaranteed funding up to 2018).

#### **Other Agreed Facts**

48. There is a Statement of Common Ground between the Appellant and Copeland Borough Council at Document 2. This sets out: the procedural history; an agreed description of the development including distances from the nearest properties and the National Park; comment on renewable energy targets; policy context; agreed viewpoints; visual receptors; the area for consideration of cumulative impacts; a brief reference to the residential amenity survey in the Environmental Statement which assesses properties within 1.5km; effects of the development that are not in dispute; and draft planning conditions (which were modified in discussion at the Inquiry).

## The Case for Copeland Borough Council

*[These submissions are edited from the Council's Closing Statement with some additions from the evidence to the Inquiry]*

49. These submissions are structured to deal with the two principal issues identified by the Inspector at the beginning of the Inquiry.

*What effects the wind farm would have on the character and visual amenity of the landscape and nearby settlements, both in its own right and cumulatively with Fairfield wind farm.*

50. It is submitted that the issue should not lead to the overlooking of the cumulative effect of the appeal scheme with the permitted, but not erected, Watch Hill turbine and with other wind farms in the wider area.

51. The appeal scheme, Fairfield Wind Farm and the Watch Hill turbine would lie in very close proximity to each other. The agreed distances, measured between the centres of the nearest turbines to each other, are:

- a. Weddicar Rigg to Fairfield: 977m;
- b. Weddicar Rigg to Watch Hill: 1691m; and
- c. Watch Hill to Fairfield: 531m.

52. That Mr Denney's landscape evidence for the Appellant says that the Watch Hill turbine would be 2km from the Weddicar Rigg turbines suggests that his evidence was written on a misunderstanding of the position, even though he denies this.

53. The Council's landscape witness for the Inquiry was Mr Woolerton. He concluded in his written evidence that the development would result in an unacceptable local wind farm landscape within a strategic part of Copeland that would breach the ridge and open up hitherto unspoilt landscapes to tall engineered structures. He illustrated this by overlaying Zones of Theoretical Visibility of different wind farm developments. These show an area to the south east of the appeal site around Frizington where no wind farms are currently visible. Mr Woolerton considered that the backdrop of the Lakeland Fells would be vulnerable to detrimental landscape change and that similar development would be difficult to control such that there would be an extension of the wind farm landscape that exists to the north and which could be extended if further wind farm development is consented.

54. The Cumbria Landscape Character Guidance and Toolkit (CD54) (the LCGT) is instructive about the characteristics of Sub-Types 9a and 9d of Landscape Character Type 9ii, Intermediate Moorland and Plateau. The following points about sub-type 9a Open Moorlands, should be noted:

- a. The description of the sub-type's perceptual character (CD54 page 118 left column) as regards West Cumbria, refers to it retaining: *"large expansive views of the Lakeland Fells which provide a dramatic backdrop to the landscape", despite the presence of pylons*;

- b. The description of the sub-type's sensitive characteristics or features [CD54 page 118 left column] sets out that the sub-type's character and views across the moorland are *"sensitive to large scale infrastructure that could obscure or significantly interrupt the views"*;
  - c. The section on changes to the landscape (CD54 page 118 right column) and the guidelines for development (CD54 page 119 right hand column) show that it would not be advisable to locate such large scale infrastructure where the open and remote character of the landscape would be eroded. That cannot be treated as a demonstration that the Toolkit rejects any significant impact, because the penultimate bullet point in the development guidelines (CD54 page 119 right column) discusses the minimisation of effects.
55. The LCGT makes similar points about sub-type 9d Ridges. The statement that: *"views are often wide and expansive and uninterrupted and striking views of the Lakeland Fells"* appears as elements of both perceptual character and sensitivity (CD54 page 127 left column); and we are told that cumulative effects *"could have a significant adverse effect on the character of the area"* (CD54 page 127 right column) and the development guidelines are to the same effect as for sub-type 9a (CD54 page 128 left column).
56. The LCGT is not addressed at all by Mr Denney. That is a significant omission because his evidence fails to deal with key elements of the sub-types' character and sensitivity.
57. The Cumbria Wind Energy Supplementary Planning Document (CD16) (the SPD) also sets out important aspects of the sub-types' character and value. The distinctive ridges and striking views are again set out (DOC4 CD16, Part 2 page 68, first row after headings). The SPD notes the rarity of the sub-types which together account for just 2.9% of the area of the County. The small unit of Sub-Type 9d in which 3 of the proposed turbines would sit is the only occurrence of that sub-type in West Cumbria. The SPD tells us that the significance of effects will increase with scarcity and reduced geographical extent, amongst other things (CD 16 Part 2 page 7 paragraph 1.31). The value of the local landscape has been recognised by the continued protection of parts of it as a Landscape of County Importance (LOCI), pending a future Copeland character assessment – an approach which must have been thought to be sound by the Inspector examining the draft DPD as no modifications have been proposed in that regard.
58. The landscape in which the turbines would be located performs a strategic role which Mr Woolerton and others regard as important. In the 1997 Fairfield decision letter at paragraph 11 the Inspector said that: *"This landscape has less intrinsic quality than most of the National Park itself but it plays an important transitional role between the coastal towns to the west and the Cumbrian Mountains."*
59. Further, sub-type 9d has greater value than 9a: see the second Fairfield decision (CD26(z) paragraph 15), a point which the Inspector made in order to distinguish sub-type 9a, in which the turbines he was dealing with would be located, from sub-type 9d, in which 3 of the appeal scheme's turbines would be located. The SPD's capacity statement (DOC4 CD16 Part 2 page 69 first paragraph) makes the same point about Sub-Type 9d having higher value than Sub-Type 9a. That

therefore provides a distinction between the capacity and sensitivity of sub-types 9a and 9d which shows 9d to have greater sensitivity and less capacity.

60. The SPD (CD16) provides other useful guidance:

- a. It points out the risk of cumulative impacts occurring and that such effects may present a limit to the extent of wind energy development which may be acceptable (CD16 Part 1 page 29, paragraphs 3.2 and 3.3);
- b. It points out the number of turbines existing in the landscape at the time it was written, the risk of change in character of the landscape and how an Inspector, dealing with the Solway area, had already pointed to a position where the character of a *"number of types"* of landscape was *"shifting towards a distinct change"* (Part 1 page 30 paragraph 3.9);
- c. It reminds the reader that it provides only an indication of relative capacity of landscape types and should not be used definitively to accept or reject a particular proposal (DOC 4 CD16 Part 2, page 1 paragraph 1.7) and the guidance does not define capacity exhaustively (Part 2 page 4 paragraph 1.16);
- d. Table 1.1 [Part 2 page 4] sets out that sub-types 9a and 9d in West Cumbria have moderate capacity for wind energy development, such that they could accommodate *"up to a small group"* of turbines, which means 3-5 turbines (Part 2 page 2, paragraph 1.10). Uniquely in table 1.1, Type 9 is split. That is to reflect key differences in the sensitivity of the landscape in different areas of Type 9 (DOC 4 CD16 Part 2 page 2 paragraph 1.8);
- e. It sets out the importance of good and consistent design so as to avoid a situation where a *"succession of schemes with different designs and relationships to the landscape can appear confusing as well as raise questions about the visual rationale and suitability of each development"* (DOC 4 CD16 Part 2 page 9 paragraph 1.42).

61. The SPD also provides a capacity statement for landscape Type 9ii overall (Part 2, page 69). The identified moderate capacity relates to the whole landscape type. Nevertheless the capacity of sub-type 9iia must tend to be lower, given its higher value. The capacity statement also refers to the possibility of eroding a quiet backwater character – a point which Mr Denney agreed was relevant to consider when considering the effects of the scheme upon the Keekle Valley and towards Ennerdale.

62. Messrs Woolerton and Denney agree that the landscape and visual effects of the proposal should be treated as negative. Valency therefore has no role to play in this case. Mr Denney asserts that this is a precautionary approach, but the LCGT and SPD both clearly proceed on the basis that wind turbines are objects which would adversely affect the character of the landscape; otherwise the capacity for them would not be finite.

63. The Appellant draws support for the scheme from the Axis appraisal (CD8). Axis cannot answer for their assessment at the Inquiry and it has not been tested. The Council's Officers plainly did attach weight to its contents when reporting the application to the Planning Panel, but Mr Woolerton explained the concerns he had about the Axis report, which were those put in cross-examination to Mr Denney, and his written evidence makes plain that he does not share Axis' view.

It is not correct, as Mr Denney said in re-examination, that the first that the Appellant heard of the criticisms of the Axis report was when they were put to him in cross-examination.

64. There are two points to make about the Axis report:

- a. It does not address the relationship of the appeal scheme's turbines to the Fairfield wind farm in any detail. There are but two fleeting references to Fairfield in the part of the report containing Axis' own appraisal (CD8 paragraphs 5.1.10 and 5.1.12). That does not constitute a thorough assessment of the relationship of those schemes to each other and of their cumulative impact; and
- b. There is no consideration of the adequacy of the design of the appeal scheme, either in isolation or cumulatively with the Fairfield scheme. That too is a material omission.

65. Mr Woolerton has explained his concerns about the visualisations produced by the Appellant. Mr Denney rejects them by making the point that they conform to best practice. However, there are serious concerns about current best practice as expressed by Mr McDonald in his book (CD97) and reflected in guidance issued by Highland Council and which have been taken up in the consultation draft of proposed new best practice guidance by Scottish Natural Heritage (CD101). Mr Denney focussed on the issue of viewing distance, but the main point, as explained by Mr Woolerton, is that for a visualisation properly to reflect what the eye sees and the brain perceives, photographs ought to be taken with a 75mm lens (rather than a 50mm lens), in order to deal with depth of field distortions and vertical flattening of the image of the landscape and to be reproduced with larger prints. Mr Woolerton picks up on points drawn from the guidance produced by Highland Council and Mr McDonald, both of which are said by SNH to have informed the draft guidance – see their press statement explaining the launch of the consultation (Document CBC/DW/4).

66. Mr Woolerton contends that the images produced by the Appellant, whether they conform to current best practice or not, reduce the vertical height of objects in them. The correctness of that proposition can readily be tested in the field by looking at the Fairfield turbines in the visualisations and in reality. In his rebuttal evidence, Mr Denney rejects Mr Woolerton's opinion and that of Mr McDonald, despite the fact that he knew, when he wrote it, that SNH were consulting upon guidance which adopted important aspects of the practices which Mr McDonald advocates (DOC8). He did not acknowledge that and deal with it in his rebuttal evidence which presents an incomplete picture.

67. Mr Woolerton was cross-examined on the basis that he had adopted an inconsistent approach in his evidence as between his paragraphs 6.2.36 and 7.7.2. But Mr Denney accepted that, in the former paragraph, Mr Woolerton was dealing with mentally increasing the height of the turbines in the visualisations by 25%, i.e. adjusting the proportion taken up by an object within the vertical extent of the image. He also agreed that in the latter paragraph, Mr Woolerton was explaining that he had made a further mental adjustment so as to double the height of the entire image. He accepted that the two paragraphs were performing different roles. He was unable or unwilling to accept the inevitable consequence of those answers: that there was no inconsistency between the two paragraphs and that the point put to Mr Woolerton was wrong.



68. The Appellant's case was that the occurrence of significant effects is to be accepted for a commercial scale wind farm and so the simple existence of some such effects cannot lead to a refusal of planning permission. However it has never been the LPA's case to argue such a point. The Council accepts that wind energy development would become almost impossible if that were the case.
69. The Council does not argue that effects must be minimised to their end point. Absolute minimisation would mean not pursuing the scheme. However, it is relevant to consider whether those residual effects are acceptable with the effects minimised to extent where a productive (and presumably viable) scheme of development is proposed. Minimising effects does not allow the Appellant to evade scrutiny of the effects which remain.
70. The exercise should assess the severity and geographical extent of the significant effects of a scheme in order to see whether they are no more than the inevitable product of commercial scale wind energy development, or whether there is something about this scheme in this location which renders it unacceptable.
71. Mr Denney's evidence cannot help in that task, because of the way it is expressed without an LVIA. Rather, he has reviewed the LVIA in the Environmental Statement and provided evidence of his own when he considered it appropriate or necessary to do so. That here leads to an unsatisfactory outcome.
72. Mr Denney accepted that it is necessary for a landscape architect to adopt a methodology which is transparent, systematic and capable of replication. Here, there is no challenge by the Council to the methodology set out in Appendix 2 to Mr Denney's evidence. Rather, the Council's point is that the methodology is inadequately applied in this case.
73. In his Appendix 3, at page A3-1, Mr Denney shares some of Axis' criticisms of the LVIA in the Environmental Statement. For landscape character effects, the one criticism he dealt with was that the LVIA either (i) treats the magnitude of effects erroneously by concentrating on visual aspects of impact or (ii) does not make it clear whether non-visual issues were taken into account. The logic of that must mean that the LVIA's assessment of magnitude of effects is unreliable, because it adopts a method which is flawed or opaque or both. Mr Denney's methodology sets out a proper description of a five point scale of magnitude of effects. Yet one cannot see how that aspect of his methodology has been applied. The flawed method used in the Environmental Statement LVIA is reviewed in a way which does not tell us how, or even if, the corrected methodology has been applied. One ends up with two flawed exercises.
74. There are two examples. First, Mr Denney's Appendix 3, at paragraphs 16 to 18, comprises his review of landscape character effects for sub-type 5a, which is a sub-type where there is a difference of opinion with Mr Woolerton's judgment. However, nowhere does Mr Denney explain:
  - a. Whether he agrees with the LVIA's assessment of the sensitivity of that sub-type and if not, what his view is;
  - b. What his assessment of the magnitude of effects is, so as to correct the agreed substantive and/or presentational defects in the LVIA; or

- c. What his judgment is as to the degree of significance of the effects, beyond saying that there would be an effect significant for EIA purposes in part of the sub-type.

75. The second example is Mr Denney's assessment of the character effects which would occur in sub-types 9a and 9d. That topic is not dealt with in Appendix 3 at all, but in the main proof (page 16). He again agrees with the criticism of the LVIA's assessment of magnitude. But he also fails to deal with sensitivity, magnitude and the level of significance of effects in that assessment too. All we have is a statement as to whether the binary switch relating to significance is in the "*significant*" or "*not significant*" position.

76. There are two consequences which follow from these examples:

- a. There is no transparency in the assessment and no explanation of the components of reasoning which lead to his judgments. A perfectly proper methodology is lacking in any transparency in its application. If that is so, the assessment could not be replicated or tested and thus it cannot be afforded weight; and
- b. All Mr Denney does is to present a view that some effects of significance will occur. But the occurrence of such effects to some degree is not in dispute. Without knowing by how much effects cross his threshold of significance, one cannot form an understanding of the true level of significance of impacts. When dealing with the Inspector's question about the Lake District National Park Authority referring, in its consultation response, to its view that "*locally the effects may be severe*", Mr Denney's response was simply to the effect that their view of "*severe*" impacts relates to his assessment that effects would be "*significant*". That shows that he treats all effects above his threshold of significance as significant and all gradations of significance above the threshold simply disappear.

Occasionally, a full explanation does occur: see Mr Denney's treatment of Lake District National Park Area 21 Ennerdale (Appendix 3, page A3-5, paragraph 21), which does not explain why he has not followed the same transparent approach elsewhere.

77. Paragraph 42 of the recently published PPGRICE guidance stresses that when assessing the significance of impacts a number of criteria should be considered including the sensitivity of the landscape and visual resource and the magnitude of size of the predicted change. It outlines that some landscapes may be more sensitive to certain types of change than others and it should not be assumed that a landscape character area deemed sensitive to one type of change cannot accommodate another type of change. From the Council's point of view paragraph 42 is considered to strengthen the above arguments.

78. Mr Woolerton's assessment of the landscape effects of the scheme alone has been produced using a five point scale of magnitude. He agrees with the LVIA that significant adverse effects would arise in Landscape Character Area sub-types 5 Lowland Ridge and Valley and Lake District National Park Landscape Character Area 21 Ennerdale, as well as in Sub-Types 9a and 9d as discussed. Mr Woolerton's assessment also concludes that significant adverse effects would arise in National Park Areas 8 Loweswater and 28 Kinniside. The adoption of the five point scale of magnitude allows for finer-grained assessments of change and

produces effects at generally greater levels of significance than does the LVIA in the Environmental Statement. The details of Mr Woolerton's assessment are laid out alongside that drawn from the Environmental Statement in Mr Woolerton's Appendix 5 in an ordered and transparent way. Mr Woolerton's evidence is accompanied by a ZTV (his Appendix 9) which shows the approximate extent of the area where only the proposed turbines, and no others, would be theoretically visible. It is rare in this northern part of West Cumbria for the ZTVs of at least one windfarm not to extend into a local area such as this. The blue shading shows the zone of theoretical visibility of the proposed turbines extending to the east, into the National Park and into such an area that also has the type of "*peaceful backwater*" character which the SPD (DOC4 CD16 Part 2 page 69) warns against eroding. The Appellant's attempted criticism of Mr Woolerton for his use of ZTVs is misplaced, because he recognises the limitations of them in his evidence: see paragraph 7.5.8 of his proof.

79. The LVIA in the Environmental Statement assessed that there would be significant effects on 15 of the 25 viewpoints around the site. Mr Woolerton's assessment of the visual effects adds a further 3, so that there are 18 viewpoints with significant adverse impacts. This arises through his use of a five point magnitude of scale, differing views on sensitivity of some receptors and differences of judgment. Again, Mr Woolerton sets out his assessment in a methodical and transparent way in his appendix 6. That includes the occurrence of effects of "Major+" significance for residents at Frizington (VP11), Moresby Parks (VP16) and Arlecdon (VP25).
80. The agreed viewpoints are not an exhaustive list of places where significant effects might be expected. As Mr Woolerton states, they are also representative of areas around them. The assessment shows that Mr Woolerton is correct to say that extent of effects is of considerable concern, even allowing for the inevitable occurrence of some significant effects from commercial scale wind energy development.
81. Mr Woolerton has also assessed the cumulative effects of the proposal, both in landscape character and visual terms. He has done so having regard to the totality of effects and not just the incremental addition to effects. Paragraph 7.16 of the third edition of the Guidelines for Landscape and Visual Impact Assessment (GLVIA3) (CD56b) provides as much. Mr Denney's reference of paragraph 7.18 in GLVIA3 did not undermine Mr Woolerton's position, because that paragraph shows that both approaches may be used. Mr Woolerton has used both approaches: see the last two columns of the tables at his appendix 7.
82. In order to assess cumulative effects, Mr Woolerton's Appendices 9 and 10 are useful. He has noted the caveats about their use and taken those into account. It is correct that turbines are included in the assessment which have either been dismissed at appeal (Broughton Lodge) or not yet been the subject of determination at application (Lillyhall) or appeal stage (Potato Pot), but Mr Woolerton explained how these issues would not affect the basic outcome of the assessment. Nor does the precise number of turbines have a considerable impact. At the lowest figure, there are still 91 permitted or extant onshore turbines in Allerdale and Copeland (leaving single turbines out of account).
83. Mr Woolerton is justified in concluding that the addition of Weddicar Rigg into the area would extend and infill areas which are subject to cumulative landscape and

- visual effects. Where significant effects would occur, they tend to be more severe than the Environmental Statement assesses. The LVIA in the Environmental Statement accepts that up to 147 turbines would be visible in some views (Woolerton proof paragraph 7.5.13) – a figure which must include Robin Rigg and which therefore shows the propriety of taking those offshore turbines into account. The landscapes where Mr Woolerton assesses that significant effects would occur above and beyond those set out by the Appellant are illustrated by considering viewpoints 3, 5, 6, 10, 15, 20, 22 and 23 (proof paragraph 7.7.4). For cumulative visual effects, the additional viewpoints where Mr Woolerton considers that significant visual effects would occur are 2, 3, 5, 13, 20, 21, 22 and 23 (proof paragraph 7.7.5). Significant cumulative visual effects would also occur along stretches of the Coast to Coast Walk. Although Mr Denney says that walkers would already be accustomed to seeing turbines, the effect of the Weddicar Rigg scheme would be to introduce views of turbines in length of the walk where views are not currently obtained: compare the route of the walk (Planning Application Folder 2 of 3 figure 6/17a) with Mr Woolerton's appendix 10.
84. Mr Woolerton's assessment that a large proportion of the red and green areas shown on his Appendix 10 would be a "*wind farm landscape*" and that a large part of the pink area in his Appendix 9 would be a "*landscape with wind farms*" as both terms are used in the Angus Study (CBC/DW/3 Woolerton Appendix 4). That assessment is justified and appropriate.
  85. The importance of good design of a wind farm is not in dispute and can be decisive: see the Sillfield decision (CD26(cc)) where such issues were, along with residential amenity concerns, determinative. The design iteration of this scheme has been the product of the constraints imposed upon it by the allowing of the appeal in relation to the Fairfield scheme. So much is clear from tracking through the evolution of the scheme from a 24 turbine proposal down to a 6 turbine scheme in the Design Evolution Statement where iterations do refer to the Fairfield permission, along with other factors. It is therefore clear that the scheme designers recognised that there was a cumulative issue to be considered.
  86. It is submitted the design does not address issues satisfactorily. The Fairfield turbines are materially smaller than the proposed turbines – 81m to blade tip at Fairfield compared to 115m to blade tip in the appeal scheme. The turbine bases are also at different elevations AOD: the Fairfield turbines' bases stand on land which is between 148-160m AOD (CD26z paragraph 14), compared to 153m to 205m AOD on the appeal site (Mr Denney's proof page 7, paragraph 3.4). The appeal turbines would be bigger machines standing on generally higher ground. The Watch Hill turbine is different again, with a blade tip height of 74m.
  87. The result is that there would be three schemes of turbines, of differing numbers and differing heights, in very close proximity to each other. That, in turn, would produce particular harm to landscape character and visual impact.
  88. It is not intended to appraise every viewpoint for which there is a visualisation. Examples will suffice.
  89. The montage for **Viewpoint 16** (figure 6/49b) clearly shows the unhappy relationship between Fairfield Farm Wind Farm and the appeal scheme. The proposed additional Watch Hill turbine can also be mentally taken into account when assessing the montage. The different turbine heights, base elevations and

the schemes' proximity can all readily be viewed. So can the location of the Fairfield turbines in what Inspector Mr Woolcock described as "*a depression*" (CD26(z) paragraph 14) in contrast to the appeal scheme's location climbing a ridge or Rigg. These matters combine to produce an effect where viewers would be confused as to which turbines were larger and smaller and which were closer or further away. Unhappy relationships of the sort warned against on pages 35 and 36 of the SNH siting and design guidance (CD58) and Part 2, paragraph 1.42 of the SPD (DOC4 CD16) would occur. The turbines would be neither far enough apart to read as separate developments whose impacts did not materially reinforce each other, nor sufficiently close to read as one larger group (which would infringe the SPD indicative capacity guidance in any event). The appeal scheme on its own would also have an unhappy relationship to its landscape context. The turbines would significantly interfere with the characteristic open views to the Lakeland Fells from and across Sub-Types 9a and 9d. It is no answer to argue that the Lakeland Fells could still be appreciated. The substantial turbines, with their movement, would detract from and impede the characteristic views. Although the impact would be visual, it is a visual effect which also affects an important characteristic of the landscape. The turbines would not sit on a ridge but climb up it in an unhappy way, as shown in sketch 3 of Appendix 1 of the SNH siting and design guidance (CD58). Mr Denney's point, in response to the Inspector, that that sketch was not important because the guidance was talking about larger Scottish ridges was not valid. Three of the proposed turbines would sit on land characterised as a ridge. The same points would apply if one considers the view from School Brow, Moresby Parks, as set out in visualisation A (in document APP/BD/4).

90. Consideration of the montage for **Viewpoint 18** (figure 6/50b) also illustrates the unhappy relationship of the appeal scheme to the Fairfield scheme and the Watch Hill turbine. The overlapping of the appeal scheme and the Fairfield scheme means that, from that viewpoint, and other locations lying at the same compass point or 180 degrees opposite, would read as one large scheme, exceeding the indicative capacity in the SPD by a considerable and harmful margin. The disparity in the scale of the two main schemes and of the Watch Hill turbine would again be readily apparent and confusing, revealing the unsatisfactory scheme design.
91. On the basis of the foregoing, it is submitted that the proposed wind farm would cause significant and adverse landscape and visual effects, both on its own and in combination with Fairfield, Watch Hill and other schemes, which go far beyond the inevitable consequences of erecting commercial scale wind energy development in the countryside. At the heart of the Appellant's case is a logical fallacy created by simply assessing the presence or absence of significant effects. That is an argument which runs: (i) all commercial scale wind energy development brings significant effects; (ii) the Weddicar Rigg scheme would cause significant effects; therefore (iii) the Weddicar Rigg scheme is acceptable.

*Whether any identified harm may be outweighed by any economic or environmental benefits including the benefits of renewable energy production.*

92. The Appellant understandably draws attention to the benefits of its proposal. But it has not done that because the benefits have been ignored or overlooked by the local planning authority. The benefits are dealt with in sufficient detail in the committee report and in Mr Taylor's evidence. Mr Earle was able to make no

material criticism of the Council's treatment of those issues. It can hardly be thought that the indigenous source of the wind or of security of supply was left out of account by the Planning Panel of the Council and the report did draw attention to the community benefits which would be secured by the proposed planning obligation.

93. The main benefits of this scheme, as put to Mr Taylor were as follows:

- a. The contribution to regional and national renewable energy targets against legally binding international obligations and a deficit against such targets;
- b. The environmental benefits of renewable energy;
- c. Helping to provide domestic security of supply;
- d. The contribution towards financing apprenticeships for local people;
- e. Rural diversification;
- f. Habitat Management by way of mitigation and compensation of effects on Hen Harriers which would also assist other species. Mr Taylor was unsure where mitigation ended and enhancement began, but the correct figures were put to Members of the Planning Panel (CD6 page 20) and must therefore have been weighed by them;
- g. The package of financial benefits of a guaranteed £2,500 per MW per annum, less than the level set out in the Secretary of State for Energy and Climate Change's recent policy statement, with a top up to 1.5% of gross annual income which may or may not take the annual figure up to about £6,500 on the basis of calculations which the Appellant has carried out but which are not before the Inquiry and cannot be tested.

94. These benefits are and have been recognised by the Council.

95. The LPA recognises that Local Plan policies EGY 1 and EGY 2 are out of date. That is recognised in Mr Taylor's evidence. It was recognised in the body of the officer's report. It must have been recognised by the Planning Panel, because the reason for refusal uses language that demonstrates recognition that the decision-taking test in paragraph 14 of the NPPF was engaged and that can only have been the case if the Panel accepted that the Local Plan was absent, silent or out of date. The Secretary of State can therefore be confident that the LPA used the right decision-taking test in this case.

96. The reason for refusal did not cite any emerging DPD policy but things have moved on apace since then. The emerging DPD has been examined, the Inspector's report published, and modifications published to deal with the recommendations of the examining Inspector. In particular, modifications have been made to policies which were those sought by Mr Earle. As a result, he is satisfied that the relevant policies as proposed to be adopted, particularly DM2 on renewable energy, accord with the Framework. There must be a high likelihood of adoption in that form and there is agreement between the principal parties that the relevant policies of the emerging DPD can now be afforded significant weight. The proposal can therefore be tested against policy DM2's considerations of whether landscape and visual impacts would be unacceptable.

97. It is no part of the LPA's case to mount an argument based on meeting targets. It is relevant to note, however, that the DPD uses as part of its evidence base the Cumbria Renewable Energy Capacity and Deployment Study (CD102) which sets out that 606MW renewable energy could realistically be deployed in Cumbria by 2030 (CD102 paragraph 12), with Copeland BC making a projected contribution of 46MW - the figure set out in paragraph 4.3.6 of the DPD (CD15 page 33). To that extent, the DPD can be said to be founded on a more up to date evidence base as regards Cumbria's renewable energy capacity and practicable deployment to 2030. That is a factual point – it is no part of the Council's case to argue that means that less weight is to be attached to the provision of renewable energy.
98. It is accepted that the adverse landscape and visual impacts of this scheme would have to significantly and demonstrably outweigh the benefits of the proposal, if the appeal is to be dismissed. Mr Taylor was taken to task for not providing his view of the planning balance in his written evidence. That is not a significant point in the Appellant's favour for 5 reasons:
- a. Mr Taylor said, in cross-examination, that on the basis of Mr Woolerton's opinions, he thought that the disadvantages did significantly and demonstrably outweigh the benefits;
  - b. Mr Taylor's position was that he could not carry out the planning balance on the basis of all of the evidence because that is the task of the Inspector and Secretary of State: that assessment of the balance will depend upon their assessment of the type and weight of the benefits and of the type, extent and weight of the harm;
  - c. A frequent recourse of Mr Denney in cross-examination to criticism of his assessment was that the Inspector and Secretary of State would form their own views in any event;
  - d. Mr Earle relies upon Mr Denney for his view of the planning balance; and
  - e. Mr Earle's assessment of the balance is limited to a single sentence in his proof (proof paragraph 9.25 page 78).
99. The position of the Council was that the adverse effects of the proposal would significantly and demonstrably outweigh the benefits of the scheme. That is a view which is amply justified not just by the Council's evidence but also by a critical appraisal of the Appellant's evidence. The Inspector is asked to recommend and the Secretary of State to determine that the appeal should be dismissed.

## The Case for Other Persons Appearing at the Inquiry to Object to the Development

100. **Cllr Sunderland** has been the Copeland BC member for Arlecdon ward since 1991. His ward includes the appeal site and several villages to the north east. He is also a member of the Council's Local Development Framework Panel but not of the Planning Panel which determined the application. His constituents are mainly opposed to the proposal on the main grounds of visual impact. The size and scale of the turbines on high ground would be intrusive and there would be a cumulative impact with the turbines at Fairfield resulting in a 'wind farm landscape'. People are aware of the Landscape of County Importance (LOCI) designation which has existed since 1991 and they value that landscape and wish it to be protected. It is complemented by the Sub Type 9a and 9d assessments in the SPD. The turbines are an alien feature in a landscape of quality being tall, man made, industrial and akin to factory chimneys. They would intrude into views to and from the National Park. Renewable energy would be of benefit but this is the wrong location. Not all renewable energy to meet the DPD aspiration for 46MW would come from wind energy. He accepts that this is not a ceiling on provision. There are 17 years remaining to meet that 2030 aspiration and provision does not have to be made now. He points out that southern parts of Copeland are not included in the Appellant's constraints map and that there are wind energy proposals in that area.
101. **Mr Pearson** and **Mrs Lockhart** are neighbours and long standing residents of Moresby Park at the north eastern corner of the settlement. Their homes enjoy extensive views both to the east across the appeal site to the Lakeland Fells and also to the north where they can see the Fairfield turbines as well as a number of other onshore wind farms and single turbine developments and the offshore windfarm at Robin Rigg in the Solway Firth.
102. Mr Pearson considers the photomontages to be inaccurate by comparison with the 60m anemometer mast which had been erected on the site and which appears relatively tall compared to the images of the 115m turbines. He appended his own photograph to his statement to illustrate the point.
103. When Mrs Lockhart came to the village 44 years ago there was 'not a lot going for it'. It was a pit village with a spoil heap. Only the views of Ennerdale and the Fells 'saved the place'. These are uplifting views which change constantly with the weather. They are available from several parts of the village and should be retained for future generations. There had subsequently been open cast coal mining for several years but that has now gone. A golf course has been created and the spoil heap has been landscaped. Mrs Lockhart has experienced the relentless encroachment of wind energy which she considers to be costly and inefficient although she is not against green energy. Altering the height of the turbines would have no effect and they cannot be screened. With this and other wind farm proposals the village will be almost surrounded. There is a risk of creating an industrial landscape with no soul.
104. **Mr Vout** is a retired engineer who lives in Arlecdon to the north east of the site. He says that local roads and footpaths around Weddicar Rigg are well used for recreation by walkers and riders. The valley east of the ridge is unblemished. A seat on the hillside provides one of the best views in Cumbria but would be spoiled by views of 115m high structures. Views of spring and autumn sunsets



over the ridge would be spoiled. He also considers the photomontages to be misleading as they cannot be matched to the landscape at any viewing distance. The turbines on the ridge would be higher than the adjacent valley is deep. About 40 houses in Arlecdon and 100 in Frizington would have direct views of the turbines. Residents of Pica and Moresby Parks would experience a '*double whammy*' as they also have views of the Fairfield turbines. The turbines would be an overwhelming and unavoidable presence in views from dwellings and would fail the 'Lavender test'<sup>1</sup>. Property values would be adversely affected. Over 90% of villagers object. He had spoken to no local person who had been contacted for a Banks telephone poll which Banks had claimed to show greater support.

105. The turbines would drive tourists away from an area that is promoted in association with the Western Lakes. Providers of tourist facilities such as hotels, public houses and bed and breakfasts are worried about the effects. Tourism in Copeland provided 2,100 full time equivalent jobs. Tourism had reduced by 11% in the last 10 years and this development would not help.
106. Harm to the landscape can outweigh other benefits. The negatives far outweigh the positives and the average local person would see no benefit. Most construction jobs would be temporary and would go to people outside the area. The community benefit payments would equate to only 50p per Copeland inhabitant per year (£30,000 between 69,000 residents).
107. **Mr Sewell** lives in Moresby Park. He objects to the subsidies for wind energy which result in high energy bills and yet output can be very low at times. According to press reports, over £1.25bn was paid in subsidies in the year to February 2013 and this could rise to £6bn. With 12,000 jobs in the industry that could equate to £100,000 per job created. Mr Sewell considers that Cumbria has little going for it except the Lakes. The turbines would obstruct views of the Lakes. There will be a steel ring of turbines around Cumbria. Cumbria is now bereft of heavy industry and turbines are not built here. Ennerdale is being restored to a more natural habitat which will bring in rare birds that could be killed by the turbines. He did not consider that the proposed habitat mitigation and enhancement scheme at Weddicar Rigg would be a benefit as this is poor little used agricultural land which would be available to wildlife in any event. Comparisons were made with the Banks development at Killington (Armistead). Training would not create jobs. The 25 year life of the scheme does not mean that the harm would be temporary as wind farms are often repowered with bigger machines.
108. **Mr Coulter** lives in Moresby Park and is an amateur radio enthusiast. The development would harm the outstanding views. The Fairfield turbines already caused interference on some days with radio signals from that direction as the turbines act as spark generators. The Weddicar Rigg turbines would make this dramatically worse. Mr Coulter approached the Appellant with these concerns in

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<sup>1</sup> The Lavender Test is derived from the words of Inspector David Lavender at the North Dover (Enifer Downs) Inquiry which were: '*However, when turbines are present in such number, size and proximity that they represent an unpleasantly overwhelming and unavoidable presence in main views from a house or garden, there is every likelihood that the property concerned would come to be widely regarded as an unattractive and thus unsatisfactory (but not necessarily uninhabitable) place in which to live. It is not in the public interest to create such living conditions where they did not exist before.*'

2011. The Appellant responded by letter dated 11 August 2011 in which the appeal development is described as 'Keekle Head' [Document APP/ME/4]. That letter acknowledged that some interference could occur to UHF and VHF signals over a 25 degree arc but that the extent of the impacts was difficult to measure but is likely to be similar to that from the Fairfield Wind Farm (which affects a different arc). The matter was not pursued further in correspondence.

109. **Mr King** lives at Scilly Banks to the west of Moresby Park. The turbines would ruin a rare landscape and disturb hen harriers which are on the red list of endangered species.

## **The Case for Banks Renewables (Weddicar Rigg Wind Farm) Ltd**

*[These submissions are edited from the Appellant Company's Closing Statement with some additions from the evidence to the Inquiry]*

110. This appeal is unusual. It relates to a project that was recommended for approval twice by the Council's professional planning advisors. It was also found to be acceptable by the Council's independent landscape consultants, the Axis Group, following a detailed review and assessment. As Mr Denney confirmed in re-examination, it is unusual for local planning authorities to commission independent professional landscape consultants to undertake an assessment of a wind farm proposal prior to determination of an application.
111. The Planning Officer's support for the project is clear from the second Officer's Report (Page 26 of CD6), in which he concluded: *"Given the conclusion provided by the consultants, it is unlikely that the Council could provide adequate evidence to defend and justify a decision to refuse planning permission."*
112. Apart from the local Parish Councils, not one statutory consultee objects to the project, which is rare. Some concern from local residents is balanced by support from local businesses and residents, as noted in the Officer's Report (page 11 of CD 6) and as demonstrated at the inquiry, both in writing and in person.
113. The Statement of Common Ground between the Council and the Appellant confirms that the majority of considerations are not in dispute between the principal parties. The only area of concern for the Council is the effect that the wind farm would have on the character of the local landscape, individually and in combination with other wind farms in the area. The issues raised by 3rd parties were very limited. Again, this is unusual for a wind farm appeal.
114. As described by Mr Earle and confirmed by Mr Taylor, given the out of date nature of the relevant policies in the Development Plan, the test that needs to be applied in this case is the one set out in Paragraph 14 of the Framework, that is whether the adverse effects of the proposed wind farm would significantly and demonstrably outweigh the benefits of the project. It was also agreed by Mr Taylor that this question must be addressed in the context of the presumption in favour of sustainable development (which includes wind farms) that runs through the Framework as *"a golden thread"*.

### *The Need Case*

115. There is widespread recognition that the increasing use of renewable energy sources will contribute towards targets established to reduce emissions of greenhouse gases. The setting of targets for renewable energy production forms a very important part of the UK's response to the threats posed by climate change. National energy policy and national planning policy all provide a positive framework of encouragement for renewable energy projects. Wind power, together with other renewable forms of energy, is seen as an essential element of the strategies of the UK Government and European Union in tackling climate change.
116. Legally binding targets have been set which the UK must meet. The UK Renewable Energy Strategy confirms that the UK is expected to deliver 30% of its electricity generation from renewable sources by 2020. Unfortunately

progress has been very slow and at present only just over 12% of the UK's electricity comes from renewable generation. Given the length of time it takes to plan and deliver renewable generation projects, a step change in the implementation of renewables, including onshore wind, has to take place now if the UK is to have any chance of meeting its legal obligations.

117. Some progress has been made in the North West. There is currently 406MW of onshore wind in operation, under construction or consented in the region. However, there is still a long way to go if the former RSS target of 720MW of onshore wind is to be met by 2020. As agreed by Mr Taylor, this target is still an important material planning consideration, notwithstanding the revocation of the RSS. Furthermore, as Mr Earle explains in evidence (Document APP/ME/1 page 49) this target increases to 1080MW, when account is taken of the aims and objectives of the UK Renewable Energy Strategy.
118. At a county level there is also a shortfall. Mr Taylor's evidence confirms that there is just under 138MW of onshore wind generation in operation, under construction or consented in Cumbria, against a RSS target of 247.5MW by 2020. In light of the UK Renewable Energy Strategy, it could be argued that this target should be increased by 50% to just over 371MW by 2020, as noted by Mr Earle (APP/ME/1 page 49). This is a very steep hill to climb, in a very short period of time.
119. As discussed and agreed at the Inquiry, there is approximately 17MW of onshore wind generation in operation, under construction or consented in Copeland. No target was set for Copeland in the RSS. In the emerging DPD there is reference to an aspiration of delivering 46MW from renewable sources by 2030. As Mr Earle explained the Cumbria Renewable Energy Capacity and Deployment Study (CD102) suggests that 28MW of this is to come from onshore wind.
120. So, although some progress has been made, there is also a shortfall at a local level. In addition the emerging Core Strategy (paragraphs 4.3.7 and 4.3.9) confirms that there are no specific targets for renewable generation and the 46MW figure is not a ceiling. This figure should therefore be regarded as a minimum rather than a limit.
121. It is acknowledged that there are other wind generation projects located in Copeland that are currently going through the planning system. However, there is no evidence before the Inquiry as to the likelihood of those projects being consented, either by the Council or on appeal. Nor is there any evidence as to the pros and cons of those projects.
122. The amount of time and effort needed to get wind generation projects approved and implemented is clear. Weddicar Rigg has been promoted and developed since 2007 and is now ready to proceed. It would contribute at least 12MW towards the national, regional and county targets and would go a long way to meeting the emerging Core Strategy's aspiration. As Mr Taylor states, the national and regional need is a powerful material consideration in favour of the proposal (see paragraph 5.42). The need case for this project is therefore clear and unequivocal.

### *Why this site?*

123. Mr Earle explained the process that has been undertaken to identify this site, with reference to the constraints map found in the application documentation (Volume 1 of 3 - Environmental Statement Drawing 01). The lack of unconstrained land in a large part of Copeland is self-evident. Although other suitable sites may be available, they are likely to be few and far between. This proposal is located within one of few areas of "white land" shown on Mr Earle's constraints map.
124. In addition, this site falls within an area that has been identified in the Cumbria Wind Energy Supplementary Planning Document (DOC4 CD16) as having moderate capacity to accommodate wind turbines. Part 2 of the SPD (page 69) specifically states that the medium to large scale of this landscape suggests scope for up to small groups of turbines. Although a small group is defined as being 3 to 5 turbines, Part 2 of the SPD (paragraph 1.7) makes it clear that the guidance should not be used in a definitive sense and as the Council's Planning Officer stated in his Report (page 19), the SPD does not rule out larger scale development. Further, as Mr Denney pointed out during cross-examination, if the authors of the SPD had thought that this location had reached its capacity following the approval (on appeal) of the Fairfield wind farm in May 2008, they would have noted this during the review of the SPD that took place in October 2008. The fact that they didn't confirms that the area has capacity for more than one wind farm.
125. Although Mr Woolerton tried to argue that the SPD is out of date, the criticisms that he set out in his written evidence (number and height of turbines) do not stand up to scrutiny. Furthermore, the SPD is mentioned in the emerging DPD (see paragraph 10.2.7) and Mr Taylor stated in his evidence that the SPD should be given significant weight. Mr Woolerton eventually accepted (rather reluctantly) that the SPD was an important material consideration.
126. This site has not been chosen randomly. It is the result of a great deal of effort to find a location that can accommodate a wind farm without giving rise to unacceptable environmental effects. In promoting this project, the Appellant is following the spatial planning guidance that has been produced by Cumbria County Council and adopted by Copeland Borough Council.

### *Effects on local landscape character*

127. The effects of this proposed wind farm on the local landscape character (from an individual and cumulative point of view) have been considered and assessed on a number of occasions. First, the Environmental Statement submitted in support of the application undertook a detailed assessment of the likely landscape and visual effects.
128. Second, Axis carried out a review of the LVIA contained in the ES, as well as undertaking their own assessment of the landscape effects. Although some criticisms of the ES were raised by Axis, they concluded that when the work in the ES was combined with their own appraisal, it was possible "*to draw robust conclusions in respect of the landscape and visual impacts of the proposal*" (para 6.1.1 of CD 8). They also concluded that the presence of the turbines at

Weddicar Rigg would not exceed the capacity of the landscape to accommodate wind turbines (paragraph 6.1.4).

129. Mr Woolerton and Mr Carter sought to call into question the work undertaken for the Council by the Axis Group. However the Report was commissioned by the Council and was not criticised by anyone prior to Mr Woolerton's evidence.
130. The Axis Group have experience of undertaking landscape and visual assessments for a range of projects and have appeared at public inquiries. It is a fair and balanced independent summary of the landscape and visual effects of the project and its conclusions should be given significant weight by the Inspector and the Secretary of State.
131. For the appeal the Appellant Company commissioned its own review of the LVIA and the Axis appraisal from another consultant, Mr Denney of the Pegasus Group. Mr Denney has also undertaken a detailed review of the landscape and visual effects of the proposed wind farm.
132. Mr Denney concludes that the proposal is of an appropriate form and scale of development that can be accommodated within its local and wider landscape context (paragraph 8.2 of his proof of evidence APP/BD/2).
133. Although Mr Carter tried to question Mr Denney's methodology, this was based on a misunderstanding of the purpose and scope of Mr Denney's evidence. He was not attempting to undertake a full landscape and visual assessment. Rather, he undertook a review of the LVIA contained in the ES, in order to satisfy himself that the findings of the LVIA are correct and that he can support its findings and conclusions. Mr Denney's assessment is thorough, sound and robust.
134. Before the Inquiry Mr Denney submitted a rebuttal statement addressing Mr Woolerton's evidence. Mr Woolerton's assessment is flawed for the reasons described in Mr Denney's rebuttal proof. That rebuttal was not challenged at the Inquiry, which adds to its weight. What follows is a summary of the key problems with Mr Woolerton's evidence:
  - (a) Mr Woolerton's was over-reliant on the Zones of Theoretical Visibility (ZTV's) contained in the ES, to inform his assessment. He accepted that his maps at Appendices 9 and 10 are inaccurate, in that they include wind farm projects that have either been refused or still remain undetermined. They take no account of the actual visibility of turbines from any given viewpoint or landscape character area. His suggestion (at paragraph 7.5.10) that turbines are unlikely to be screened is not credible, as will have been apparent from the site visit and whilst travelling through the area. His lack of any proper consideration of how many turbines will be seen, the distances involved and the extent of visibility (just tips or more) is significant.
  - (b) Mr Woolerton has failed to make proper use of the photomontages that were produced as part of the LVIA. The photomontages have been produced to current best practice and are 100% accurate. It is therefore inappropriate for Mr Woolerton to arbitrarily "scale-up" the photomontages in the way he described in his written and oral evidence. Even if there is to be a move towards producing photomontages at different focal lengths, the viewing distance remains critical. If viewed

at the wrong distance, the photomontages will not provide an accurate representation of the proposed wind turbines, whatever the scale of production. On the other hand, if they are viewed at the correct distance and used in the correct manner, as clearly described by Mr Denney, they will be accurate. There has never been and will never be any need to randomly scale up the images. This can only lead to inaccuracies and flaws in assessment.

- (c) Mr Woolerton has exaggerated the number of turbines in the area, when undertaking his assessment of cumulative effects. His written evidence (paragraph 5.3.3) clearly states that there are currently over 150 turbines "within the jurisdictions of Allerdale and Copeland Councils". The actual number is 91, as agreed with Mr Taylor. Mr Woolerton has therefore assumed that there are almost 40% more turbines in the area than there actually are. This is a serious error and must call into question his conclusions on cumulative landscape and visual effects.
- (d) Mr Woolerton tries to re-write the findings of the SPD to support his assessment of the value and sensitivity of the local landscape. As Mr Denney explains in his rebuttal proof (Document APP/BD/5 paragraphs 55 to 58), there is no basis whatsoever for Mr Woolerton's suggestion that LCA sub-type 9d is more sensitive than the overall LCA and that 9d has a lower capacity to accommodate turbines because of the presence of Fairfield wind farm. Nor is there any basis for the suggestion that LCA sub-type 9a is of inherently less value than sub-type 9d. It is clear from page 69 of Part 2 of the SPD that its assessment of moderate capacity is made in full knowledge of the value of the landscape and its local designation as a Landscape of County Importance.
- (e) Mr Woolerton suggested that the site falls within an area which occupies an important strategic location in landscape terms, separating the West Cumbria coastal plain from the Ennerdale Fells. This is not accepted by Mr Denney. Weddicar Ridge does not, in his view, form any kind of important landscape setting to the National Park. Furthermore, although it is accepted that there will be significant effects on receptors looking towards the site from VP16, as Mr Denney explained, this is just one of many views of the Lake District fells. As he stated, VP16 does not represent a particularly important viewpoint. It is not recognised or noted in any guidebooks and there are much better places to get good views of the fells than from to the west of the appeal site. This view is supported by the representations of the LDNPA dated 25 November 2011, in which the Authority's landscape architect confirmed that the Authority did not object to the application. It should also be noted that the Council's reasons for refusal make no reference whatsoever to the effects on views of the National Park.
- (f) Mr Woolerton's suggests that the design of the proposed wind farm does not follow guidance contained in the SPD and SNH's 2009 publication (CD58). For the reasons set out in Mr Denney's rebuttal proof (paragraphs 18 to 30) and in his responses to Mr Carter and the Inspector, this is not correct. Despite the difference in size between the turbines at Fairfield and the proposed turbines at Weddicar Rigg and bearing in mind the separation distance between the two projects, Mr

Denney is firmly of the view that both schemes respond well to the landform and topography of the landscape when viewed either individually or together within the same angle of view. This opinion is supported by the Axis Report, which did not raise any concerns in relation to the design of the proposed wind farm. As Mr Denney made clear, if Axis had had any concerns, they could and would have raised them in their report.

- (g) In paragraph 6.2.44 of his proof (Document CBC/DW/2), Mr Woolerton makes it clear that he has adopted a “totality” approach to his cumulative assessment. Although it is accepted that there is reference to this approach in the latest edition of the GLVIA (CD56b), for the reasons given by Mr Denney in his rebuttal proof and in oral evidence, such an approach is not appropriate in this context. In order to decide whether this project is acceptable from a cumulative landscape and visual point of view, it is necessary to assess the nature and extent of the additional landscape and visual effects associated with the construction and operation of the Weddicar Rigg turbines, in the context of the existing baseline. By adopting a totality approach, Mr Woolerton goes beyond this and assesses effects associated with projects that have already been found to be acceptable. In this way, his judgement takes into account matters that are not relevant to the determination of this application.
  - (h) Mr Woolerton (and Mr Carter) tried to draw a number of parallels between the Armistead/Sillfield projects and the Fairfield/Weddicar Rigg projects. However there are many differences between the situation at Sillfield and here.
135. In paragraph 7.7.21 of his proof, Mr Woolerton states that to the south, east and north of Workington and between Workington and Carlisle, wind turbines are the dominant and defining element in the landscape and in these locations the threshold of the capacity of the landscape to accommodate wind turbines has already been exceeded. Mr Woolerton used subjective and negative language referring to the wind turbines in these areas as alien man-made features which results in a large area of wind farm landscape. This is not an objective assessment but his own opinion that the existing baseline is unacceptable. To essentially call for a moratorium on wind energy development in large parts of Copeland and Allerdale is contrary to the existing and emerging Development Plan and to national, regional and local planning and energy policy. It is submitted that only limited weight should be given to Mr Woolerton’s evidence.
136. It is accepted that this wind farm would give rise to some significant effects on landscape character, both individually and in combination with Fairfield. Amongst other things Mr Denney’s rebuttal maintained that a wind farm landscape is an inherent feature of wind farm landscapes but would here only be created up to 600m from the Weddicar turbines.
137. The presence of significant landscape and visual effects does not automatically make a wind farm project unacceptable. If that were the test, then no wind farm would ever get consented. It is also accepted that a limited area of “wind farm landscape” would be created if Weddicar Rigg were built. Again, this does not make the project automatically unacceptable.



138. It also needs to be noted that the LVIA and the photomontages contained in the ES presents very much a worst case scenario. The viewpoints were chosen to demonstrate the most open views of the proposal. An equal, if not greater, number of viewpoints could have been chosen in the area where there would be no visibility of the proposed turbines.
139. Mr Woolerton's conclusions on landscape effects are considered by the Appellant to be unclear and un-substantiated, to lack objectivity and to suggest a pre-determined view. Mr Denney explained why the effects on landscape character in this case are acceptable. This accords with the views of the Axis Group, the Council's Planning Officer and the LDNPA. In light of this, the Appellant submits that Mr Denney's evidence is to be preferred.

*Effects on visual amenity of nearby settlements*

140. A Residential Amenity Survey was submitted in support of the application, which provided an assessment of all dwellings within 1.5km of the nearest turbine. The Survey confirmed that only two properties lie within 1km of the site. One has a financial involvement with the project. Due to the orientation of the other property and the presence of screening, views of the proposed wind farm would be limited. All other properties are over 1km away. In light of the Survey and following advice given by the Axis Group, the Planning Officer confirmed (page 20 of his Report) that at this distance it was unlikely that adverse visual effects would translate into effects upon the amenity/living conditions of any property.
141. The Axis Group also considered visual effects on settlements. They concluded (paragraph 5.1.4) that whilst the turbines would be prominent from a number of settlements, the presence of the proposed turbines would not detract from the existing visual amenity of those settlements. Nevertheless, the Council's reason for refusal made specific reference to the impact that the wind farm would have on the visual amenity of nearby settlements, including Moresby Park, Arlecdon and Frizington. These settlements are all over 1.5km away from the nearest turbine at Weddicar Rigg.
142. Mr Denney provides a detailed assessment of the effects of the proposal on settlements in the vicinity of the site (Appendix 1 and paragraphs 5.73 to 5.103 of his proof). He confirms that although in some views from settlements the turbines will appear prominent, they will not be dominating. Nor will they change the view to such a degree that it would not remain open, rural and attractive. On this basis he concludes the visual amenity that the local settlements enjoy would remain high, even in views that contain the wind turbines.
143. The Council's position at the inquiry contrasts with the reason for refusal. Mr Woolerton accepted during cross-examination that the proposed wind farm would not give rise to any unacceptable visual effects on receptors, including settlements. Mr Taylor confirms at paragraph 5.46 of his proof that the visual effects of this proposal would not justify dismissal of the appeal. In light of these concessions and the lack of any evidence relating to visual effects on settlements, Mr Taylor accepted that the Council had, in effect, abandoned this part of their reason for refusal.
144. Although concerns in relation to visual amenity were raised by a number of residents at the Inquiry and prior to that during the determination of the

application, it is submitted that their concerns have all been addressed by the original Residential Amenity Survey, the Axis Report and Mr Denney's evidence to the Inquiry. Most, if not all, commercial wind farm developments will give rise to some locally significant visual effects. As Mr Earle explains at paragraph 6.59 of his proof, if a priority was placed on separating wind farm projects from residential properties, in order to avoid any significant visual effects, then pressure is likely to increase for development in the more sparsely populated upland landscapes of the sub-region. Such landscapes are, for the most part, the subject of national and international designations.

145. It is a long held planning principle that there is no right to a view. It is clear from a number of previous appeal decisions that the test that needs to be applied in cases such as this is whether the proposal would give rise to such an overbearing or overwhelming effect on residential visual amenity that it would lead to unacceptable effect on living conditions. Following Mr Denney's detailed assessment, he concludes (Document APP/BD/2 paragraph 5.99) that there would be no unacceptable overbearing or overwhelming visual effects on any properties or settlements within the surroundings of the site and the turbines would not cause any properties to become unattractive to live. The fact that the Council now agree with this, adds weight to Mr Denney's conclusion on this issue.

#### *Other Effects*

146. A number of other concerns were raised during the determination of the application and to a lesser extent, during the Inquiry. All such issues were dealt with in detail in the ES and addressed in the Officer's Report. Some matters, including potential effects on tourism, are also dealt with in the written evidence of Mr Earle.
147. In summary, Mr Earle confirms that none of the matters raised are of such material weight that they outweigh the strong policy support for the proposed development. This view is supported by the Council, as confirmed by the content of the Statement of Common Ground.

#### *The Benefits*

148. Mr Earle describes in detail the range of benefits that would arise if this development were to proceed. They include the following:
- a. A contribution towards meeting targets set on an international, national and regional basis for the promotion of renewable generation, including onshore wind. The Weddicar Rigg wind farm would provide at least 12MW of installed capacity and is anticipated to have an energy output of just under 45GW per annum. This would provide enough electricity to supply over 9,500 homes (paragraph 6.11 of Mr Earle's proof)
  - b. The important role of reducing carbon emissions, equating to over 19,000 tonnes of CO<sub>2</sub> per year and over 480,500 tonnes of CO<sub>2</sub> during the lifespan of the wind farm.
  - c. A contribution towards improving security of supply. As Mr Earle notes at paragraph 4.37 of his evidence, Government has made it clear that the stability of the UK economy depends, irrespective of climate change, upon reducing the country's reliance on expensive and unstable

imported energy sources. The provision of indigenous generation by a wind farm at Weddicar Rigg improves the UK's security of supply.

- d. A number of local farmers will receive income, in the form of rent, from the wind farm over a 25 year period. As Mr Taylor accepted, this will assist with the general objective of promoting rural diversification and is an important factor to take into account. This view is supported by the letter from Mr Addyman, who emphasises the importance of the income to him and his family.
- e. As Mr Earle confirms, (paragraph 6.23) most of the work of site establishment, civil engineering, site cabling, provision of construction plant, machinery and materials, together with site surveying is usually undertaken by local contractors and local labour. The contracts available to Cumbrian based companies are likely to have a value in the region of £3m. As Mr Lees from Freedom Agrilek explained to the Inquiry, the approval of Weddicar Rigg would support local businesses such as his. Mr Taylor accepted that given the Government's growth agenda, this is a very important material consideration to take into account in this case.
- f. In consultation with Natural England, the RSPB and other local conservation groups, the Appellant has prepared a detailed Habitat Management Plan (HMP) which sets out specific objectives to deliver a wide range of mitigation and enhancement proposals. As Mr Earle explained, the area of land being put forward for the enhancement of habitat for hen harrier and other species is 96 hectares. This is larger than the area of the actual application site. A further 138 hectares of land is being provided for mitigation purposes. The letter from Natural England dated 5 July 2013 confirms that the future of hen harriers in this area is uncertain, in the absence of the provisions of the HMP. Furthermore, they regard the approach adopted by the Appellant in this case as a flagship to development that secures priority species needs alongside economic development. Mr Earle confirmed that the measures of the HMP would be implemented immediately following the grant of planning permission. Accordingly, the benefits to hen harriers and other species arising from improvements to the local environment are guaranteed and certain.
- g. The Appellant has agreed to establish a community fund with a guaranteed minimum of £2,500 per each MW of installed capacity. This equates to £30,000 per annum for a 12MW scheme, the first payment of which will be made up-front following the take-over of the wind farm. This annual payment would then be topped up, based on a calculation of 1.5% of gross income from the wind farm. In response to a question from the Inspector, Mr Earle estimated that actual payments would equate to approximately £6,000 per MW or £72,000 per annum. This exceeds the amounts suggested by Mr Davey in his recent Ministerial Statement. This is an important material planning consideration to be taken into account, especially bearing in mind the support for such community funds from the Secretary of State for Energy.
- h. The Appellant has also agreed to make an additional upfront donation of £50,000 to support apprenticeship schemes in the area, of the type

described by Mrs Richardson, the Principal of The Lakes College. Furthermore, 50% of all payments to the community fund will also be allocated for training residents in the locality of the site. The social and economic benefits of such funding are clear and significant.

149. It is submitted that these are all important material planning considerations that need to be given significant weight in the determination of this appeal.

#### *The Planning Test*

150. There is agreement between the Council and the Appellant that little weight should be given to the LP policies referred to in the reason for refusal, due to the fact that those policies are out of date and in conflict with the Framework. Mr Taylor accepted that this was the case at the time of the determination of the application by the Council and accordingly Members were wrong to place reliance on the local plan policies referred to in their decision.
151. Although policies within the emerging DPD are more up-to-date, they do not currently form part of the Development Plan. Accordingly, it is also agreed between the Council and the Appellant that the approach set out in paragraph 14 of the Framework should be adopted in this case. In other words, there is a presumption in favour of this development, given that it comprises an inherently sustainable form of development. Furthermore, planning permission should be granted unless the adverse impacts would significantly and demonstrably outweigh the benefits of the proposal.

#### *The Planning Balance*

152. The Council's Planning Officer concluded his report by stating: *"Given the significant benefits of the scheme as outlined above, I am firmly of the view that it would be difficult to argue that the development would cause sufficient harm to warrant a refusal."*
153. Although the Council's reason for refusal make reference to the view that the adverse effects significantly and demonstrably outweigh the benefits of the proposal, it is not clear how the Members came to this conclusion, especially bearing in mind the clear and compelling advice of their professional Planning Officer. There was little, if any, discussion of the benefits associated with the proposed wind farm during the meetings.
154. The one sided nature of the debate is confirmed by Mr Woolerton in paragraph 7.5.3 of his proof. There he states that Members refused the application not only due to their concerns with the cumulative effects with Fairfield, but also on the grounds that the existing cumulative effects of the turbines in the wider area were already significant and the additional cumulative effects of the Weddicar Rigg proposal *"would make it even more unacceptable"*. This suggests a pre-determination on the part of the Members which mirrors that of Mr Woolerton.
155. In summary, it is clear that the Members (and Mr Woolerton) are of the view that there are already too many wind turbines in Copeland. If this is their starting point, they are bound to refuse planning permission, irrespective of the benefits. Such an approach is clearly incorrect and out of kilter with the Framework, the SPD and the Council's emerging DPD.

156. Although Mr Taylor's proof had a section (on page 23) headed "*The Balancing Exercise*", he does not carry out such an exercise in his written evidence. Nor did he address this issue in his oral evidence in chief. He stated that he was not in a position to undertake such a balance, as it was difficult for him to calibrate the weight to be given to the benefits and the harm identified by Mr Woolerton. Given that Mr Taylor has, in his own words (paragraph 1.3), been involved in evaluating development proposals in urban and rural situations for over 40 years and has experience of dealing with wind farm applications, such a response is simply not credible.
157. The impression is that Mr Taylor does not actually support the Council's position that planning permission should be refused. He did not say so in his written evidence and much of his proof of evidence supports the proposal. There is a lack of a conclusion on the question of acceptability and the absence of an overall balancing exercise. It appears that Mr Taylor may agree with the Council's Planning Officer's conclusion that the significant benefits associated with this proposal outweigh the limited harm.
158. In any event, Mr Earle undertakes a detailed review of all the environmental effects that are likely to arise if the development were to proceed and weighs these against the benefits that he sets out clearly. This leads him to conclude (at Document APP/ME/1 paragraph 9.22) that the harm associated with the Weddicar Rigg proposal cannot be seen as significantly and demonstrably outweighing the benefits. Accordingly there should be a presumption in favour and planning permission should be granted.

### Conclusion

159. Mr Earle's paragraph 9.24 summarises the position:

- "(i) The Weddicar Rigg site is an entirely reasonable location for a wind farm in a heavily constrained County. It has been deployed to accord with the specific guidance on the deployment of renewable energy contained in the CWESPD*
- (ii) The Weddicar Rigg development accords with the criteria of the renewable energy specific policies of the development plan*
- (iii) To the extent that the proposal has to be assessed against other planning policies, it is similarly acceptable*
- (iv) The Weddicar Rigg development will deliver economic, social and environmental benefits at a local level and will support employment retention and creation in Cumbria*
- (v) The proposal will allow the enhancement of a large proportion of land for the protection of (principally) ornithological interests"*

160. And as he concludes at 9.25: *"On balance and having regard to both the benefits of the proposal as well as the harm and having particular regard to the reason for refusal given by members, it is my professional opinion that the proposal is acceptable."*

161. The Appellant has considered the PPGR LCE guidance that was issued after the Inquiry closed and considers that, whilst the new guidance highlights the need for

a full assessment of environmental effects, it does not alter the parameters of assessment. Furthermore the Guidance reinforces the site-finding principles and design evolution applied here. Accordingly it is clear that the appeal proposal has been prepared and assessed in a manner which accords with the guidance (full comments at DOC APP/ME/6). It is requested that the Inspector recommends to the SoS that the appeal should be allowed and permission granted subject to the imposition of suitable planning conditions and obligations, as discussed during the hearing session. The SoS is requested to allow the appeal, subject to the conditions and planning obligation.

### **The Case for Other Persons Appearing at the Inquiry to Support the Development**

162. **Ms Richardson** is the Principal of The Lakes College (further education). She supports the scheme for its benefits. The S106 agreement would result in an initial £50,000 contribution which would support 15-20 apprenticeships in local businesses with educational support from the college. Thereafter about half of the likely £30,000 annual community benefit payments would support training for local people of all ages. This would accord with Copeland BC objectives in relation to worklessness and is needed in the area. Similar schemes have been run previously with Copeland and Allerdale Borough Councils. About 95% of the apprentices had previously found permanent jobs representing about 100 people across the area of the two councils.
163. **Mr Lees** represents an electrical contractor which employs 70 people in Barrow in Furness (about 50-60 miles south) and has 2,000 employees overall. The firm would be bidding for electrical work in both the construction and maintenance phases and supports the scheme for its employment and economic benefits. About 12 people would be involved in construction and 1-2 people would work on maintenance for 1-2 days per month.
164. **Mr Addyman** is a farmer and owns part of the appeal site. He says that the whole site is currently farmed. Income from the development would help to support and diversify his farming activities and his family which includes 3 sons. Hen harriers do not breed on the site but only over-winter there and hunt. Consequently the European protection for breeding and young birds does not apply to such migratory birds. Natural England have done a marvellous job locally with hen harriers and they support the proposed mitigation and enhancement measures. His written statement (Document 13) claims that the Council only supports nuclear energy and should not rely on the development of Sellafield given its past record of poor delivery. He has visited the recent Banks windfarm development at Armistead near Kendal and is impressed by how little damage has been caused to the landscape. It is not surprising that Cumbria has had many windfarm developments because it is one of the windiest places in Britain.

### **Written Representations**

#### *Objections*

165. At the application stage there were objections from the Parish Councils of Moresby, Arlecdon and Frizington, and 56 written objections from individuals on a wide variety of grounds which included:

- Adverse landscape and visual impact which would be accentuated by the location of the turbines on a very prominent ridge
- The proximity to other wind farms will result in an adverse cumulative impact in an area which is overrun with wind energy developments already
- The turbines will have an adverse impact on the outlook and amenity of the area
- Adverse impact on residential amenity in terms of noise and shadow flicker
- Devaluation of property
- The visual representations submitted by the applicant are very misleading
- Adverse impact on the Lake District National Park
- Adverse impact on wildlife, in particular the protected bird population, bats and red squirrels. The mitigation measures in terms of habitat enhancement for birds is insufficient.
- Adverse impact on walkers and recreation in an area which is open access land
- Negative impacts on tourism and the local economy
- The employment generation is minimal
- The turbines are not an efficient or effective way of generating energy, especially as they don't work when it is not windy and the energy involved in constructing the wind farm is not taken into account when considering the overall benefit
- The benefits do not outweigh the harm, especially when the Lavender test is applied
- The landscape is more important than the renewable targets
- The construction phase may result in pollution to watercourses
- The connection to the grid is uncertain

166. There were also 606 pro forma letters of objection raising concerns about visual impact on local valleys and the wider environment and damage to the tourist community within the western Lakes.

167. The Campaign to Protect Rural England (Friends of the Lake District) and the Friends of Rural Cumbria's Environment (FORCE) both objected to the landscape and visual impact, including harm to the setting of the National Park which would outweigh the benefits.

168. At the appeal stage there were written objections from about 27 individuals, mainly concerning visual impact but also with some wildlife and noise concerns.

### *Support*

169. At the application stage there were 21 letters of support. 7 of these were from individuals and cited:

- The development will result in the reduced consumption of fossil fuels and the production of greenhouse gases
- The financial contributions will be beneficial to local education and employment which will benefit the local economy
- It provides an alternative to nuclear energy
- It is important for the green, clean sustainable image of West Cumbria
- The development will involve land associated with 6 family farms which will all benefit and allow the farms to remain viable and also potentially expand
- It will result in local work opportunities including apprenticeships
- It will support local wildlife via an environmental stewardship scheme.

170. 15 of the letters of support were from companies and organisations. They stressed the economic benefits including the boost to the construction industry, the benefits of the proposed local apprenticeship scheme and the enhancement of the area's clean green sustainable image, consistent with the 'Energy Coast' banner. A further 26 letters of support with similar messages were submitted following meetings at Lakes College. 102 pro forma letters were received in support of the proposal, again expressing similar reasons.

171. At the Inquiry additional representations of objection or support were received as listed at Documents 12-23 including statements from some of those who appeared at the Inquiry. These expressed similar views to those in the earlier representations.

### *Statutory Consultations*

172. Other than earlier reservations about wildlife impacts which have been addressed by the mitigation and enhancement measures, there appear to have been no maintained objections from statutory consultees other than the Parish Councils.

173. Of particular note is that shortly before the Inquiry opened Natural England submitted a letter of strong support for the Habitat Management Scheme with its wildlife mitigation and enhancement measures as a potential 'flagship' proposal (Document 24).

174. Also notable are the Lake District National Park Authority application stage representations of 25 November 2011 (Document 25). These advised that the quality of views from and of the National Park would be adversely affected at some scale including cumulative impacts with the Fairfield wind farm and locally severe effects at viewpoints where the western upland edge would form a backdrop to views with the proposed windfarm in the foreground. However the Authority took into account: its Vision for the National Park; statutory purposes; national policy context and targets relating to renewable energy production; and



the benefits of a low carbon landscape, before deciding not to object to the proposed development.

## Environmental Statement

175. The application was accompanied by an Environmental Statement (ES) prepared in accord with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011, as amended, and comments from statutory consultation bodies and representations duly made about the ES and the likely environmental effects of the proposed development. The standing of the ES and the procedure followed has not been challenged except in relation to the accuracy of photomontages which is considered below where it is concluded that the visualisations are satisfactory. Account has been taken of that and all other environmental information submitted in connection with the appeal including that arising from written and oral evidence and questioning at the Inquiry.

## Conditions and Obligations

### *Obligation*

176. The proposal is accompanied by a completed S106 Planning Obligation between the Appellant Company, the landowners and the Council which provides for community benefit payments including an initial £50,000 contribution to support apprenticeships. There would also be an 'annual contribution' of £2,500/MW but this would be topped up by a 'Residual Sum' contribution being the difference between the annual contribution and 1.5% of gross income. The annual sums would be paid to a Community Foundation to be used for training purposes to tackle poverty and disadvantage in the area.

177. However in order for such contributions by way of an obligation to be taken into account in the determination of the appeal they would need to meet the tests set out at Regulation 122 of the Community Infrastructure Levy Regulations 2012 and repeated at paragraph 204 of the Framework in that they are:

- *'necessary to make the development acceptable in planning terms;*
- *directly related to the development; and*
- *fairly related in scale and kind to the development'.*

### *Conditions*

178. In the event that the appeal is allowed by the Secretary of State a draft set of planning conditions was included in the Statement of Common Ground between the Council and the Appellant Company. Revisions to these conditions were discussed at the Inquiry. Further minor changes have been made to reflect advice in Circular 11/95 '*The Use of Conditions in Planning Permissions*'. A final set is included as a Schedule to this Report that includes reasons for individual conditions.

## **INSPECTOR'S CONCLUSIONS**

*Figures in square brackets [ ] refer to other paragraphs in the report.*

### **The Main Considerations**

179. The application was recovered for the decision of the Secretary of State for Communities and Local Government (SoS) because he considers that the appeal relates to proposals of major significance for the delivery of the Government's climate change programme and energy policies. The SoS is required to determine the application in accordance with the development plan unless material considerations indicate otherwise. National policy is also an important material consideration in this case.

180. At the Inquiry, and having regard to the reasons for refusal and to local and national policy, I identified the main considerations to be:

- a) What effects the wind farm would have on the character and visual amenity of the landscape and nearby settlements, both in its own right and cumulatively with Fairfield Farm Wind Farm.
- b) Whether any identified harm may be outweighed by any economic or environmental benefits including the benefits of renewable energy production.

181. Whereas the main cumulative impact relates to the Fairfield Farm Wind Farm, I agree with the Council that the potential cumulative effects of the proposal with the permitted Watch Hill single turbine and with other wind farms in the wider area are also material [50]. These matters were covered in the evidence and discussed at the Inquiry.

182. Other additional matters have been raised in written representations and orally at the Inquiry and should be taken into account. Some of these can be addressed by the application of planning conditions as discussed [178].

### **Landscape Character**

#### *Policy Context*

183. Consideration of the effect of the development on landscape character is a requirement of the current development plan (the Copeland Local Plan – LP) [10], the emerging development plan (Copeland Core Strategy and Development Management Policies Development Plan Document - the DPD) [13-16], and the National Planning Policy Framework (the Framework) [23-29].

184. The wording of the emerging DPD is more consistent with that of the Framework than is the LP in that it would allow for the weighing of adverse impacts with the benefits of development [15]. It is possible that the DPD will be adopted before the end of 2013 when it will replace at least some of the relevant provisions of the LP [13, 16].

#### *Landscape Guidance*

185. The recently published national Planning Practice Guidance for Renewable and Low Carbon Energy (PPGRLCE) is not a policy document but it amplifies national policy. Paragraph 15 amongst other things highlights the consideration of

cumulative landscape and visual impacts and developments close to National Parks. Paragraphs 39-44 include guidance on the assessment of cumulative landscape and visual impacts [28]. The PPGRLE has been issued since the Inquiry closed and the main parties' views on any implications of that guidance have been submitted in writing [77, 161].

186. The Cumbria Landscape Character Guidance and Toolkit 2011 (LCGT) usefully describes the baseline landscape character of this and other Cumbrian landscape types and sub-types [5, 30]. It remains consistent with the highly material Cumbria Wind Energy Supplementary Planning Document (2007) (the SPD). That latter document includes an analysis of the capacity of different landscape types and sub-types to accommodate groups of wind turbines. It also advises on the handling of cumulative effects [18]. Both documents are generally consistent with the approach advocated in the Framework and the PPGRLE.

### *Visualisations*

187. The Council's landscape witness, Mr Woolerton, and other interested persons have been critical of how the turbines are depicted in the Appellant's submitted photomontages [65-67, 102, 104]. In particular they complain of difficulty in matching the photomontages to actual views from the viewpoints. They consider that the representations make the turbines appear shorter than they would be perceived in reality. In response the Appellant Company's landscape witness, Mr Denney, claims that the photomontages are accurate and that they follow established best practice [134(b)].
188. However Scottish Natural Heritage is currently consulting on amended guidance which, whilst not identifying any technical fault with established practice, would seek additional visualisations produced with lenses of 75mm focal length rather than 50mm and with larger prints [65]. Nevertheless that guidance has yet to be confirmed and adopted. I do not consider that it invalidates the visualisations that have been submitted for this proposal.
189. It has not been demonstrated that all or part of any turbine would be more or less visible from any location if different visualisation techniques were adopted. Moreover, as the main landscape and visual impacts are experienced at a distance from the turbines, the perception of their impact on the landscape would be unlikely to vary significantly even if they are imagined to be, say, 25% taller than they appear in the photomontages, as some have suggested. They would still maintain the same lateral position in the landscape. They would still appear in front of the same background views, whether those views are of distant hills or the sky. It is possible that the perception of the likely scale and impact of the turbines would change if different visualisation techniques were adopted. However that would be of more relevance to visual impact in near views and whether or not the turbines appeared overbearing in those views. It is of much less relevance to the longer views and the associated landscape impacts which were central to the debate at the Inquiry.

### *Individual Effects of the Weddicar Rigg Turbines*

190. The appeal site lies within LCGT Landscape Type 9 'Intermediate Moorland and Plateau' [5, 30, 45]. As noted in the SPD [20, 57], this is a relatively scarce landscape type in Cumbria outside the Lake District National Park. It is distributed between several small areas on the fringe of the County as shown in

Map 7 of Document 5 which is part of the SPD. This particular area of Type 9 Landscape in West Cumbria itself covers a relatively small area. It measures only about 6km north to south and a similar distance east to west [5]. The relatively small extent of this landscape type makes it more vulnerable to change and loss than larger areas. A contrast may be drawn with the extensive adjacent Type 5 lowland landscape which stretches all the way across North West Cumbria to Carlisle. Numerous wind farm developments have been permitted within that larger Type 5 landscape. Moreover, there is typically much greater separation between wind turbine groups in that Type 5 area than there would be between the subject Weddicar Rigg and Fairfield Farm wind farms. An appeal in respect of the Broughton Lodge wind farm was dismissed primarily owing to the Inspector's concerns about the cumulative impact of that development with other wind farms [38]. However the gaps that would have remained between the Broughton Lodge wind farm and other wind farms would have been significantly greater than the narrow gap proposed here between the Weddicar Rigg and Fairfield Farm wind farms.

191. The LCGT defines further subdivisions for Type 9 landscapes. This area in West Cumbria is divided approximately equally into Sub-Type 9a 'Open Moorlands' and Sub-Type 9d 'Ridges'. These sub areas are consequently smaller than the Type 9 landscape as a whole and even more vulnerable to change. The appeal site is on the boundary between these 2 areas such that the 3 turbines to the east would be on higher ground within Sub-Type 9d whilst the 3 turbines to the west would stand on lower ground within Sub-Type 9a [19].
192. The LCGT describes the Sub-Type 9a and 9d landscapes. The perceptual character of the Sub Type 9a area at page 118 includes the statement that: *'Despite the row of pylons it retains large expansive views of the Lakeland Fells which provide a dramatic backdrop to the landscape.'* The perceptual character of Sub Type 9d is described on page 127 as *'... generally open large scale landscapes. The unenclosed moorland gives a feeling of wildness. Views are often wide and expansive and uninterrupted and striking views of the Lakeland Fells ... provide drama and reinforce a sense of wildness. Changes in weather conditions accentuate the sense of wildness.'* [30, 54]
193. Whilst small in extent, this Type 9 landscape occupies high ground which adds to its prominence in views from adjacent landscapes. It is especially prominent in views from the east and west and its landscape character can thus be visually appreciated when standing in those areas. From the west there are views of and across the ridge. This includes a backdrop of the iconic Lakeland Fells (See Viewpoint 16). Whilst this is not the only part of West Cumbria from which views of the Fells are available, this is one of the best and most accessible views that are available in the vicinity of the large town of Whitehaven.
194. From the east there are near views up to the skyline ridge of Weddicar Rigg from the adjacent valley including from Arlecdon and Frizington villages (See Viewpoint 11). Further east, similar views of Weddicar Ridge on the skyline are also available from within the Lake District National Park in the vicinity of Ennerdale and adjacent areas. From higher ground in the National Park, such as at Flatt Fell, it should also be possible to see over the ridge to the further ridge that lies between Weddicar Rigg and Whitehaven and beyond to parts of the coast.

195. The perceptual landscape character of this Type 9 area includes these views into and across the area from adjacent landscapes. An Inspector in 1997 dismissed on landscape grounds an appeal concerning 10 turbines at Fairfield Farm [58]. He did not have before him the extensive landscape character analysis and supplementary planning guidance that is now available. However he identified the area's transitional role in the landscape between the coastal development to the west and the National Park to the east. The wind farm that was subsequently allowed on appeal at Fairfield Farm has only 5 turbines and must have a reduced landscape impact.
196. The LCGT was not addressed by the Appellant's landscape witness in his written evidence for the Inquiry [56]. However it was referred to in the Appellant's previous Landscape and Visual Impact Assessment (LVIA) which was carried out as part of the Environmental Statement. The LVIA does not refer directly to the perceptual character identified in the LCGT. Nevertheless paragraph 5.95 acknowledges: *'The importance of open views to the Lake District from key viewpoints'*. Paragraph 5.702 also describes views of the Lake District Fells as a *'valued resource'* and a *'distinctive distant skyline'*.
197. The SPD is highly material because it was specifically directed at assessing the capacity of landscapes in Cumbria to accept wind turbine developments. To this end it further divided all the LCGT Type 9 Landscape Sub-Types into 2 groups known collectively as Type 9i landscapes and Type 9ii landscapes. The main reason for that sub-division appears to have been the greater sensitivity of the Type 9ii areas in relation to the accommodation of larger groups of turbines.
198. Whereas the appropriate scale of development for a Type 9i landscape is assessed in the SPD as *'Up to a large group [6-9 turbines], exceptionally up to a medium wind farm [16-25 turbines] on a broad moorland plateau'*, the appropriate scale for a Type 9ii landscape (such as that of the appeal proposal) is only *'Up to a small group'* (3-5 turbines). The appeal proposal would be in a Type 9ii landscape. Importantly, there is no provision in the SPD for exceptions to allow larger groups of turbines in Type 9ii landscapes [20].
199. In this context it is disingenuous for the Appellant's landscape witness to suggest that the SPD *'does not rule out larger scale development'* even if he relies on a similar comment in the Officer Report to the Council which itself derives from the Axis Report [124]. Neither do I attach any weight to the suggestion there that the SPD, which covers the whole of Cumbria, should have been revised immediately following the Fairfield Wind Farm appeal decision to state that this particular location had reached its capacity, if that had been the authors' view [124]. There is no evidence that the SPD authors were aware of that appeal decision or were in a position to review their assessment of this local area or to introduce changes of that kind. Neither is it inevitable that more than one wind turbine development would be unacceptable within this landscape type. The SPD includes separate advice on cumulative assessments. It provides that it is conceivable that the capacity of an area could be exceeded by too many developments and it includes advice on the assessment of cumulative effects. However it cannot be expected to reach categorical conclusions as to when that capacity may be reached in any particular circumstance and it does not do so.
200. Paragraph 1.7 of Part 2 of the SPD provides that the capacity assessments should be used as guidance and not in a definitive sense. That the proposal is for

a group of 6 turbines (literally larger than a defined small group) should thus not necessarily disqualify it. The Council does not make that argument. The 5 turbine group at Fairfield Farm is in the same Type 9ii landscape. It would literally qualify as a small group. It was allowed on appeal in 2008 after the SPD was published. The Council subsequently permitted an additional single turbine nearby at Watch Hill. That could appear from some angles to be a sixth turbine of the Fairfield Farm group even though it would be set apart from that group on higher ground.

201. Paragraph 1.16 of the SPD Part 2 explains that it is not the intention of the SPD that only one more development would be acceptable in each landscape type. There are other larger landscape character areas in West Cumbria in which several windfarm developments have been permitted since the SPD was published. Nevertheless the SPD advice is material when considering cumulative impacts. These include including whether different wind farm developments within one landscape type are adequately separated from one another.
202. The Fairfield turbines are about 80m tall and the Watch Hill turbine is 74m tall (but would be situated on higher ground). However the SPD was written for turbines with heights of up to 95-120m notwithstanding that it was published when most turbines were smaller. The authors therefore had in mind turbines that are 115m tall, as proposed here.
203. **Viewpoint 16** was much discussed at the Inquiry [89, 134(e)]. It is taken from Red Lonning road on the ridge to the west of the village of Moresby Parks. That Class III road runs parallel to the main A595 coast road and provides a well-used alternative route avoiding Whitehaven. Viewpoint 16 is close to houses at Scilly Banks and to Whitehaven Golf Course. These have open views towards the appeal site and beyond to the Fells. In the photograph the Fairfield Farm Wind Farm can be seen to the left (north). In the visualisation the settlement of Moresby Parks is in the foreground, Weddicar Ridge is in the middle distance, and there is a view of the Lakeland Fells in the background within the National Park. This is one of the nearest points to Whitehaven where it is possible to see the Fells. From here the wind turbines would appear partly in front of the rising land of Weddicar Rigg, and partly on the summit of the ridge. They would obviously intrude into the 'valued' views of the Fells [20, 21, 30, 53, 89, 101, 103, 107, 108] and into the skyline above the Fells. The LVIA concluded that the sensitivity of this view is high for residential receptors, walkers and cyclists (to which I would add the users of Whitehaven Golf Club) and medium for those using motor vehicles. The magnitude of change was concluded to be 'Substantial'. This view is likely to be representative of what the Lake District National Park Authority described as a locally 'severe' effect on views. This is notwithstanding that the NPA concluded that the landscape impact would not be unacceptable in its effect on the National Park [76(b), 174]. Similar views are available from some of the houses seen in the foreground of Viewpoint 16 and from other roads in Moresby Parks such as School Brow (**Viewpoint A**).
204. The 'Left View' from Viewpoint 16 shown in 6/35a (Document 29) provides an impression of the number of other wind farm developments that might be visible from the same point when looking north. The Broughton Lodge and Lillyhall Wind Farms should be discounted from these views as the former has been refused and dismissed at appeal and the other has yet to be determined. The Potato Pot

- turbines are not shown but might be visible close to the location of the proposed Lilyhall turbines, should the current Potato Pot appeal be allowed [40].
205. On lower ground at the eastern edge of Moresby Parks the views towards the Fells from homes, roads and paths are similar to those from Viewpoint 16 except that the lower angle of view means that a greater proportion of the Fells are concealed by the landform of Weddicar Ridge itself (see **Viewpoint C**). Nevertheless the turbines would also intrude into these views. Their closer proximity would increase their perceived scale relative to the Fells.
206. The Weddicar Rigg turbines would appear in the forefront of these important and valued east facing views towards the ridge. They would cause substantial harm to the wild landscape character of the west-facing slope of the ridge. Moreover they would blur the outline of the ridge in the manner warned of in the Appendix to the SNH design guidance [89]. Of particular importance is that they would detract from the dramatic backdrop of the Lakeland Fells which is itself part of the defined perceptual character of the Type 9 landscape and which is highly valued locally.
207. **Viewpoint 18** from Watch Hill was also much discussed at the Inquiry [90]. It was taken from a country road near the village of Pica to the north of Moresby Parks. The view is looking south east towards the appeal site. It is notable for the foreground presence of the smaller turbines at Fairfield Farm which here also intrude into some views of the Fells. The combined impact of the two wind farms is considered further below in terms of cumulative effects. The visualisation does not include the recently permitted Watch Hill turbine which would be in the foreground but to the right (west) of the Fairfield turbines. There are few dwellings in this location. The LVIA concludes that this view would be seen mainly by road users of medium sensitivity and that the magnitude of change would be moderate. However the change is moderate rather than substantial only because these views already include foreground views of large commercial wind turbines.
208. **Viewpoint 14** from the village of Keekle is looking north east towards Weddicar Ridge. The Fairfield Wind Farm turbines can be seen from here but they are relatively distant and they do not here intrude into views east towards the Lakeland Fells. From here the Weddicar Rigg turbines would appear on the skyline above the ridge and clear of the backdrop of the Fells.
209. **Viewpoint 11** is in the large village of Frizington looking west towards Weddicar Rigg. Frizington and nearby areas are locally rare in this northern part of West Cumbria in that they currently have no views of windfarms. In particular the Fairfield Wind Farm is too far beyond the ridge to be seen from here. Open views of Weddicar Rigg from public places in the village are scarce. However Viewpoint 11 is representative of views west from the rear of many houses and bungalows [104]. The outlook from Viewpoint 11 currently enables the observer to see the open and relatively wild expanse of Weddicar Rigg. The Weddicar Rigg turbines would appear above the ridge against the sky. As they would not conceal any part of the moorland landscape or the outline of the ridge or any views of distant landscapes the impact would be less than that experienced in views from the west of the ridge around Moresby Parks. The LVIA again described the sensitivity of the receptors as medium/high and describes the

magnitude of change as 'Substantial' but in this case that is because there are no wind turbines currently visible from Frizington.

210. At the Inquiry the Council's landscape witness highlighted that it is rare in this northern part of West Cumbria for the Zones of Theoretical Visibility (ZTVs) of at least one windfarm not to extend into a local area [78]. Indeed the ZTVs of wind farms frequently overlap such that 2 or more wind farms may be theoretically visible at any one locality. However the limitations of ZTVs include that they do not show how much of a wind farm or wind turbine is visible or at what distance. Thus the notation on the ZTV map would be the same whether it relates to the full visibility of many turbines at a close distance or to the visibility of a blade tip at a considerable distance. Neither do the ZTV maps take account of any obstructions to view such as buildings, woodland and hedgerows which can markedly reduce actual visibility if close to the viewer. For example the ZTV maps suggest that some turbines are theoretically visible in central Whitehaven streets when in practice the buildings screen all such views.
211. **Viewpoint 25** is from the edge of the small village of Arlecdon. The sensitivity and magnitude of change here would be similar to that experienced at Frizington except that fewer dwellings directly face towards Weddicar Rigg and the proposed turbines.
212. In all of the above views there would be an associated change in the perceived character of the Landscape of County Importance (LOCI) as defined by LP Policy ENV6 and which in Copeland is generally coincident with Landscape Sub-Type 9d in the LCGT and Sub-Type 9iid in the SPD. There is as yet no other analysis of the character of this LOCI or any different means of assessing the effect of the appeal proposal on this landscape than that which applies to Sub-Type 9d.
213. The Inspector who allowed the Fairfield Farm Wind Farm on appeal did comment that the wind farm was in Sub-Type area 9a and thus outside the LOCI [36]. It could be inferred that the 9a area was considered to be of lesser value than the 9d (LOCI) area. However it is notable that the SPD did not seek to exclude the LOCI area from its assessment that Type 9ii areas are capable of accommodating '*up to a small group*' of turbines [20]. Thus it allows that 9d areas (and thus here the LOCI) may have some capacity for wind turbine development. Moreover national policy in EN-1 provides that local landscape designations should not on their own be used to justify the refusal of renewable energy development [11]. Local landscape designations have not always been supported by appropriate assessment and the DPD only seeks to retain the LOCI designation in LP Policy ENV 6 pending a review [16]. However that does not negate the need to consider actual landscape character impacts of development in an area which happens to have such a local designation. Regard should also be had to relevant landscape character assessments that may have been prepared for reasons other than to support a particular local landscape designation such as the LOCI.
214. **Viewpoints 6 and 10** are taken from within the National Park. The PPGR LCE advises that particular regard be had to the setting of such areas. In both views the proposed turbines would be seen above Weddicar Rigg but as relatively small and distant features on the skyline within an expansive landscape. Other existing windfarms can already be seen from the same viewpoints at an equal or greater distance. The higher viewpoints also already permit views of urban



development along the coast around Whitehaven and Workington. It was in that context that the National Park Authority did not object to the proposed development [174]. I do not consider that the turbines would significantly harm the landscape setting of the Park in these outward views.

215. There are local roads, public footpaths and open access land within 2km of the site which are used for recreation including walking [104]. From here the proposed turbines would have major and significant visual impacts due to the proximity of the turbines and to their height and position on the skyline where they would often be at a higher level than the observer. However some such impacts would be expected from a small group of wind turbines wherever they are located in a Type 9 landscape, or in most other landscapes.
216. The LVIA included an assessment of impacts on several main roads, long distance paths and long distance cycle routes. The sensitivity of road users would vary to some degree. It would be greater where journeys have a recreational purpose including journeys by tourists to view the scenery of the western lakes of the National Park [105]. Long distance walkers and cyclists would also be particularly sensitive to views of the landscape. However the long distance routes pass about 4km away from the turbines which would be but one relatively small feature in a long and varied route through different landscapes. Moreover at these distances views of the turbines would often be screened by local vegetation, buildings or landform.
217. The Appellant's landscape witness has accepted that the turbines would create a windfarm landscape that would extend up to 600m in each direction away from the turbines [136]. Within that area the turbines would be the dominant and defining characteristic of the landscape. They would inevitably detract from the wild and open character of Landscape Sub-Types 9iia and 9iid/LOCI. However some landscape change is inevitable wherever commercial wind farms are located. The adopted SPD has previously assessed that the receiving landscape has the capacity to accept a development of almost this scale. Nevertheless it does not follow that any location within such an area, or any design of development, would have the same effect or is equally appropriate. In this case there would be a particularly severe adverse effect on landscape character in views from the west as represented by Viewpoint 16.

### *Cumulative Effects*

218. The Framework and the PPGRLE practice guidance emphasise the importance of considering cumulative landscape and visual impacts [25, 28]. In Cumbria the SPD already recognises that cumulative effects are a growing issue as the number of wind farm developments increases [22]. The SPD provides advice on the assessment of such effects which is broadly consistent with that in the PPGRLE [28].
219. There are numerous wind farm and single wind turbine developments of various scales across West Cumbria. More such proposals are at different procedural stages in the planning system [6, 40-42]. The LVIA reasonably concentrates on the potential for cumulative effects of the Weddicar Rigg turbines with other wind farms rather than with single turbines. However the LVIA assessment included some windfarm developments that have either been refused (eg Broughton Lodge – appeal dismissed due to cumulative landscape effects) [38] or which have yet to be determined by the local planning authority (eg

Lillyhall) [41]. These should be discounted. The LVIA does not consider every possible future development. In particular it excludes consideration of the individual turbine that was subsequently permitted nearby at Watch Hill and which should be taken into account. The implications of that permission were fully considered at the Inquiry [37, 51, 86, 89-91]. There are no other individual turbines which have been identified to have significant cumulative effects with the current appeal proposal. The LVIA also reasonably excludes consideration of the Potato Pot Wind Farm which was at an early stage at the date when the LVIA was prepared. At the date of the Weddicar Rigg Inquiry it was awaiting an appeal decision against the refusal of permission by Allerdale Borough Council) (Appeal Ref 2189934) [40]. However the Potato Pot site is close to the Lillyhall site and at a similar distance from the appeal site. The relevant considerations are therefore very similar to those of the Lillyhall scheme which was assessed in the LVIA. I consider that the Potato Pot Wind Farm would be too far from Weddicar Rigg to have significant cumulative visual impacts.

220. There are places in the local area from where it is already possible to simultaneously see large numbers of wind turbine developments both on land and sea [3, 6]. These include views to the north from some dwellings on the western edge of Moresby Parks. There are also some distant views of wind farms from high ground on the western edge of the National Park [100]. Elsewhere sequential views of different wind farms at varying distances are possible when travelling along roads such as the A595. It is arguable that some areas north of the appeal site already constitute a 'landscape with wind farms' where wind farms have become one of the defining characteristics of the landscape. However the developments are not so numerous, so extensive, or so closely spaced that wind farms have become the defining element in which case the whole area would have become a wind farm landscape as suggested by Mr Woolerton for the Council [84]. That is not the case. Wind farm landscapes do exist in parts of the area but only in relatively close proximity to each individual wind farm development. However some wind farms have been extended in stages with an associated expansion of the local wind farm landscape and some others are close enough to one other that the wind farm landscape that each creates will overlap.
221. Whilst the appeal proposal has the potential to marginally extend the 'landscape with windfarms' in a southerly direction, by far the most significant cumulative effect would arise from its relationship with the Fairfield Farm Wind Farm. That wind farm is less than 1km to the north of the appeal site and within the same relatively small area of Type 9ii '*Moorland Hills and Low Plateaus*' landscape. Both wind farms would frequently appear in the same near views, as would the permitted Watch Hill Turbine which has yet to be erected.
222. The LVIA acknowledges in its assessment of **Viewpoint 18** at paragraph 5.322 that the Weddicar Rigg and Fairfield Farm wind farms would be likely to read as one wind farm in this view. If so that would comprise a total of 11 turbines (or 12 turbines including the nearby Watch Hill Turbine which the LVIA did not consider). This would be more than the '*small group*' defined as acceptable by the SPD in this Sub-Type 9ii landscape. It would even be larger than the '*large group*' which the SPD defines as 6-9 turbines and which are exceptionally supported in some other types of landscape. 11 or 12 turbines would instead qualify as what the SPD confusingly describes as a '*small wind*

*farm* (10-15 turbines) and which the SPD certainly does not support in this landscape Type 9ii.

223. From **Viewpoint 16** there would be a 997m gap between the two groups of turbines [51]. The Appellant considers that these are sufficiently separated to usually appear as two distinct groups and that each would thus qualify as a small group in the terms of the SPD [20]. However, the Appellant's landscape witness considers that the Weddicar Rigg turbines would create a wind farm landscape extending to 600m beyond that group. As the Fairfield turbines are only a little smaller they must create a similar wind farm landscape. It follows that the wind farm landscapes created by each group would overlap to result in a single wind farm landscape. That resulting wind farm landscape would stretch over a north-south distance of about 3km or roughly half the overall 6km north-south length of this area of Type 9 landscape [5]. That could not avoid a substantial change in the perceived character of this ridge and moorland landscape including a loss of the sense of openness and wildness and a loss of uninterrupted views of the Lakeland Fells from the west.
224. The Fairfield Farm turbines already intrude into some views of the Lakeland Fells. But the Weddicar Rigg turbines would considerably extend the area over which this effect is experienced. They would intrude into views from many more dwellings and from other private or public places. Moreover the Weddicar Rigg turbines have not been deliberately designed as a complementary extension to the Fairfield group. They would be taller than the Fairfield and Watchfield turbines. They would be located on higher ground than the Fairfield turbines. The spacing between the 3 developments would be inconsistent with varying gaps between the groups of turbines and between individual turbines. As paragraph 1.42 of Part 2 of the SPD warns, the overall result would be a *'close succession of different schemes with different designs and relationships to the landscape that would appear confusing and would raise questions about the visual rationale and suitability of each development'* [22].
225. The above adverse cumulative effects would mainly be experienced in views from the north west though west to the south west. These include views from the Moresby Parks-Pica road, from Moresby Park village, from Red Lonning Road, Scilly Banks and the Whitehaven Golf Club, and from local roads and footpaths and open spaces within about 2km.
226. In views from the east and south east including from Frizington, Arlecdon and nearby areas there would not be significant cumulative landscape visual impacts because it would rarely be possible to see the Weddicar Rigg turbines in association with other turbines. In these views the Weddicar Rigg turbines would be visible but the Fairfield and Watch Hill turbines would typically be screened by the landform of the intervening ridge.
227. From the roads and local footpaths that are over 2km from the site and from the long distance footpaths and cycle routes that are typically beyond 4km from the site, travellers would typically have some intermittent views of the appeal site where not shielded by landform, vegetation and buildings. The cumulative impacts would either involve simultaneous views of the turbines with other turbines. There would be some potential for sequential views when passing to and from other areas that contain windfarms, particularly areas to the north. However in each case the views of the existing and proposed windfarms would

often be distant from the viewer and within an expansive mainly rural landscape that already includes some windfarms. In that context the addition of one further group of turbines would have only a marginal additional cumulative effect.

228. In summary, the development would result in substantial cumulative harm to the landscape character of the Type 9 area in which it would be located in that it would considerably extend the modest area of wind farm landscape already created by the Fairfield Farm Wind Farm such that the wind farm landscape would occupy an excessive proportion of this Type 9 Landscape Character Area. The two wind farms and the Watch Hill turbine would appear from some angles as a single group which would be much larger than the small group identified by the adopted SPD as appropriate in this landscape character area. From other angles they would appear as 3 too-closely-related groups of different and conflicting designs, scale and spacing. That would appear incoherent and confusing to the viewer. The appeal scheme would specifically harm important perceptual characteristics of the Sub-Type 9d area (and hence those of the similarly defined LOCI area) in that it would intrude into views of the moorland ridge, reducing its wildness, blurring the outline of the ridge and intruding into views of the ridge with its valued backdrop of the Lakeland Fells, especially as seen from the west.

### **Visual Amenity**

229. The Council's reason for refusal includes a claimed detrimental impact to the *'distinctive character and visual amenity of the nearby settlements, particularly Moresby Parks, Arlecdon and Frizington.'* In their evidence for the Inquiry the Council's witnesses have not claimed any additional harm either to the visual amenity of residents of the settlements or to any identified character of the settlements themselves which is not part of the general perception of effects on landscape character.
230. In particular it has not been claimed by the Council that the turbines would be so close to any dwellings as to be unacceptably dominant or overbearing in the outlook from those dwellings or to make them unpleasant places to live (the 'Lavender test'). Whilst some such claims have been made by other interested persons [104, 165], I judge that the turbines would be sufficiently remote from all dwellings other than those occupied by financial beneficiaries of the development that they would not have unacceptable effects on the visual amenity of their occupiers.
231. Whilst there would clearly be a change in the views available from numerous dwellings and from other private places, it is a well established planning principle that there is no right to maintain unchanged such views from private property [144]. To do otherwise would severely constrain all types of development, whatever their public benefits, which would be contrary to the public interest. Nevertheless the general public perception of valued landscape character should not exclude how that character may be perceived in views from private dwellings. The LVIA has specific regard to the varying sensitivity of receptors in these locations. Thus in this case I consider that the views available from many private dwellings, buildings and land in the settlements are relevant to considerations of the effect on landscape character as above. However they do not here result in other unacceptable visual amenity impacts on occupants of individual dwellings that are separate from considerations of landscape character.

## Benefits

### *Benefits of Renewable Energy*

232. There is no significant dispute between the Council and the Appellant in respect of the benefits of renewable energy production or the contribution that the appeal scheme would make towards such production. The key points include that:

- The UK Renewable Energy Strategy confirms that the UK is expected to deliver 30% of its electricity generation from renewable sources by 2020 [116, 93(a)]
- At present only just over 12% of the UK's electricity comes from renewable generation [116]
- The background evidence which led to the RSS regional and county targets was itself related to then national targets and it remains relevant [9]. Moreover the Appellant suggests that national targets derived from the UK Renewable Energy Strategy 2009 would increase the need by 50% above that identified in the former RSS targets in order that 30% and not 20% of electricity would come from renewable energy [118]
- In Cumbria, there is only 138MW of onshore wind in operation against an RSS target of 247.5MW by 2020 [118]
- The former RSS target may itself understate the need identified by the UK Renewable Energy Strategy 2009 [118]
- There was no target for Copeland in the RSS but the emerging Copeland DPD includes an aspiration for 46MW from renewable sources in the Borough by 2030 of which only about 17MW is already permitted. That figure is derived from the Cumbria Renewable Energy and Deployment Study which expects most renewable energy to come from onshore wind (CD102) [97, 119]
- 46MW is agreed by the parties not to be a ceiling [120]
- 46MW cannot relate to any national target for 2030 as no such target has been announced
- The development would contribute about 12MW of installed capacity and would contribute to an associated reduction in carbon emissions [122, 148(b), 93(a)]

233. There are other wind farm proposals at various stages in the planning process in Copeland, including pre-application proposals, which could also contribute to renewable energy provision but it cannot be predicted which of these other schemes may be permitted [121].

234. The Framework confirms at paragraph 93 that the delivery of renewable energy is supported. It identifies the associated key role of planning in securing reductions in greenhouse gas emissions, minimising vulnerability (which would include security of energy supplies [148(c)]) and providing resilience to the impacts of climate change.

235. Given the strong national policy support for renewable energy and the contribution which the development could make towards the local production of renewable energy (which is necessary to meet national targets), these are significant benefits to weigh in the planning balance.

#### *Wildlife Enhancement Benefits*

236. The Habitat Management Scheme which accompanies the proposals, and which is supported by Natural England, includes mitigation for habitat loss which would not be a benefit as it would be unnecessary if the development did not take place [148(f)]. However it also includes habitat enhancement measures with management funding for the life of the development. This enhancement would be a positive benefit but of modest scale.

#### *Community Benefits*

237. As part of the claimed benefits of the development the Appellant Company and some interested supporters rely on the completed S106 planning obligation agreement with the Council which provides for an initial £50,000 contribution to support apprenticeships and for subsequent annual payments to a Community Foundation to be used for training purposes to tackle poverty and disadvantage in the area [148(g & h), 159(iv), 169-170]. These benefits also featured strongly in the listed benefits in the Officer Report which recommended to the Council's Planning Panel that planning permission be granted.
238. Community benefits of this kind on a voluntary basis are encouraged by the Government. The Ministerial Statement dated 6 June 2013 from Edward Davey (Secretary of State for Energy and Climate Change) suggested an increase in the recommended payments from £1,000/MW of installed capacity per year to £5,000/MW/year for the lifetime of the wind farm. The likely top up payments included in the Obligation may vary. The Appellant suggests that they could lift the annual payments at this site from £2,500/MW to £6,000/MW although the calculation method has not been submitted in evidence [93(g)]. However even if the payments would accord with the Minister's recent recommendation, it does not follow that the S106 Obligation payments accord with the CIL Regulations test or the Framework. In particular the community benefits on offer are not a requirement of planning policy and they would not be directly related to the development. Those benefitting from the training would be unlikely to be trained or employed to work on this development. I therefore consider that these benefits should not be taken into account in the planning balance.

#### *Other Economic Benefits*

239. It is material that the development would contribute directly to economic growth and that it would generate some employment both in the construction of the wind farm and in its future maintenance. Whilst it appears unlikely that the turbines would be manufactured locally or in the UK, there is a possibility of some direct local economic benefits such as employment of local firms during the construction phase or the accommodation of workers from outside the area [148(e)]. One supporter suggests that his company in Barrow in Furness is likely to benefit from construction and maintenance contracts although this is not assured. Barrow is in a different local authority area [163]. Nevertheless there would still be benefit to the national economy and employment even if the

economic activity and employment occurs in another part of the country. This would be a positive benefit to weigh in the planning balance.

240. The development would result in direct financial benefits to several local farmers as landowners [148(d), 164]. That would accord with Framework objectives at paragraph 28 to support growth in rural areas and to promote the development and diversification of agricultural and other land-based businesses.

### **Other Matters**

241. None of the additional matters raised by interested persons were included in the Council's reasons for refusal or are of sufficient weight to be significant in the overall planning balance [100-109, 162-171]. In particular the claimed effects on property values should not be taken into account as planning considerations [104, 165]. The claimed adverse effects on tourism are not supported by the Council or by objective evidence of significant economic impact [104, 164]. Whilst the 3 western turbines would be within Tourism Opportunity Site 2 as designated in the LP by Policy TSM2 [12], the Council does not identify any conflict with, or prejudice to, that policy. The appeal site would only occupy a small part of one of several extensive areas of land within the Borough which are so designated. Tourists visiting the area would already experience views that include other wind turbines. It has not been demonstrated that claimed past reductions in tourism are due to those developments or that the addition of this wind farm would have a significant additional effect on tourist numbers or spending. That tourists may experience the adverse effects on the landscape and visual impact including in views from the National Park and from long distance cycle and footpath routes is part of the general consideration of effects on other receptors.
242. The Environmental Statement suitably addressed wildlife considerations and there is no evidence of a significant adverse effect on red squirrels or other species [165, 168].
243. Mr Coulter already experiences noise interference on amateur radio signals on some days due to the presence of the Fairfield Farm Wind Turbines [108]. There is a possibility that the Weddicar Rigg turbines would similarly interfere with signals from a different direction, resulting in increased inconvenience. Whilst there would be some effect on Mr Coulter's hobby, the extent of the impact cannot be judged precisely on the available information. It may depend on matters such as whether radio signals would travel directly through the wind farm to and from Mr Coulter's home, bearing in mind the greater height of the Fells to the east, and whether interference would render the signals less clear or completely inaudible. Nevertheless, whilst some harm is possible and that would add marginally to the other identified harm, I do not consider that the wider public interest would warrant the dismissal of the appeal on the grounds of this harm alone, having regard to the overall benefits of the development.
244. Most of the other matters are either covered as part of the main considerations above or they can be satisfactorily addressed by the suggested planning conditions. This includes the proposed noise control conditions which suitably reflect guidance in ETSU [29, 165, 168, 178].

## Planning Balance and Conclusions

245. Since the revocation of the RSS and the SP, the LP is the only relevant remaining part of the statutory development plan in Copeland until such time as the emerging DPD is adopted [9-13]. Given the above conclusions that the development would cause significant adverse harm to landscape character both in its own right and cumulatively with the Fairfield Farm and Watch Hill turbines, there would be a literal conflict with LP Policies EGY 1, EGY 2 and ENV 6. However the LP is inconsistent with the Framework in its lack of regard to the benefits of development which are an important material consideration.
246. The emerging DPD is at an advanced stage and merits weight in these respects [13-16]. It may be adopted as part of the statutory development plan before the end of 2013. On adoption it would replace LP Policies EGY 1 and EGY 2. Whilst LP Policy ENV 6 is to be retained pending review of the LOCI [16], the adopted DPD would carry more weight if there were any conflict with that policy. Draft DPD Policies ER2, DM2 and ENV 5 are more consistent with national policy in the Framework in that they do provide that the benefits of development are to be considered before concluding whether or not a development is acceptable [15].
247. The Appellant's sieve map crudely demonstrates some of the constraints on wind energy development in North West Cumbria [123]. Unconstrained areas are shown as white land. The Appellant accepts that other sites for wind turbines are available whilst suggesting that they are likely to be few and far between [123]. However it is notable that there are existing permitted wind farms in locations which are not shown on the sieve map as unconstrained white land. Also the map does not have regard to all aspects of landscape capacity as assessed in the SPD or to cumulative effects. It does not distinguish between those dwellings that may be financially involved in wind farm developments and those which are not. In that regard part of the appeal site is itself shown as a coloured or constrained area. This is due to the presence of a dwelling but that dwelling is occupied by someone who is financially involved. Similar situations could arise elsewhere. Neither does the map show the southern part of Copeland outside the National Park where there are other current and proposed wind energy developments. To dismiss the appeal would not result in a moratorium on wind energy development in West Cumbria. There are still likely to be other locations where wind turbines would be acceptable.
248. In this case I consider that the identified benefits of the development do not require that the wind farm be developed at this location. The benefits are either likely to be capable of realisation elsewhere or they are not essential to the overall public interest. To develop the wind farm here would be in conflict with the landscape capacity guidance in the adopted SPD because of its close proximity to the existing Fairfield Wind Farm and permitted Watch Hill Turbine and because it would have a confused design relationship with those developments owing to the different scale, height and spacing of those developments. The positioning on the ridge and west facing slope of Weddicar Rigg would cause substantial harm to key perceptual characteristics of the landscape character area and LoCI in which it would be located. Were the wind farm developed in another location in West Cumbria it would not necessarily have similar impacts.



249. In the terms of the Framework I consider that the adverse impacts would in this case significantly and demonstrably outweigh the benefits. In the terms of the emerging DPD (as proposed to be modified – CD87) the proposal would be in conflict with emerging Policy DM2(C) in that there would be unacceptable adverse effects on landscape character and distinctiveness because the identified landscape harm is not outweighed by the other benefits.
250. My overall conclusion and recommendation is thus that the appeal should be dismissed.
251. Should the Secretary of State decide instead to allow the appeal, then it is recommended that the planning conditions in the attached schedule are applied.

*R P E Mellor*

INSPECTOR

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Mr M Carter	Of Counsel instructed by Marlene Jewell, Senior Legal Services Officer, Copeland Borough Council
He called	
Mr R D Woolerton MA(LD)	Consultant Landscape Architect, Woolerton Dodwell Associates Ltd
BA(Hons) FLI	
Mr R Taylor DipTP MRTPI	Principal Planner, Taylor and Hardy Chartered Town Planners

### FOR THE APPELLANT:

Mr R Glover	Solicitor, Squire Sanders LLP
He called	
Mr B J Denney BA(Hons)	Landscape and Environmental Planning Director,
DipLA CMLI CEnv MIEMA	Pegasus Environmental
Mr M Earle BSc(Joint Hons)	Development Planner, Banks Group Ltd
MScTCP MRTPI	

### INTERESTED PERSONS:

#### *Objectors*

Cllr G Sunderland	Local Member – Arlecdon Ward and member of the Council's Local Development Framework Panel
Mrs N Lockhart	Resident of Moresby Parks
Mr R Pearson	Resident of Moresby Parks
Mr G Sewell	Resident of Moresby Parks
Mr D Coulter	Resident of Moresby Parks
Mr A King	Resident of Scilly Banks
Mr J Vout	Resident of Arlecdon

#### *Supporters*

Ms K Richardson	Principal of The Lakes College
Mr C Lees	Freedom Agrilek – Potential Electrical Contractor for the development
Mr Addyman	A landowner of the appeal site

## INQUIRY DOCUMENTS SUBMITTED BY COPELAND BOROUGH COUNCIL

CBC/MC/1	Carter Opening Statement
CBC/MC/2	Carter Closing Statement
CBC/MC/3	Carter Skeleton Costs Rebuttal
CBC/DW/1	Woolerton Summary Proof
CBC/DW/2	Woolerton Proof
CBC/DW/3	Woolerton Appendices
CBC/DW/4	Scottish Natural Heritage Press Release
CBC/RT/1	Taylor Renewable Energy Position
CBC/RT/2	Taylor Proof
CBC/RT/3	Taylor Summary
CBC/RT/4	1997 Appeal Decision Fairfield Farm T/APP/Z0923/A/96/270976
CBC/RT/5	Email from Nick Hayhurst of Copeland BC dated 2 August 2013 commenting on ' <i>Planning Practice Guidance for Renewable and Low Carbon Energy</i> '

## INQUIRY DOCUMENTS SUBMITTED BY THE APPELLANT

APP/RG/1	Glover Opening Statement
APP/RG/2	Glover Closing Statement
APP/RG/3	Glover Costs Application
APP/BD/1	Denney Summary Proof
APP/BD/2	Denney Proof
APP/BD/3	Denney Appendices 1-4
APP/BD/4	Denney Appendix 5 Additional Visualisations (A3 document)
APP/BD/5	Denney Rebuttal Proof
APP/BD/6	Plans showing corrected position of Watch Hill turbine (replaces Denney Fig 1)
APP/ME/1	Earle Proof and Summary
APP/ME/2	Armistead Wind Farm Appeal Ref APP/M0933/A/08/2090274
APP/ME/3	Statement by Secretary of State for Energy and Climate Change
APP/ME/4	Response to Coulter concerning radio interference
APP/ME/5	Letter of 25 June 2013 in response to SoS CLG statement ' <i>Local Planning and Onshore Wind</i> '
APP/ME/6	Letter of 9 August 2013 commenting on the <i>Planning Practice Guidance for Renewable and Low Carbon Energy</i>

## OTHER INQUIRY DOCUMENTS

DOC1	Core Documents List
DOC2	CD1 Statement of Common Ground between CBC and Banks (Final signed version)
DOC3	CD14/1 Copeland Local Plan Proposals Map Extract
DOC4	CD16 Cumbria Wind Energy SPD Pt 2
DOC5	CD16 Cumbria Wind Energy SPD Maps
DOC6	CD54 Cumbria Landscape Character Guidance and Toolkit Pt 1
DOC7	CD54 Cumbria Landscape Character Guidance and Toolkit Pt 2
DOC8	CD101 Scottish Natural Heritage Consultation
DOC9	CD102 Cumbria Renewable Energy Capacity and Deployment Study
DOC10	2 <sup>nd</sup> Letter of notification of appeal and list of persons notified
DOC11	Revised S106 Planning Obligation Agreement - Final Signed Version
DOC12	Representation by Richardson of Lakes College
DOC13	Representation by Addyman – landowner of part of appeal site
DOC14	Representation by Gill Bros
DOC15	Representation by Pearson
DOC16	Representation by Lees
DOC17	Article in Westmoreland Gazette - Sewell
DOC18	Killington Wind Farm Briefing - Sewell
DOC19	Representation dated 6 July – D & H Southall
DOC20	Representation dated 8 July – Bell
DOC21	Representation to DECC dated 3 July - Abbot
DOC22	Representation dated 11 July - Keron
DOC23	Representation dated 15 July – Perry
DOC24	Letter from Natural England dated 5 July 2013
DOC25	Letter from Lake District National Park Authority dated 25 Nov 2011
DOC26	Plan of route for accompanied site visit
DOC27	Guidelines for Landscape and Visual Impact Assessment 3 <sup>rd</sup> Ed 2013
DOC28	Viewpoint 16 photomontage 6/35a ( <i>filed with other montages</i> )

## **SCHEDULE OF CONDITIONS**

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### **Documents and Drawings**

1. The development hereby permitted shall be carried out in accordance with the approved documents and plans listed below; except as provided for in other planning conditions which shall at all times take precedence:

#### Documents

Planning Application and Environmental Statement Dated September 2011 Volume 1

#### Drawings

Planning Application Drawing 01 Location Plan  
Planning Application Drawing 02 Application Boundary and Existing Features  
Planning Application Drawing 03 Site layout  
Planning Application Drawing 08 Site Access

*Reason: For the avoidance of doubt and to ensure that the development is carried out fully in accordance with the approved plans.*

### **Duration of Permission, Decommissioning, and Site Restoration**

2. The development hereby permitted shall be commenced within 3 years of the date of this permission.

*Reason: Imposed pursuant to the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.*

3. No later than one calendar month after the sooner of the following dates the developer shall notify the local planning authority in writing of that date:

- a) the date of the commissioning of all 6 turbines; or
- b) the expiry of a period of 2 years from the commissioning of the first turbine.

The permitted operational period for the wind turbines shall be 25 years from that date.

Decommissioning of the turbines shall commence within one month of the end of that 25 year period, and this decommissioning process shall be completed within a maximum period of 12 months from the expiry of the operational period. The decommissioning process shall include the removal of all wind turbines, ancillary equipment and buildings from the site and the restoration of the land, all in accordance with a decommissioning scheme that shall previously have been submitted to and approved in writing by the local planning authority.

*Reason: to provide certainty as to the permitted operational period and to ensure that, on decommissioning, the site is reinstated in order to protect the environment.*

4. If any wind turbine fails to produce electricity to the grid for a continuous period of 6 months then, not more than 6 months after that date, a scheme for the decommissioning and removal from the site of that wind turbine and any ancillary equipment and works which relate only to that turbine and the restoration of the land shall be submitted to the Local Planning Authority for written approval. The approved scheme shall be fully implemented within 12 months of date of its approval. If all 6 turbines have ceased operation then the decommissioning and restoration scheme shall apply to all remaining turbines, buildings and equipment.

*Reason: to ensure that, on decommissioning, the site is reinstated in order to protect the environment, to accord with Development Plan Policy.*

### **Details of the Development**

5. Notwithstanding details hereby approved, the wind turbines and their associated access tracks and transformers shall be sited within 25m of the positions indicated on Planning Application Drawing 03 entitled 'site layout plan'.

*Reason: To provide scope for micro siting whilst ensuring the development does not differ materially from the submitted proposal.*

6. No development shall take place until details of the design and external appearance of the wind monitoring mast and the blade configuration, direction of rotation, colour and surface finishes of the wind turbines, have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details. Notwithstanding the details to be submitted, the overall height (Above Ground Level) of the wind monitoring mast shall not exceed 70 metres and the wind turbines shall not exceed 115 metres to the tip of the blades when in the vertical position.

*Reason: To ensure the external appearance and the operation of the wind turbines are acceptable, in the interests of the visual amenities of the locality.*

### **Construction and Environmental Management Plan**

7. No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the construction of the development shall only be carried out in accordance with the approved Statement, unless otherwise previously agreed in writing by the Local Planning Authority. The Construction Method Statement shall address the following matters:

- a. Details of the programme and phasing of construction works, and the construction and surface treatment of all hard surfaces and tracks including passing spaces (such surfaces shall thereafter be retained)
- b. Details of the proposed temporary site compounds for storage of materials and machinery (including areas designated for car parking)
- c. Siting and details of wheel washing facilities
- d. Details of the phasing of works and methods of working for cable trenches and foundation works
- e. Details of the phasing of works and construction of the substation/control buildings and anemometry mast

- f. Dust management
- g. Cleaning of site entrances, site tracks and the adjacent public highway and the sheeting of all HGVs taking spoil or construction materials to/from the site to prevent spillage or deposit of materials on the highway
- h. Pollution control: protection of water courses and ground water and soils, bunding of fuel storage areas, sewage disposal
- i. A surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development
- j. Disposal of surplus materials
- k. Post construction restoration/reinstatement of the temporary working areas, including seed mixture for planting
- l. Construction noise management plan (including identification of access routes, locations of materials lay-down areas, details of equipment to be employed, operations to be carried out, mitigation measures and a scheme for the monitoring of noise)
- m. Any temporary site illumination.
- n. The external appearance and external materials of the sub-station building and compound, fencing of these facilities, its access from the public highway and its landscaping, including a timetable for implementation.
- o. Post construction / decommissioning restoration of the land within the disturbed former working areas, including seed mixture.
- p. Turbine foundations and crane pad
- q. Site tracks and cross-sections

*Reason: To retain control over the construction and decommissioning phases of the development, in the interests of visual amenity, the environment and the amenities of occupants of nearby property.*

8. Within 3 months of the completion of construction of the wind turbines hereby permitted, the temporary site construction compound as depicted on Planning Application Drawing 03 "Site Layout" shall be removed and the ground reinstated in accordance with details which shall previously have been submitted to and approved in writing by the Local Planning Authority.

*Reason : To retain control over the construction and decommissioning phases of the development, in the interests of visual amenity, the environment and the amenities of occupants of nearby property.*

### **Highways and Public Rights of Way**

9. No development hereby permitted shall commence until a Construction Traffic Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Construction Traffic Management Plan shall include, but not be restricted to, detailing the following;

- a. Site information
- b. Programming
- c. Traffic disruption, speed control, road works co-ordination
- d. Temporary widening, running surfaces, narrow lanes, visibility
- e. All statutory utility services that may need protecting or diverting
- f. Temporary safety barriers and safety zones

- g. Routes for emergency vehicles, diverted vehicles, diverted pedestrians
- h. Abnormal Load Movements
- i. Vehicle recovery and incident management
- j. Temporary Traffic Regulation Order's, signing, lighting, vehicle waiting areas
- k. Detailed layout of the Traffic Management scheme
- l. Consultation
- m. Details of measures to be employed to prevent the egress of mud, water and other detritus onto the highway and details of the measures to be employed to remove any such substance from the highway

Throughout the construction phase, the Construction Traffic Management Plan shall be implemented in accordance with the approved details, and any changes to the plan shall only be permitted by prior written consent from the Local Planning Authority.

*Reason: in the interests of highway safety and free flow of traffic on the Highway Network. To support Local Transport Plan Policies LD7 & LD8.*

10. Notwithstanding details hereby approved, or to be approved as part of the Construction Traffic Management Plan, no development shall commence until a 'dry run' for transporting the abnormal loads to the site has been carried out ensuring that the load accurately represents the maximum width, length and height of the turbine components. The Local Planning Authority shall be informed in writing of timing of the dry run a minimum of 2 weeks prior to its operation. No development shall commence until a written statement of the findings of the dry run has been submitted in writing to the Local Planning Authority to include any necessary provisions in, or amendments to, the Construction Traffic Management Plan for the approval of the local planning authority that may be necessary to address issues identified by the dry run.

*Reason: In order to address any unforeseen impacts of transporting the Abnormal Loads to site. To support Local Transport Plan Policies LD7 & LD8.*

11. The whole of the access area bounded by the carriageway edge, entrance gates and the splays shall be constructed and drained to the specification of the local planning authority.

*Reason: In the interests of road safety. To support Local Transport Plan Policies LD5, LD7 & LD8.*

12. No development shall take place until details of measures to be taken to protect public rights of way within the site have been submitted to and approved in writing by the Local Planning Authority. Thereafter development shall only take place in accordance with the approved details.

*Reason: In order to protect the public rights of way network and users of it, in the interests of highway safety.*

13. All electrical cabling between the individual turbines and the on-site control building shall be located underground in accordance with details to be submitted to and agreed in writing by the Local Planning Authority. Thereafter the excavated

ground shall be reinstated to its former condition within 6 months of the commissioning of the wind turbines to the satisfaction of the Local Planning Authority.

*Reason: In order to limit the impact of the development on the character and appearance of the surrounding landscape*

14. No turbine hereby permitted shall be erected until details of a scheme for the detection of blade icing and mitigation of its impacts have been submitted to and approved in writing by the Local Planning Authority. The procedures, measures and use of equipment set out in the approved scheme shall thereafter be operated at all times unless otherwise agreed in writing with the Local Planning Authority.

*Reason: In order to take into account the position of the turbines in respect to the public rights of way and the operation of surrounding land and the need to maintain public safety in accordance with the guidance contained within PPS22 companion guide.*

15. Any facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The volume of the bunded compound shall be at least equivalent to the capacity of the tank plus 10%. If there is multiple tankage, the compound shall be at least equivalent to the capacity of the largest tank, or the combined capacity of interconnected tanks, plus 10%. All filling points, vents, gauges and sight glasses must be located within the bund. The drainage system of the bund shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipe work shall be located above ground and protected from accidental damage. All filling points and tank overflow pipe outlets shall be detailed to discharge downwards into the bund.

*Reason: To prevent pollution of the water environment.*

### **Construction Hours and Dates**

16. The hours of onsite work during the construction and decommissioning phases of the development and any heavy goods vehicle movements into or out of the site associated with the construction of the development shall be limited to 0700 to 1900 hours on Mondays to Fridays and 0800 to 1400 hours on Saturdays and at no time on Sundays other than as allowed for elsewhere in this permission. No work shall take place outside these days and hours unless agreed in advance by the Local Planning Authority.

*Reason: In order to protect the amenities of the occupiers of nearby property.*

17. Notwithstanding the provisions of condition 16 above, delivery of turbine and crane components may take place outside the hours specified subject to not less than 1 business day's written prior notice of such traffic movements being given to the Local Planning Authority.

*Reason: To enable turbine and crane components to be delivered at times appropriate to minimise impacts on the local and strategic highway networks, in the interests of highway safety and the free flow of traffic.*



18. In accordance with the recommendations of the Environmental Statement at paragraph 7.118, construction work carried out between 31st August and 31st March shall be restricted to between 1 hour after sunrise and 90 minutes before sunset. External lighting shall be switched off outside these times

*Reason: To conserve protected species and their habitats*

19. No site clearance shall be undertaken until surveys to establish the locations of nests or general areas where nests are located have been carried out by a suitably qualified ornithologist. Where nests cannot be avoided, exclusion zones around them shall be set up or site clearance shall be undertaken elsewhere until the birds have fledged and the nests have been abandoned. In the event that site clearance occurs between 1<sup>st</sup> April and 1st July, details of such works shall be submitted for the written approval the Local Planning Authority and only the approved works shall be implemented.

*Reason: To conserve protected species and their habitats*

### **Archaeology**

20. No development shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority.

The written scheme shall include the following elements :

- a. an archaeological evaluation;
- b. an archaeological recording programme the scope of which will be dependant upon the results of the evaluation and;
- c. Where appropriate, a post-excavation assessment and analysis, preparation of a site archive ready for deposition at a store approved by the local planning authority, completion of an archive report, and publication of the results in a suitable journal.

*Reason: in order to protect and/or record any unforeseen features of archaeological interest uncovered during the carrying out of the works*

### **Habitat Management**

21. The proposed development shall only be undertaken in full accordance with the Weddicar Rigg Wind Farm Habitat Management Plan – Dated June 2012 (Amended February 2013). One month prior to the commencement of the development hereby approved the Local Planning Authority shall be notified of the implementation of the provisions of the approved Habitat Management Plan. Thereafter, the content of the Habitat Management Plan shall be implemented for the duration of the consented wind farm development.

*Reason: To protect and enhance the habitats of protected species.*

### **Shadow Flicker**

22. Generation of electricity from the development to the electricity grid shall not

commence until a scheme for the avoidance of any shadow flicker effect for dwellings within 10 rotor diameters of any turbine in the development and within 130 degrees of true north has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented as approved.

*Reason: In order to protect residential amenity.*

### **Blade Rotation**

23. The blades of the wind turbines hereby permitted shall at all times rotate in the same direction.

*Reason : In the interests of visual amenity.*

### **Television Reception**

24. No development shall take place until a scheme designed to safeguard existing television reception quality arising from the operation of the development has been submitted to and agreed in writing by the Local Planning Authority. The scheme shall, in particular, provide for a base line survey of residential properties that might be affected, and a protocol for dealing with any complaints arising from the operation of any of the wind turbines made within 12 months of the first generation of electricity to the electricity grid and for the identification and implementation of necessary mitigation measures, or remedial action, to be undertaken in accordance with details and a timetable previously submitted to and approved in writing by the Local Planning Authority. The development shall only be carried out in accordance with the approved scheme.

*Reason: In the interests of the living conditions of occupiers of nearby property.*

### **Aviation Lighting**

25. Prior to the construction of the turbines on the site a scheme which illustrates the aviation lighting that is to be fitted to each individual turbine shall be submitted to and approved in writing by the Local Planning Authority. The approved lighting shall be fitted to each turbine prior to its first operation and shall be maintained as such at all times thereafter.

*Reason: For the avoidance of doubt and in the interest of aviation safety*

### **Noise**

26. The rating level of noise immissions from the combined effects of the wind turbines (including the application of any tonal penalty) when determined in accordance with the attached Guidance Notes, shall not exceed the values for the relevant integer wind speed set out in the tables attached to these conditions and:

- A. No electricity shall be exported off-site until the wind farm operator has submitted to the Local Planning Authority for written approval a list of the only proposed independent consultants who may undertake compliance measurements in accordance with this condition. Amendments to the list of approved consultants shall be made only with the prior written approval

of the Local Planning Authority.

- B. Within 21 days from receipt of a written request of the Local Planning Authority, following a complaint to it alleging noise disturbance at a dwelling, the wind farm operator shall, at its expense, employ an independent consultant approved by the Council to assess the level of noise immissions from the wind farm at the complainant's property in accordance with the procedures described in the attached Guidance Notes. The written request from the Local Planning Authority shall set out the conditions described in Guidance Note 2(b) and include a statement as to whether, in the opinion of the Local Planning Authority, the noise giving rise to the complaint contains or is likely to contain a tonal component. The wind farm operator shall provide the information relevant to the complaint logged in accordance with paragraph (G) to the Local Planning Authority in the format set out in Guidance Note 1(e).
- C. Where a dwelling to which a complaint is related is not listed in the tables attached to these conditions, the wind farm operator shall submit to the Local Planning Authority for written approval proposed noise limits selected from those listed in the Tables to be adopted at the complainant's dwelling for compliance checking purposes. The proposed noise limits are to be those limits selected from the Tables specified for a listed location which the independent consultant considers as being likely to experience the most similar background noise environment to that experienced at the complainant's dwelling. The submission of the proposed noise limits to the Local Planning Authority shall include a written justification of the choice of the representative background noise environment provided by the independent consultant. The representative background noise environment and proposed noise limits shall be submitted for approval in writing by the Local Planning Authority. The rating level of noise immissions resulting from the combined effects of the wind turbines when determined in accordance with the attached Guidance Notes shall not exceed the noise limits approved in writing by the Local Planning Authority for the complainant's dwelling.
- D. No measurements by the independent consultant shall be undertaken in accordance with these conditions, until the wind farm operator has submitted to the Local Planning Authority for written approval the proposed measurement location identified in accordance with the Guidance Notes where measurements for compliance checking purposes shall be undertaken. Measurements to assess compliance with the noise limits set out in the Tables attached to these conditions or approved by the Local Planning Authority pursuant to paragraph (C) of this condition shall be undertaken at the measurement location approved in writing by the Local Planning Authority.
- E. The wind farm operator shall provide to the Local Planning Authority the independent consultant's assessment of the rating level of noise immissions undertaken in accordance with the Guidance Notes within 2 months of the date of the written request of the Local Planning Authority made under paragraph (B) unless the time limit is extended in writing by the Local Planning Authority. The assessment shall include all data collected for the

purposes of undertaking the compliance measurements, such data to be provided in the format set out in Guidance Note 1(e) of the Guidance Notes. The instrumentation used to undertake the measurements shall be calibrated in accordance with Guidance Note 1(a) and certificates of calibration shall be submitted to the Local Planning Authority with the independent consultant's assessment of the rating level of noise immissions.

- F. Where a further assessment of the rating level of noise immissions from the wind farm is required pursuant to paragraph 4(c) of the attached Guidance Notes, the wind farm operator shall submit a copy of the further assessment within 21 days of submission of the independent consultant's assessment pursuant to paragraph (E) above unless the time limit has been extended in writing by the Local Planning Authority.
- G. The wind farm operator shall continuously log power production and nacelle orientation at each wind turbine and rainfall, wind speed and wind direction at the permanent meteorological mast all in accordance with Guidance Note 1(d). These data shall be retained for a period of not less than 12 months. The wind farm operator shall provide this information in the format set out in Guidance Note 1(e) to the Local Planning Authority on its request, within 14 days of receipt in writing of such a request.

**Note:** For the purposes of this condition, a "dwelling" is a building within Use Class C3 or C4 of the Use Classes Order which lawfully exists or had planning permission at the date of this consent

**Table 1 - Between 07:00 and 23:00 - Noise level dB L<sub>A90</sub>, 10-minute**

Location	Wind speed measured at 10 metre height (m/s) within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
Moresby Parks	35	35	35	35	35	35	37	39	41	44	47	50
Sands Close	45	45	45	45	45	45	45	45	45	45	46	46
Croftend Farm	35	35	35	35	35	35	35	37	39	41	43	45
Acrewalls	45	45	45	45	45	45	45	45	45	46	49	52
Routon Syke	35	35	35	35	35	35	36	39	42	46	51	54
Crofts	35	35	35	35	35	35	35	37	39	41	44	46
Low Tutehill	35	35	35	35	35	35	35	36	38	41	43	47

**Table 2 - Between 23:00 and 07:00 - Noise level dB L<sub>A90</sub>, 10-minute**

Location	Wind speed measured at 10 metre height (m/s) within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
Moresby Parks	43	43	43	43	43	43	43	43	43	43	43	45
Sands Close	45	45	45	45	45	45	45	45	45	45	45	45
Croft end Farm	43	43	43	43	43	43	43	43	43	43	43	43
Acrewalls	45	45	45	45	45	45	45	45	45	45	49	52
Routon Syke	43	43	43	43	43	43	43	43	43	46	49	51
Crofts	43	43	43	43	43	43	43	43	43	43	43	44
Low Tutehill	43	43	43	43	43	43	43	43	43	43	43	43

**Table 3: Coordinate locations of the properties listed in Tables 1 and 2.**

Property	Easting	Northing
Moresby Parks	300069	519348
Sands Close	301190	519127
Croft End Farm	301921	517925
Acrewalls	302522	518524
Routon Syke	303263	519072
Crofts	303638	520004
Low Tutehill	302976	520690

Note to Table 3: The geographical coordinate references are provided for the purpose of identifying the general location of dwellings to which a given set of noise limits applies

*Reason: For avoidance of doubt and to protect the amenities of the occupiers of nearby residential properties*

## SCHEDULE OF GUIDANCE NOTES RELATING TO NOISE CONDITIONS

### Guidance Notes for Noise Conditions

These notes are to be read with and form part of the noise condition. They further explain the condition and specify the methods to be employed in the assessment of complaints about noise immissions from the wind farm. The rating level at each integer wind speed is the arithmetic sum of the wind farm noise level as determined from the best-fit curve described in Note 2 or Note 4 of these Guidance Notes and any tonal penalty applied in accordance with Note 3. Reference to ETSU-R-97 refers to the publication entitled "The Assessment and Rating of Noise from Wind Farms" (1997) published by the Energy Technology Support unit (ETSU) for the Department of Trade and Industry (DTI).

#### Note 1

- (a) Values of the  $L_{A90,10\text{-minute}}$  noise statistic should be measured at the complainant's property, using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This should be calibrated in accordance with the procedure specified in BS 4142: 1997 (or the equivalent UK adopted standard in force at the time of the measurements). Measurements shall be undertaken in such a manner to enable a tonal penalty to be applied in accordance with Guidance Note 3.
- (b) The microphone should be mounted at 1.2 - 1.5 metres above ground level, fitted with a two-layer windshield or suitable equivalent approved in writing by the Local Planning Authority, and placed outside the complainant's dwelling. Measurements should be made in "free field" conditions. To achieve this, the microphone should be placed at least 3.5 metres away from the building facade or any reflecting surface except the ground at the approved measurement location. In the event that the consent of the complainant for access to his or her property to undertake compliance measurements is withheld, the wind farm operator shall submit for the written approval of the Local Planning Authority details of the proposed alternative representative measurement location prior to the commencement of measurements and the measurements shall be undertaken at the approved alternative representative measurement location.
- (c) The  $L_{A90,10\text{-minute}}$  measurements should be synchronised with measurements of the 10-minute arithmetic mean wind speed and with operational data logged in accordance with Guidance Note 1(d), including the power generation data from the turbine control systems of the wind farm.
- (d) To enable compliance with the conditions to be evaluated, the wind farm operator shall continuously log rainfall data and wind speed at 10m height in metres per second in each successive 10-minute periods. The wind farm operator shall continuously log arithmetic mean nacelle orientation and arithmetic mean power generated during each successive 10-minutes period for each wind turbine on the site. The 10 metre height wind speed data shall be correlated with the noise measurements determined as valid in accordance

with Note 2(b), such correlation to be undertaken in the manner described in Note 2(c). All 10-minute periods shall commence on the hour and in 10-minute increments thereafter synchronised with Greenwich Mean Time and adjusted to British Summer Time where necessary.

- (e) Data provided to the Local Planning Authority in accordance with paragraphs (B), (E), (F), and (G) of the noise condition shall be provided in comma separated values in electronic format.
- (f) A data logging tipping bucket rain gauge shall be installed within 3m of any sound level meter installed in the course of the independent consultant undertaking an assessment of the level of noise immissions. The gauge shall record over successive 10 minute periods in accordance with the protocol detailed in Note 1(d).

## Note 2

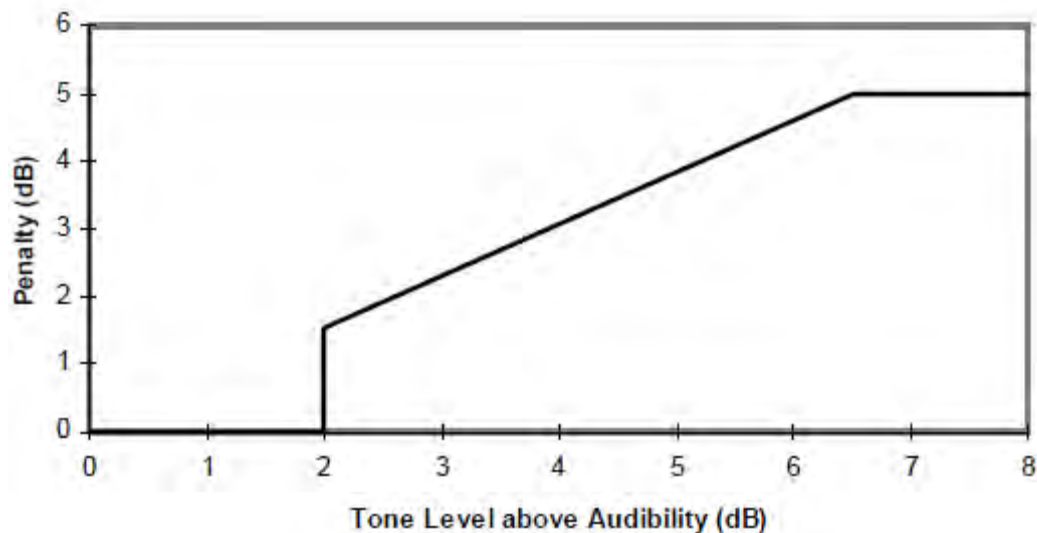
- (a) The noise measurements should be made so as to provide not less than 20 valid data points as defined in Note 2 paragraph (b).
- (b) Valid data points are those measured during the conditions specified by the Local Planning Authority in its written request under paragraph (B) of the noise condition but excluding any periods of rainfall measured in accordance with Note 1(f). These specified conditions shall include the range of wind speeds, wind directions, times of day and meteorological conditions and power generation. In specifying such conditions the local planning authority shall have regard to those conditions which prevailed during times when the complainant alleges there was disturbance due to noise or which are considered likely to result in a breach of the limits.
- (c) Values of the  $L_{A90,10\text{-minute}}$  noise measurements and corresponding values of the 10-minute wind speed for those data points considered valid in accordance with Note 2 paragraph (b) shall be plotted on an XY chart with noise level on the Y-axis and wind speed on the X-axis. A least squares, "best fit" curve of an order deemed appropriate by the independent consultant (but which may not be higher than a fourth order) should be fitted to the data points and define the wind farm noise level at each integer speed.

## Note 3

- (a) Where, in the opinion of the Local Planning Authority as advised to the wind farm operator in its written request under paragraph (B) of the noise conditions, noise immissions at the location or locations where compliance measurements are being undertaken contain or are likely to contain a tonal component, a tonal penalty shall be calculated and applied using the following rating procedure.
- (b) For each 10-minute interval for which  $L_{A90,10\text{-minute}}$  data have been determined as valid in accordance with Note 2, a tonal assessment shall be performed on noise immissions during 2 minutes of each 10-minute period. The 2-minute periods should be spaced at 10-minute intervals provided that uninterrupted uncorrupted data are available ("the standard procedure"). Where uncorrupted data are not available, the first available uninterrupted clean 2-

minute period out of the affected overall 10-minute period shall be selected. Any such deviations from the standard procedure shall be reported.

- (c) For each of the 2-minute samples the tone level above audibility shall be calculated by comparison with the audibility criterion given in Section 2.1 on pages 104 -109 of ETSU-R-97.
- (d) The tone level above audibility shall be plotted against wind speed for each of the 2-minute samples. Samples for which the tones were below the audibility criterion or no tone was identified, a value of zero audibility shall be substituted.
- (e) A least squares "best fit" linear regression shall then be performed to establish the average tone level above audibility for each integer wind speed derived from the value of the "best fit" line fitted to values within  $\pm 0.5\text{m/s}$  of each integer wind speed. If there is no apparent trend with wind speed then a simple arithmetic mean shall be used. This process shall be repeated for each integer wind speed for which there is an assessment of overall levels in Note 2.
- (f) The tonal penalty is derived from the margin above audibility of the tone according to the figure below.



#### Note 4

- (a) If a tonal penalty is to be applied in accordance with Note 3 the rating level of the turbine noise at each wind speed is the arithmetic sum of the measured noise level as determined from the best fit curve described in Note 2 and the penalty for tonal noise as derived in accordance with Note 3 at each integer wind speed within the range specified by the Local Planning Authority in its written request under paragraph (B) of the noise condition.
- (b) If no tonal penalty is to be applied then the rating level of the turbine noise at each wind speed is equal to the measured noise level as determined from the best fit curve described in Note 2.
- (c) In the event that the rating level is above the limit(s) set out in the Tables attached to the noise conditions or the noise limits for a complainant's dwelling approved in accordance with paragraph (C) of the noise condition, the independent consultant shall undertake a further assessment of the rating



level to correct for background noise so that the rating level relates to wind turbine noise immissions only.

- (d) The wind farm operator shall ensure that all the wind turbines in the development are turned off for such period as the independent consultant requires to undertake the further assessment. The further assessment shall be undertaken in accordance with the following steps:

- i. Repeating the steps in Note 2, with the wind farm switched off, and determining the background noise (L3) at each integer wind speed within the range requested by the Local Planning Authority in its written request under paragraph (B) of the noise condition.
- ii. The wind farm noise (L1) at this speed shall then be calculated as follows where L2 is the measured level with turbines running but without the addition of any tonal penalty:

$$L_1 = 10 \log [10^{L_2/10} - 10^{L_3/10}]$$

- iii. The rating level shall be re-calculated by adding the tonal penalty (if any is applied in accordance with Note 3) to the derived wind farm noise L1 at that integer wind speed.

- (e) If the rating level after adjustment for background noise contribution and adjustment for tonal penalty (if required in accordance with note (iii) above) at any integer wind speed lies at or below the values set out in the Tables attached to the conditions or at or below the noise limits approved by the Local Planning Authority for a complainant's dwelling in accordance with paragraph (C) of the noise condition then no further action is necessary. If the rating level at any integer wind speed exceeds the values set out in the Tables attached to the conditions or the noise limits approved by the Local Planning Authority for a complainant's dwelling in accordance with paragraph (C) of the noise condition then the development fails to comply with the conditions.



## Department for Communities and Local Government

### **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

#### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;**

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

#### **SECTION 2: AWARDS OF COSTS**

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

#### **SECTION 3: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.