



Department for
Communities and
Local Government

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Our Ref: APP/E0915/A/12/2170838 and
APP/E0915/A/12/21777996

23 May 2013

Ms Kee Evans
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Dear Miss Holgate and Ms Evans,

TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)
APPEAL BY REG WINDPOWER LTD
HALLBURN FARM , HALLBURN, LONGTOWN, CARLISLE, CA6 5TW
APPLICATION REF:11/0118

APPEAL BY EDF ENERGY RENEWABLES LTD
BECK BURN PEAT WORKS, SPRINGFIELD, LONGTOWN, CARLISLE, CA6 5NH
APPLICATION REF: 10/1102

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, David M H Rose BA (Hons) MRTPI, who held a public local inquiry which opened on 2 October 2012 into your respective clients' appeals under Section 78 of the Town and Country Planning Act 1990 against the decision of Carlisle City Council (the Council) to refuse planning permission for the erection of:

Hallburn Farm:

Six wind turbines with a tip height not exceeding 126.5m, access tracks, crane hardstandings and outrigger pads, control building, underground electrical cables and temporary construction compound at Hallburn Farm, Hallburn, Longtown, Carlisle CA6 5TW, in accordance with planning application ref: 11/0118, dated 11 February 2011.

Beck Burn Peat Works:

Nine wind turbine generators, transformer housings, control room, 80m high meteorological mast and formation of associated laydown area, crane pads, and access tracks. Associated change of use to mixed use comprising operational peat works and wind farm at Beck Burn Peat Works, Springfield, Longtown,

Carlisle CA6 5NH, in accordance with planning application ref: 10/1102, dated 6 December 2010.

2. The appeals were recovered for the Secretary of State's determination on 5 March 2012 (Hallburn Farm) and 15 August 2012 (Beck Burn Peat Works) in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because they involve proposals against which another Government department has raised major objections or has a major interest.

Inspector's Recommendation and Summary of the Decision

3. The Inspector, whose report is enclosed with this letter, recommended that the appeals be allowed, subject to the Secretary of State receiving confirmation from the Ministry of Defence (MoD), following re-consultation, that there is sufficient 'budget' to accommodate the schemes (taking account of projects which have been approved, consented or constructed) within the safeguarding zone of the Eskdalemuir Seismological Monitoring Station (the Array). The Secretary of State disagrees with the Inspector's recommendation and dismisses both appeals. All paragraph numbers, unless otherwise stated, refer to the Inspector's report (IR).

Procedural Matters

4. The Hallburn Farm application was refused for four reasons and the Secretary of State notes that the Council subsequently confirmed that following receipt of additional information and proposed mitigation works, three of the four reasons were resolved before the inquiry and that the remaining unresolved reason for refusal related to the effect of the development on the Array, and measures to secure the future restoration of the site, if permission is allowed, by means of a restoration bond (IR 1.8-1.13 and 2.1-2.3).

5. The Secretary of State notes that the description of the Beck Burn Peat Works proposal was revised at the procedural meeting held on 2 October 2012, to delete the reference to a change of use to a mixed use (footnote 4 of page 1 of the IR). He has therefore considered the proposal as amended.

6. In reaching his decision, the Secretary of State has taken into account the Environmental Statements (ES) made in accordance with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. He also notes the additional information supplied in each case (IR1.14-1.26). He considers that the environmental information as a whole meets the requirements of these regulations and that sufficient information has been provided for him to assess the environmental impact of the proposed developments.

7. In determining these appeals, the Secretary of State has had regard to the statutory duty to pay special attention to the desirability of preserving and enhancing the character or appearance of Longtown Conservation Area, as required by section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. The appeal sites lie outside the Hadrian's Wall World Heritage Site but as there would be inter-visibility with the WHS, the Secretary of State has had regard to the conservation and protection of the WHS. The Secretary of State has also had regard to the purpose of conserving and enhancing the natural beauty of the Solway Coast Area of Outstanding Natural Beauty (AONB), as required under section 85 of the Countryside and Rights of Way Act 2000.

Policy Considerations

8. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. At the time of the inquiry the development plan comprised the North West of England Plan: Regional Spatial Strategy to 2021 (RS) (2008); saved policies of the Cumbria and Lake District Joint Structure Plan 2001-2016 (SP) (2006); and the saved policies of the Carlisle District Local Plan 2001-2016 (LP) (2008). Development plan policies relevant to the appeals are identified at IR 1.27 and 1.31.

9. The RS and SP were revoked on 20 May following the closure of the inquiry, and the intention to revoke is acknowledged in both cases. Neither the RS nor the SP include policies for the protection of the Array, and the revocation of the RS and SP is not considered to materially affect the Inspector's conclusions. The Secretary of State does not consider that, in this case, the revocation of these plans is a change in policy that requires a referral back to parties in advance of determining these appeals. For the avoidance of doubt, he has had no regard to policies in the RS or the SP in determining these appeals. He considers that even though the policy basis for regional renewable energy targets has been revoked, the evidence base underpinning the RS is consistent with Government policy for increasing sustainable energy production. Overarching National Policy Statement for Energy (EN-1) and National Policy Statement for Renewable Energy (EN-3), and other national and EU policy documents on energy are cited in both cases (IR1.29 and 1.33). The national and EU documents provide a policy steer on the need for renewable energy.

10. Other material considerations that the Secretary of State has had regard to are the National Planning Policy Framework (the Framework); Circular 11/95 The Use of Conditions in Planning Permissions; and the Community Infrastructure Levy (CIL) Regulations (2010) as amended, and other documents referred to in the Statements of Common Ground (IR1.30 and 1.33-1.34).

Main Issues

11. The Secretary of State agrees with the Inspector that the main issue common to both appeals is whether the noise budget for the Array would be exceeded and thereby result in the generation of additional seismic noise which would compromise the capability of the UK to detect distant nuclear tests in breach of the Agreement under the Comprehensive Nuclear-Test-Ban Treaty (IR1.53).

Energy policy context (common to both appeals)

12. The Secretary of State agrees with the Inspector's reasoning and conclusions on this matter that the wider environmental and economic benefits of renewable energy projects, whatever their scale, should be given significant weight; and that on-shore windfarms have a vital role to play (IR8.2-8.9).

Impact on the Array (common to both appeals)

13. The Secretary of State notes the points of agreement between the principal parties on this issue and that the essence of the disagreement between the appellants and the MoD is the manner in which the MoD allocates available budget (IR8.10-8.11). He agrees with the Inspector's conclusion that the need to protect the Array from

excess ground vibration is an absolute one, and that approving either of the proposed developments would lead to the budget for the Array being exceeded and the operation of the Array being compromised (IR8.50). The Secretary of State consider that this would result in an unacceptable risk to the operation of the Array.

14. The Secretary of State agrees with the Inspector's finding that the budget allocation process has resulted in constrained schemes with budget blocking otherwise unconstrained schemes which do not have budget allocation (IR8.51). He accepts the Inspector's finding that the appellants' revised process has convincing merit in principle (IR8.52), but he considers that this is a matter for the MoD to examine in detail. The Inspector refers to the Eskdalemuir Working Group and uncertainty over whether its remit should include consideration of the operation of the existing budget (IR8.44-8.46). The minutes of the November meeting of the Group (IR8.46) are now available¹ and they indicate that the Group is considering examining the budget. The Secretary of State considers that this indicates that the Group is aware of the issue, but the minutes do not include a formal remit for a review. In these circumstances he notes the Working Group minutes but does not place any reliance on the minutes in reaching his decision on these appeals. The Secretary of State does not consider that they are new evidence that would require him to seek further representations from the principal parties before determining these appeals.

Other matters (common to both appeals)

15. The Secretary of State agrees with the Inspector's reasoning and conclusions on matters relating to tourism and the rural economy (IR8.55-8.56); noise, sleep disturbance, health effects and shadow flicker (IR8.57-8.60); aviation impacts (IR8.61-8.62); television reception and mobile phones (IR8.63); traffic (IR8.64-8.65); local democracy and human rights (IR8.66-8.68); and separation distances and property values (IR8.69-8.70).

Hallburn Farm – specific matters

16. The Secretary of State agrees with the Inspector's reasoning and conclusions on landscape and visual impact (IR8.71-8.80). He agrees that proposed turbines could be accommodated within the landscape and that the combination of distance, intervening topography and/or landscape features would provide sufficient safeguards to the wider setting and views from protected landscapes (IR8.71-8.79). Furthermore, the Secretary of State agrees that the turbines would not have any material adverse impact on Longtown Conservation Area (IR8.80).

17. The Secretary of State agrees with the Inspector's reasoning and conclusions on other matters relating to visual effects (IR8.81-8.84); ecology and nature conservation (IR8.85-8.87); archaeology, built heritage and historic landscape, including no material adverse effects on the Hadrian's Wall WHS (IR8.88-8.91); and contamination (IR8.92). In respect of the Council's request for a restoration bond should the appeal be allowed, the Secretary of State agrees with the Inspector's reasoning and conclusion on this issue, that the matter can be covered by a condition and that the lack of a bond or indemnity is not a reason to dismiss the appeal (IR8.93-8.97).

¹ <http://www.scotland.gov.uk/Resource/0041/00413845.pdf>

Beck Burn Peat Works – specific matters

18. The Secretary of State agrees with the Inspector's reasoning and conclusions on landscape and visual impact (IR8.98-8.108). He agrees that the proposed turbines could be accommodated within the landscape, which contains significant power and distribution infrastructure (IR8.99). He agrees that the turbines would not result in damaging visual impacts on the Solway landscape (IR8.105), nor be unduly distracting or harmful to the Hadrian's Wall World Heritage Site (IR8.106). The Secretary of State agrees that the turbines would not have any material adverse impact on Longtown Conservation Area (IR8.108).

19. The Secretary of State agrees with the Inspector's reasoning and conclusions on other matters relating to visual effects (IR8.109-8.117); ecology and nature conservation (IR8.118-8.120); site restoration and safety (IR8.121-8.123); and archaeology and heritage (IR8.124-8.126).

Conditions and Obligations

20. The Secretary of State agrees with the Inspector's reasoning and conclusions on conditions and the planning obligations, as set out in IR7.1-7.28. The Secretary of State agrees that the provisions of the planning obligation for habitat management measures in relation to the Hallburn Farm proposal are necessary to mitigate potential impacts on wintering Pink-footed geese and on breeding waders and satisfy the tests of Regulation 122 of the CIL Regulations 2010 as amended (IR7.1-7.4). He also agrees that the provisions of the planning obligation for the Beck Burn Peat Works proposal, for a goose refuge and site restoration are necessary to address respectively, the potential effects of the scheme on Pink-footed and Barnacle geese and to secure appropriate remediation of the site following completion of both peat extraction and the operation of the proposed wind farm. They satisfy the tests of Regulation 122 of the CIL Regulations 2010 as amended (IR7.5-7.9).

21. The Secretary of State has considered the proposed conditions, the Inspector's assessment and minor amendments to some conditions at IR7.10-7.28 and Appendices A and B, and national policy as set out in Circular 11/95. He agrees with the Inspector's assessment that the conditions, as recommended, are necessary and he considers that they comply with the provisions of Circular 11/95. However he does not consider that the provisions of the planning obligations or the conditions overcome his reasons for dismissing these appeals.

Overall Conclusions

22. The Secretary of State has given careful consideration to the matters set out in the Inspector's overall planning balance (IR8.127-8.142). The Secretary of State gives no weight to policies in the RS or SP, as these no longer form part of the development plan. However, in the context of national policy in the Overarching National Policy Statement for Energy (EN-1) and National Policy Statement for Renewable Energy (EN-3), the Secretary of State considers that the evidence base underlying the targets for renewable energy production in the RS and SP provides a relevant assessment of need, that has been subject to independent examination, and he therefore considers this a factor of significant weight (IR8.128).

23. The Secretary of State agrees that the proposals would be in accordance with the development plan, which now comprises the LP (IR8.131-8.133). He further

agrees that national policy on renewable energy; international and national obligations to reduce carbon dioxide emissions; and Government policy in seeking security of energy supply adds to the support of the development plan (IR8.134).

24. The Secretary of State has given careful consideration to the concerns expressed by residents and others who spoke at the inquiry and those who submitted written representations. He agrees with the Inspector that, setting aside the Array, matters of legitimate concern can be mitigated by conditions or the planning obligations, and there are no matters sufficient to warrant refusal of either scheme (IR8.135-8.136). He finds the proposals in accordance with the provisions of the development plan, which now comprises the LP.

25. Turning to the impact of the proposals on the Array, he agrees with the Inspector's assessment at IR8.137-8.138, that the current budget is fully allocated and the approval of either proposal would compromise the operation of the Array. He considers that these appeals demonstrate that delivery of renewable energy in the vicinity of the Array is being hampered by the budget allocation process and that the process would benefit from review. He has carefully considered the options set out by the Inspector to address this matter at IR8.139-8.141.

26. The Inspector's recommended option is to allow the appeals, subject to confirmation from the MoD, following re-consultation that there is sufficient budget, and a revision in the way that the budget is assigned, to accommodate the scheme, taking account of projects which have been approved, consented or constructed (IR8.140 and 8.143-8.144). The Inspector records the MoD's reluctance to review the budget allocation process. The Secretary of State considers that as the consultation zone for the Array covers several administrations in England and Scotland, it is unlikely to be a quick and straightforward task to revise the budget allocation process and reallocate the budget. In these circumstances, where there is no prospect of an early resolution of the issue, the Secretary of State considers that this option would lead to undesirable and unnecessary delay and uncertainty for all parties. He does not therefore accept the recommendation. Whilst the Secretary of State agrees that a review would be desirable for the reasons set out in the Inspector's report, he considers that it should be undertaken by the responsible body as an independent exercise, separate from the consideration of these appeals.

27. Having come to this conclusion on the Inspector's recommendation, the Secretary of State therefore considers that both appeals should be refused in the light of the MoD's objection, based on the manner in which it operates the budget tool for the protection of the Array (IR8.139). In coming to this conclusion he has considered the factors in favour of the schemes, including the conformity with the development plan, the need for renewable energy both nationally and locally and, aside from the Array, the absence of other matters sufficient to warrant refusal. However, he does not find that these outweigh the overriding need to protect the operation of the Array.

Formal Decision

28. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendations at IR8.143-8.144. He hereby dismisses your respective clients' appeals for:

Hallburn Farm:

Six wind turbines with a tip height not exceeding 126.5m, access tracks, crane hardstandings and outrigger pads, control building, underground electrical cables and temporary construction compound at Hallburn Farm, Hallburn, Longtown, Carlisle CA6 5TW, in accordance with planning application ref: 11/0118, dated 11 February 2011.

Beck Burn Peat Works:

Nine wind turbine generators, transformer housings, control room, 80m high meteorological mast and formation of associated laydown area, crane pads, and access tracks at Beck Burn Peat Works, Springfield, Longtown, Carlisle CA6 5NH, in accordance with planning application ref: 10/1102, dated 6 December 2010.

29. This letter serves as the Secretary of State's statement under regulation 21(2) of the Town and Country (Environmental Impact Assessment) (England and Wales) Regulations 1999.

Right to Challenge the Decision

30. 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.

31. A copy of this letter has been sent to Carlisle City Council. A notification letter/email has been sent to all other parties who asked to be informed of the decision.

Yours sincerely

Pamela Roberts

Authorised by the Secretary of State to sign in that behalf



Report to the Secretary of State for Communities and Local Government

by David M H Rose BA (Hons) MRTPI

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

Date: 4 March 2013

Appeal by REG Windpower Limited

Erection of six wind turbines

Hallburn Farm, Hallburn, Longtown,

Carlisle, CA6 5TW

and

Appeal by EDF Energy Renewables Limited

Erection of nine wind turbines

Beck Burn Peat Works, Springfield, Longtown,

Carlisle, CA6 5NH

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File Ref: APP/E0915/A/12/2170838

Land at Hallburn Farm, Hallburn, Longtown, Carlisle, CA6 5TW

- 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 REG Windpower Limited against the decision of Carlisle City Council.
- The application Ref: 11/0118, dated 11 February 2011, was refused by notice dated 19 August 2011.
- The development proposed is described as: 'six wind turbines with a tip height not exceeding 126.5m, access tracks, crane hardstandings and outrigger pads, control building, underground electrical cables and temporary construction compound'.

Summary of Recommendation: The appeal be allowed subject to:

- (i) **the Secretary of State receiving confirmation from the Ministry of Defence, following re-consultation, that there is sufficient 'budget'¹ to accommodate the scheme (taking account of projects which have been approved, consented or constructed); and**
 - (ii) **the conditions set out in Appendix A to this report.**
-

File Ref: APP/E0915/A/12/2177996

Beck Burn Peat Works,² Springfield, Longtown, Carlisle, CA6 5NH

- 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 EDF Energy Renewables Limited against the decision of Carlisle City Council.
- The application Ref: 10/1102, dated 6 December 2010, was refused by notice dated 16 December 2011.
- The development proposed is described as: 'erection of 9 wind turbine generators³, transformer housings, control room, 80m high meteorological mast and formation of associated laydown area, crane pads, and access tracks. Associated change of use to mixed use comprising operational peat works and wind farm'.⁴

Summary of Recommendation: The appeal be allowed subject to:

- (i) **the Secretary of State receiving confirmation from the Ministry of Defence, following re-consultation, that there is sufficient 'budget'⁵ to accommodate the scheme (taking account of projects which have been approved, consented or constructed); and**
 - (ii) **the conditions set out in Appendix B to this report.**
-

1. Introduction

Procedural matters

- 1.1 The appeals were recovered for determination by the Secretary of State for Communities and Local Government as they involve 'proposals against which another Government department has raised major objections or has a major interest.'

¹ Relating to the Eskdalemuir Seismological Array

² Site also known as Solway Moss Peat Works

³ 126.25m to tip

⁴ It was agreed at the procedural meeting held on 2 October that the description of the development should be amended to remove reference to change of use to a mixed use (see also ID12)

⁵ Relating to the Eskdalemuir Seismological Array

- 1.2 The Inquiry timetables anticipated the opening of the Hallburn Farm Inquiry on 2 October 2012 and the opening of the Beck Burn Peat Works Inquiry some two months later. Due to common interests, and a request to hold a Pre-Inquiry meeting, it was agreed that both Inquiries would open on 2 October; and that a procedural meeting, relating principally to the UK Seismological Monitoring Site at Eskdalemuir (hereafter generally referred to as 'the Array'), would be incorporated into the morning session.⁶ Following the procedural meeting the Beck Burn Inquiry was adjourned until 11 December 2012.
- 1.3 The Inquiry sat on 2 and 3 October to hear 'planning' evidence (as opposed to matters relating to the Array) in relation to Hallburn Farm; and to hear the representations of interested persons and Arthuret Parish Council.
- 1.4 I made an accompanied visit to the Hallburn Farm site and other agreed locations on 3 October and I also made further unaccompanied visits on the same day.⁷
- 1.5 The Inquiry resumed on 11 December for the planning evidence relating to Beck Burn Peat Works; several local residents expressed their views as did a representative of Kirkandrews on Esk Parish Council and Springfield and Gretna Green Community Council. Accompanied site visits to the Beck Burn site and the wider locality were undertaken on 12 December 2012 to supplement my earlier unaccompanied visits.
- 1.6 The Inquiry sat on 19 and 20 December dealing specifically with the issue of the Array. Closing submissions were made on 20 December 2012.
- 1.7 Proofs of evidence as originally submitted are included with the Inquiry documents; but their content may have been affected by oral evidence, concessions and corrections. Closing submissions are also included which, save for minor typographical corrections and limited oral additions, are as delivered to the Inquiry.

Hallburn Farm: reasons for refusal

- 1.8 The Council refused to grant planning permission on 4 grounds: - impacts on Eskdalemuir Monitoring Site; impacts on air traffic control radar at RAF Spadeadam;⁸ potential impacts on a number of bird species, in the absence of sufficient information;⁹ and, again, based on lack of information, potential adverse impacts on the Outstanding Universal Value of Hadrian's Wall World Heritage Site.¹⁰
- 1.9 With regard to impacts on air traffic control radar, the appellant's aviation consultants submitted a technical scheme of mitigation to the Ministry of Defence on 13 July 2012. Although the appellant's Statement of Case, dated 17 July 2012, indicated that evidence would be presented to show that the proposal would not have any adverse impacts on radar operations at RAF Spadeadam (as it was claimed that acceptable alternative radars were available), negotiations continued. These culminated in agreement on a scheme of mitigation, to be secured by planning condition, and the subsequent withdrawal of the Ministry of Defence's objection.¹¹

⁶ ID1

⁷ CD7.43

⁸ CD12.4

⁹ CD12.6

¹⁰ Incorporated into the Frontiers of the Roman Empire World Heritage Site

¹¹ ID7

- 1.10 As to impacts on bird species, this was based on objections and concerns raised by the Royal Society for the Protection of Birds, Cumbria County Council, Cumbria Wildlife Trust and Natural England.¹² However, on the basis of offsite mitigation set out in the 'Outline Plan for Wintering Geese and Breeding Waders', secured by a Planning Obligation, the Royal Society for the Protection of Birds withdrew its objection. In addition, the Council took independent ecology advice with the following outcome: -

'..... on balance it is considered likely that the proposed enhancement scheme for wintering geese and breeding waders, as submitted recently by the appellant and agreed by RSPB, would adequately address the reason for refusal regarding potential impacts of the proposed wind farm at Hallburn Farm on birds.'

- 1.11 The ecology consultants advising the Council also undertook an Assessment of Likely Significant Effects¹³ in relation to the Upper Solway Flats and Marshes Special Protection Area.¹⁴ They concluded, taking account of the management plan referred to above, that an 'Appropriate Assessment' was not required.¹⁵ Natural England concurred. As a result the Council confirmed that it did not intend to pursue reason 3.¹⁶
- 1.12 In terms of reason 4, additional material was supplied to English Heritage for consideration. It was acknowledged that although the proposed turbines would be visible in views along the Roman route between Hadrian's Wall World Heritage Site and the outpost fort at Netherby, they would lie a significant distance to the east and that they would not distract or otherwise harm appreciation of this route.¹⁷
- 1.13 On this basis the objection was removed. The remaining concern about the impacts arising from grid connection has also been overcome following the submission of the further environmental information.¹⁸ The Council confirmed that it was not supporting reason 4.¹⁹

Environmental Statement: Hallburn Farm

- 1.14 The planning application for Hallburn Farm was accompanied by an Environmental Statement (September 2010); and further information was submitted following the making of the appeal. I have taken the environmental information into account with the subsequent responses and all of the evidence to the Inquiry.

Regulation 19 - Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999

- 1.15 By letter dated 6 July 2012 the Secretary of State requested further information comprising, in short: -
- (i) a preliminary risk assessment that demonstrates the relationship between contaminants, pathways and receptors;

¹² CD12.5 and CD12.6

¹³ Under Regulation 61 of The Conservation of Habitats and Species Regulations 2010 (as amended)

¹⁴ Includes the related Ramsar site and Site of Special Scientific Interest

¹⁵ CD12.8 (conclusion at page 11 of Assessment)

¹⁶ CD12.3

¹⁷ CD12.7

¹⁸ See paragraph 1.15 below

¹⁹ CD12.3

- (ii) information on how the generating station is to be connected and the environmental effects that are likely to arise from that connection; and
 - (iii) an amended or supplementary non-technical summary.
- 1.16 Items (i) and (ii) were provided on 16 August 2012.²⁰ The former includes the conclusion that: -
- 'Based on the findings of this desk study, it has been established that risks associated with the former and current use of the site²¹ are present which warrant further investigation. A number of potentially significant contaminant sources have been identified. Contaminant pathways and receptors that could be impacted have also been identified.'*
- 1.17 The desk study also sets out a number of recommendations including consultation with Defra²² and the Ministry of Defence; appropriate intrusive ground investigation; and assessment for unexploded ordnance.
- 1.18 Its overall conclusion is: -
- 'Should all the recommendations and regulatory requirements documented herein be adhered to: and suitable mitigation measures/remediation be completed and verified, it is considered that there would likely be no significant residual effects with regard to the EIA²³ Regulations in terms of land contamination.'*
- 1.19 The Grid Route Assessment confirms that grid connection would be by means of the existing 33kv line crossing the appeal site; with the possible need to replace an existing single wooden pole with a double 'H' pole. No 'significant' effects are predicted.
- 1.20 In light of the above the conclusions of the non-technical summary remain unchanged.

Beck Burn Peat Works: reason for refusal

- 1.21 The sole reason for refusal is the impact of the proposal on the Array.

Environmental Statement: Beck Burn Peat Works

- 1.22 The planning application for Beck Burn Peat Works was accompanied by an Environmental Statement (December 2010). I have taken the environmental information into account with the subsequent responses and all of the evidence to the Inquiry.
- 1.23 At the procedural meeting held on 2 October 2012 I raised two matters, namely: - whether the baseline ecology surveys in the Environmental Statement were likely to be representative of the current position; and, the impacts of underground grid connection on the presence of peat bog.
- 1.24 These matters have been addressed in written statements confirming that the baseline material remains in date and that conditions at the site are generally unchanged. In addition, the ornithological assessment has been updated to reflect more recent background material and post-construction bird monitoring at Hellrigg, a nearby wind farm.²⁴

²⁰ Phase I Geo-Environmental Desk Study and Grid Route Assessment

²¹ Historic use of the site as a World War II airfield; made ground at the site; possible use of the site for infected animal incineration; and intermittent use of the site for motorsports events

²² Department for Environment, Food and Rural Affairs

²³ Environmental Impact Assessment

²⁴ Written Statement (Dr Percival)

1.25 The written statement provided on behalf of the appellant states: -

'It was concluded in the ES²⁵ that the proposed wind farm would not have a significant adverse effect on the nature conservation interest of the site, based on a comprehensive range of baseline surveys undertaken over more than two full years. The conclusion is now supported by the statutory government advisor on nature conservation, Natural England and by RSPB²⁶ (provided the goose management scheme is implemented, to which the developer has committed). No significant ornithological problems have occurred at any wind farms in the UK and none at any similar scale wind farms to that proposed at Beck Burn with similar bird species or numbers. All of the evidence available points to Beck Burn being an appropriate site with regard to ornithological issues.'

1.26 In terms of the impacts of grid connection, a paper submitted on behalf of the appellant, indicates that there is no formal guidance for underground cables in the presence of peat bogs.²⁷ However, 'best practice' would be followed and there is nothing to suggest, following the conclusion of the Environmental Statement, that the impacts would be 'significant'.

Statements of Common Ground

(i) **Statement of Common Ground – REG Windpower Limited and Carlisle City Council (Hallburn Farm)**

1.27 It is agreed that the adopted development plan has three constituent elements and the most relevant policies are: -

- **North West of England Plan: Regional Spatial Strategy to 2021 (2008)**²⁸
 - DP1: Spatial Principles;
 - DP9: Reduce Emissions and Adapt to Climate Change;
 - EM15: A Framework for Sustainable Energy in the North West; and
 - EM17: Renewable Energy.
- **Cumbria and Lake District Joint Structure Plan 2001 – 2016 (2006)**
 - R44: Renewable Energy outside the Lake District National Park and Areas of Outstanding Natural Beauty.
- **The Carlisle District Local Plan 2001 – 2016 (2008)**
 - CP8: Renewable Energy;
 - CP10: Sustainable Drainage Systems;
 - CP11: Protection of Groundwaters and Surface Waters;
 - CP13: Pollution; and
 - DP7: European Natura 2000 Sites.

1.28 In acknowledging that the Secretary of State intends to revoke the Regional Spatial Strategy, it is agreed that it remains part of the statutory development plan. It is further agreed that the evidence which underpins the document is an important material consideration, including the assessments of the potential renewable and low carbon energy resources.

²⁵ Environmental Statement

²⁶ Royal Society for the Protection of Birds

²⁷ ID8

²⁸ Hereafter generally referred to as the Regional Spatial Strategy

- 1.29 Policy EM17 states that by 2010 at least 10% of the electricity supplied within the region should be from renewable energy sources. Cumbria has an indicative target of providing 210 megawatts by 2010, rising to 247.5 megawatts by 2015.²⁹ Provision at the time of the planning application was said to be 143 megawatts.³⁰
- 1.30 The parties agree that relevant elements of the UK and EU Energy Policy are material considerations, including the UK Energy White Paper and Energy Act 2008; the EU Renewable Energy Directive and the UK Renewable Energy Strategy 2009; the Annual Energy Statement 2010; and the UK Renewable Energy Roadmap 2011. Overarching National Policy Statement for Energy (EN-1) and National Policy Statement for Renewable Energy Infrastructure (EN-3) are also relevant.³¹

(ii) Statement of Common Ground – EDF Energy Renewables Limited and Carlisle City Council (Beck Burn Peat Works)

- 1.31 It is agreed that the adopted development plan has three constituent elements and the most relevant policies are: -
- **North West of England Plan: Regional Spatial Strategy to 2021 (2008)**
 - DP1: Spatial Principles;
 - DP7: Promote Environmental Quality;
 - DP9: Reduce Emissions and Adapt to Climate Change;
 - EM1: Environmental Assets;
 - EM15: A Framework for Sustainable Energy in the North West; and
 - EM17: Renewable Energy.
 - **Cumbria and Lake District Joint Structure Plan 2001 – 2016 (2006)**
 - R44: Renewable Energy outside the Lake District National Park and Areas of Outstanding Natural Beauty.
 - **The Carlisle District Local Plan 2001 – 2016 (2008)**
 - CP8: Renewable Energy; and
 - DP7: European Natura 2000 Sites.
- 1.32 It is agreed that the Regional Spatial Strategy still forms part of the development plan, but it is recognised that the Secretary of State's announced intention to abolish Regional Spatial Strategies is a material consideration; and that the weight to be attached to the policies depends on progress towards the final revocation of the document at the date of the Secretary of State's decision.
- 1.33 In common with the Hallburn Farm Statement of Common Ground the relevant UK and EU energy policy documents, and National Policy Statements, are cited. In addition, reference is made to The Promotion of the Use of Energy from Renewable Sources Regulations 2011 and the Secretary of State's duty to ensure that the renewable share in 2020 is at least 15%.

²⁹ CD1.1A

³⁰ See also CD12.11

³¹ CD2.4; CD2.5

- 1.34 With regard to the statement of the Secretary of State for Energy and Climate Change (made in March 2012) that most of the country's needs for on-shore turbines were 'already on the table', the parties agree that the Beck Burn scheme is one which is already in progress and would therefore contribute to meeting national renewable energy production in 2020.

(iii) Statement of Common Ground – REG Windpower Limited and EDF Energy Renewables Limited and The Secretary of State for Defence (Hallburn Farm and Beck Burn Peat Works)

- 1.35 The Statement of Common Ground relates to the UK Seismological Monitoring Site located at Eskdalemuir.
- 1.36 The Ministry of Defence is responsible for the operation of the Array.³² The facility became operational in 1962 and since that date it has recorded almost 400 seismic signals associated with presumed nuclear test explosions. The site is in a very quiet seismological location and this, and other factors, make it an unparalleled resource for forensic seismology.
- 1.37 On 6 April 1988 the UK ratified the Comprehensive Nuclear-Test-Ban Treaty³³ which bans nuclear-test explosions; the Array is designated an auxiliary seismic station within the International Monitoring System network and is also designated a substitute primary station in the event of a primary station failure. It is agreed that the Array makes a significant contribution to the verification regime. The UK Government is obliged to ensure that there is no interference with the performance of the Array.
- 1.38 In response to concerns that the siting of on-shore wind farm development in the vicinity of the Array could interfere with its performance, a detailed research study was commissioned ('the 2005 Styles Report').³⁴ The conclusions of that research study have informed the formulation of a strategic approach for the protection of the Array by the Ministry of Defence; and it is the only substantive research project of direct relevance.
- 1.39 As a result of the 2005 Styles Report the following safeguarding arrangements apply: -
- (i) an exclusion zone of 10 kilometres around the Array within which no wind farm development would be acceptable;
 - (ii) a consultation zone between 10 kilometres and 50 kilometres from the Array within which the Ministry of Defence would object to wind farm development once an acceptable threshold for the maximum permissible background seismic ground vibration had been reached;
 - (iii) the maximum permissible (aggregate) seismic ground vibration (or 'noise') measured at the Array is 0.336 nanometres of ground displacement (hereinafter referred to as the 'threshold'); and
 - (iv) once that threshold (or 'noise budget') has been reached the Ministry of Defence would object to any additional proposed development on the basis it would result in an unacceptable impact on the detection capabilities of the Array.

³² The Array is described in CD9.1 & CD9.2 (the content of the documents is not in dispute)

³³ CD9.3

³⁴ CD9.7

- 1.40 The process which the Ministry of Defence has adopted is to allocate a noise budget to wind farm proposals on a 'first come first served' basis (at the point of consultation). Parties are agreed that the list of developments which are constructed, approved or consented, or in the planning process (but not determined) cumulatively take up the budget (MoD Table 1).³⁵
- 1.41 It is further agreed that the current marginal scheme is a site at Earlshaugh. Although some budget is available for that development, it is not enough to enable the project as a whole to proceed within the threshold. Some other proposals enjoy budget but await the outcome of the planning or consenting process.
- 1.42 A number of more recent projects have been submitted for consideration and have attracted objection as the threshold has been reached (MoD Table 2).³⁶ It is acknowledged that the list of projects with budget can change dependent on whether those with an allocation subsequently receive approval or consent.
- 1.43 The parties agree that it is for the consenting authorities to decide whether, in the circumstances before them, it is for one particular development to make use of the available budget subject to taking account of the representations of the Ministry of Defence and the management of the threshold. The Ministry of Defence has no view on the planning merits of any undetermined scheme currently with budget.
- 1.44 Further research has been undertaken on the impact of wind turbine development on the Array – principally in connection with a section 36 consent application³⁷ for a wind farm at Newfield, in Dumfries and Galloway, and the developer's proposed technical mitigation. The evidence to be given to that Public Inquiry is quite different to the considerations relating to Hallburn Farm and Beck Burn Peat Works (where no technical mitigation is proposed).
- 1.45 In 2012 the Eskdalemuir Working Group was convened by the Scottish Government with the remit to undertake a substantive piece of work to re-examine the predictive model currently in use and to examine policy around the management of the threshold. The work of the group is ongoing.
- 1.46 It is common ground that the Secretary of State should base his decision on whether the budget for the Array would be exceeded and that the proposed turbines would therefore generate additional seismic noise that would compromise the capability of the UK to detect distant nuclear tests and breach the Agreement under the Comprehensive Nuclear-Test-Ban Treaty.

The sites and the surrounding area

Hallburn Farm

- 1.47 Hallburn Farm is located approximately 3 kilometres to the east of the centre of Longtown on the south side of Moor Road. It includes a main farmhouse, a bungalow and a series of relatively large farm buildings.

³⁵ Statement of Common Ground: Appendix

³⁶ Statement of Common Ground: Appendix

³⁷ Electricity Act 1989

- 1.48 The steading is based around the former Longtown Airfield, established during World War II, with the remnants of the former runway strips and taxi-ways still evident.
- 1.49 The predominant character of the area is low lying, generally flat, farmland with scattered development and woodland. There are distant views to the Lake District. The site is close to Black Snibb and Lynne Woods Sites of Special Scientific Interest.

Beck Burn Peat Works

- 1.50 The site is located some 2.5 kilometres north-west of Longtown and a similar distance to the north-east of Gretna. The site is flat and forms part of the floodplain of the River Esk and the River Sark. Although the land is in use for peat extraction the predominant land use in the locality is agriculture, interspersed with plantations. Scattered farms and houses lie beyond the site and large areas to the south are in use by the Ministry of Defence.
- 1.51 The site is bounded to the east, south and south-west by coniferous and broadleaved woodland and to the west and north-west by an earth bund on these sides of the extraction site.
- 1.52 The Solway Coast Area of Outstanding Natural Beauty is approximately 3.4 kilometres to the west of the site; the registered battlefield of Solway Moss is 3 kilometres to the east; and the buffer zone to Hadrian's Wall World Heritage Site is about 12 kilometres to the south. There are also distant views of the Lake District.

Main issue

- 1.53 The main issue common to both appeals is whether the budget for the Eskdalemuir Array would be exceeded and thereby result in the generation of additional seismic noise which would compromise the capability of the UK to detect distant nuclear tests in breach the Agreement under the Comprehensive Nuclear-Test-Ban Treaty.

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2. The Case for Carlisle City Council

Hallburn Farm

- 2.1 The Hallburn Farm application was refused permission for the following reasons:
- (i) the effect of the development on the Eskdalemuir Seismological Array;
 - (ii) the effect on the air traffic control radar at RAF Spadeadam;
 - (iii) potential impact on Pink-footed Geese as well as other Special Protection Area bird species such as Barnacle Geese, Lapwing and Curlew; and
 - (iv) the potential impact on the Outstanding Universal Value of Hadrian's Wall World Heritage Site.
- 2.2 Matters (ii) – (iv) have been resolved following discussions between the appellant and the Ministry of Defence; the submission of a Management Plan for Wintering Geese and Breeding Waders and the completion of an Assessment of Likely Significant Effects³⁸ on behalf of the Council; and the submission of an additional photomontage regarding the impact on Hadrian's Wall.
- 2.3 The remaining unresolved principal issues relate to the effect of the development on the Array; and measures to secure the future restoration of the site (in the event of the appeal being allowed) by means of a restoration bond.

Beck Burn Peat Works

- 2.4 Planning permission for the Beck Burn Peat Works wind farm was refused because of the effect of the development on the Eskdalemuir Seismological Array. Following the evidence, this remains as the principal issue.

The Eskdalemuir Seismological Array (Hallburn Farm and Beck Burn Peat Works)

- 2.5 The consultation responses from the Ministry of Defence confirmed the sites to be within the statutory safeguarded area of the Array; the wind turbines would generate additional seismic noise which could not be accommodated as the reserved noise budget had already been allocated to other projects.³⁹
- 2.6 The appellants' approach at the Inquiry was to question the manner in which the budget was allocated and to argue that budget capacity remained. The Ministry of Defence maintained that its approach of allocating budget on a 'first come first served basis' was transparent and fair; and that there was no remaining budget.

³⁸ Under Regulation 61 of the Conservation of Habitats and Species Regulations 2010 (as amended)

³⁹ CD12.4; CD12.29

- 2.7 The National Planning Policy Framework requires authorities to *'have a positive strategy to promote energy from renewable and low carbon sources'* and *'..... to maximise renewable energy development while ensuring that adverse impacts are addressed satisfactorily'*⁴⁰ The accompanying footnote explains that in determining applications, planning authorities should follow the approach set out in the National Policy Statement for Renewable Energy Infrastructure (EN-3) and be read with the relevant sections of the Overarching National Policy Statement for Energy (EN-1).
- 2.8 EN-1 makes specific reference to the Array as an operational defence asset that may be affected by new development and stresses that it is important that new energy infrastructure does not significantly impede or compromise the safe and effective use of any such assets.
- 2.9 Three proposals for wind turbines involving sites which fall within the safeguarding area for the Array have recently received permission. The first relates to a single 15 metres high turbine at Midlem which was allowed on appeal by the Scottish Ministers subject to a condition requiring agreement on a turbine type which did not contribute to the noise budget.
- 2.10 Three turbines at Walston Braehead Farm, Carnwath and two turbines at Cargo Farm Cottage, Cargo (each approximately 27 metres to blade tip) were approved as their noise contributions were found to be negligible.⁴¹
- 2.11 In addition to the proposals at Hallburn Farm and Beck Burn Peat Works, Dumfries & Galloway Council refused planning permission (in October 2012) for the erection of 10 wind turbines at Minnygap, Lockerbie;⁴² and decisions are awaited from Scottish Ministers for wind farm projects at Rowantree and Newfield.⁴³

Restoration bond (Hallburn Farm)

- 2.12 The Council has entered into the Section 106 Agreement regarding off-site habitat management entirely without prejudice to its case regarding the need for a restoration bond. The Council considers it necessary for the appellant to provide a section 106 obligation wherein commitment is made to provide a financial bond (or an indemnity insurance policy) to cover the costs of removal of the wind turbines and reinstatement works at the end of the approved period or sooner if the turbines cease to be operational.
- 2.13 Although draft conditions 4 and 5 require the removal of the turbines and reinstatement of the land, enforcement of the conditions may not achieve an effective or appropriate outcome. In this regard, the Council has the power to serve a breach of condition notice⁴⁴ on the developer or the person having control of the land; and that a fine (up to level 4) may be imposed for further non-compliance thereafter. However:-
- (i) if the person (most likely a limited company) who carried out the development becomes (or has become) insolvent, a fine would be unlikely to achieve removal and reinstatement; and, in the event of insolvency, there is a risk that a court might not impose a fine;

⁴⁰ National Planning Policy Framework: paragraph 97

⁴¹ CD12.12

⁴² CD6.33

⁴³ The Rowantree Public Inquiry closed autumn 2012; the Newfield Inquiry was due to resume in February 2013

⁴⁴ Town and Country Planning Act 1990: section 187A

- (ii) the landowner (often a farmer) might not have control over the land where the turbines are situated by virtue of the terms of the agreement with the developer; and, even if he/she does, the landowner might not have the means to fulfill the condition.
- 2.14 As an alternative, the local planning authority could serve an enforcement notice in respect of the breach of condition. Subsequent failure to comply with the steps required to be taken by the notice would entitle the local planning authority to enter the land, carry out the works and to recover expenses reasonably incurred.⁴⁵
- 2.15 Again, this assumes that the landowner would have sufficient monies to cover the considerable expense of removal and restoration. If not, although a charge could be secured over the land for the monies,⁴⁶ a court might be reluctant to require the sale of the land to cover the expense incurred by the Council; and subsequent voluntary sale might be many years later. This would create uncertainty and an unreasonable and unnecessary burden on the public purse.
- 2.16 In the absence of an effective means of securing removal, the turbines would continue to stand, entirely contrary to the envisaged period with continuing landscape and visual harm. This could all be avoided by the provision of a bond or indemnity insurance policy which would, from the outset, guarantee that finances would be available. These are provided not only in wind turbine cases but also, for example, in respect of highway works and minerals permissions to guarantee restoration.
- 2.17 Such an obligation would meet the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended), namely the obligation would be: -
 - (i) necessary to make the development acceptable in planning terms;
 - (ii) directly related to the development; and
 - (iii) fairly and reasonably related in scale and kind to the development.
- 2.18 An appeal decision at Glebe Farm, Yelvertoft supports this submission.⁴⁷

Appraisal (Hallburn Farm and Beck Burn Peat Works)

- 2.19 The Council recognizes that a balancing exercise has to be undertaken. In these cases, because of the particular areas of expertise required, the local planning authority is dependent on the evidence of the Ministry of Defence.
- 2.20 The Council acknowledges the national and regional policy support for on-shore renewable energy development as set out in documents such as the National Planning Policy Framework and the Energy White Paper. Furthermore, the benefits of the proposal, in terms of providing renewable energy, reducing carbon dioxide emissions, assisting with security of supply and providing employment opportunities, especially during construction, are acknowledged.

⁴⁵ Town and Country Planning Act 1990: section 178

⁴⁶ Town and Country Planning Act 1990: section 178(5)

⁴⁷ CD12.41: paragraph 63

- 2.21 It is clear that the National Planning Policy Framework requires examination of the suitability of the site and that proposals should demonstrate that adverse impacts have been satisfactorily addressed. It is also clear that the regional target for renewable energy set for 2010 has not been achieved and that the targets are increasing.
- 2.22 In the event that the conclusion is reached that there would be considerable harm caused by the proposal, several recent appeal decisions (in Cumbria) illustrate how Inspectors have found that the harm caused by a particular proposal could outweigh any benefits in the context of the targets not being met.⁴⁸ As in those cases, the national and regional need is a powerful material consideration in favour of the proposal; but no part of guidance suggests that overriding weight should be afforded to the 'need' case.
- 2.23 If it is found that the impact on the Eskdalemuir Seismological Array cannot be satisfactorily addressed, it follows that the harm caused would be such that the balance in favour of the proposal from policy support for renewable energy would not be sufficient to justify the appeals being allowed.
- 2.24 If it is concluded that the issue regarding the Array can be satisfactorily resolved, the Council considers that, in the case of Hallburn Farm only, permission should be refused without the provision for a restoration bond.

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⁴⁸ CD6.25; CD12.17; Hoff (APP/H0928/A/07/2053230); Grise (APP/H0928/A/09/2093576); Berrier Hill (APP/H0928/A/2093290); Broughton Lodge (APP/G0908/A/11/2156118)

3. The Case for The Ministry of Defence

Introduction: the determining issue

- 3.1 The issue identified splits into 2 parts: -
- (i) whether the budget for the Eskdalemuir Array has been reached; and
 - (ii) whether the proposed turbines would therefore generate additional seismic ground vibration and thus compromise the capability of the UK to detect signals from distant nuclear tests and breach the agreement under the Comprehensive Nuclear-Test-Ban Treaty.
- 3.2 The protection of the Array goes beyond its role within the Comprehensive Nuclear-Test-Ban Treaty implementation and monitoring regime, because of its wider scientific value. However, it is the Treaty that lends the notification requirements their urgency and importance – and means that the safeguarding of the operation of the Array for these purposes is an absolute requirement. This is not an issue between the parties.
- 3.3 Similarly, there is no dispute about the relevant policy test, contained within Overarching National Policy Statement for Energy (EN-1), which itself seeks to reconcile the need for renewable energy resources and the protection of defence assets. To do otherwise, would be to double-count the importance of the renewables objective.

Why the issue arises

- 3.4 The Array is an important scientific resource.⁴⁹ The site was carefully chosen based on a study in the early 1960s;⁵⁰ it is not feasible to re-locate the Array; and the facility was upgraded in 2009 to meet the technical requirements of the Treaty.
- 3.5 The Array is also a defence asset of national and international importance. The Comprehensive Nuclear-Test-Ban Treaty places a ban on nuclear weapon tests and nuclear explosions by signatory countries and establishes a verification regime (known as the International Monitoring System) to ensure compliance.
- 3.6 The terms of the Treaty require the UK to contribute to the International Monitoring System; and the UK is obliged to ensure that the data provided meets the technical and operational standards specified by the Treaty. Article IV (6) of the Treaty places an obligation on State Parties not to interfere with elements of the verification regime of the Treaty.⁵¹
- 3.7 The UK's obligations under the Treaty, and the wider nuclear non-proliferation agenda, should be taken into account when considering the Ministry of Defence's case that greater weight should be attached to the resultant objection rather than placing reliance on the appellants' dependence on renewable energy policy.⁵²

⁴⁹ CD9.1

⁵⁰ CD9.2; Proof of Evidence (Pallester): paragraph 4.2

⁵¹ CD9.8; Proof of Evidence (Bowers): Section 2

⁵² Proof of Evidence (Pallester): Section 2; see also CD9.8: paragraph 14 with particular reference to the UK's financial commitment and its reputation as a responsible nuclear weapon state

- 3.8 All these points of common ground should inform the consideration of the main issue. It is also relevant to note that a similar approach to the protection of the Array is applied on both sides of the England/Scotland border (albeit in different policy documents).
- 3.9 So far as concerns the appeal proposals, relevant national policy is set out in the National Planning Policy Framework.⁵³ The development plan is silent on the protection of the Array; and (on the assumption that without the Ministry of Defence objections, the proposals would accord with the development plan) this is an instance when material considerations would indicate that the appeals should be determined otherwise than in accordance with the development plan.
- 3.10 Overarching National Policy Statement for Energy (EN-1) specifically acknowledges Eskdalemuir: -
- 'Other operational defence assets may be affected by new development, for example the Seismological Monitoring Station at Eskdalemuir It is important that new energy infrastructure does not significantly impede or compromise the safe and effective use of any defence assets.'*
- 3.11 It also confirms that cumulative effects are important: -
- 'Any assessment of aviation or other defence interests should include potential impacts of the project upon the operation of CNS⁵⁴ infrastructure, flight patterns (both civil and military), other defence assets and aerodrome operational procedures. It should also assess the cumulative effects of the project with other relevant projects in relation to aviation and defence.'*
- 3.12 The Companion Guide to Planning Policy Statement 22 has been preserved and paragraph 96, in relation to radar, makes it clear that if an objection is raised by either a civil aviation or Defence Estates consultee, the onus is on the appellant to prove that the proposal would not have an adverse effect on aviation interests. The principle must apply in relation to the safeguarding of the Array.
- 3.13 Overall, the importance of the Array, and the policy test, are agreed; so too is the way in which the Array can be safeguarded from adverse impacts through the consideration of both the individual and the cumulative effects of wind turbine development.
- 3.14 It has been shown that wind turbines produce seismic ground vibration in the passband of interest to the Array; and they have an adverse effect on its operation.⁵⁵ On this basis, the Ministry of Defence's original practice was to establish an 80 kilometres exclusion zone around the Array, but, following subsequent research (the 2005 Styles Report), it now operates an exclusion zone within 10 kilometres of the Array, and a consultation zone between 10 and 50 kilometres from the Array.⁵⁶

⁵³ National Planning Policy Framework: paragraphs 14, 96 – 98 including Footnote 17 in relation to National Policy Statements

⁵⁴ Communications, navigation and surveillance
CD9.7

⁵⁶ Statement of Common Ground: paragraph 4.3; Proof of Evidence (Boyd): paragraphs 4.1 – 4.4

- 3.15 The cumulative impact of wind turbine development in the consultation zone is managed using a spreadsheet tool,⁵⁷ which applies an equation to predict the seismic ground vibration from an individual turbine, depending on its distance from the Array and the rated-power of the turbine.⁵⁸
- 3.16 In 2005 the Eskdalemuir Working Group agreed a cumulative threshold of up to 0.336 nanometres (nm) within the consultation zone which was not to be exceeded.⁵⁹ Since June 2009, some flexibility has been applied to small wind turbine developments with demonstrated negligible impact which has allowed some 60 such projects to proceed.⁶⁰
- 3.17 The system has worked, and continues to do so, on a 'first come first served' basis taken from the receipt by the Ministry of Defence of a consultation request. The practice has allowed projects to be allocated budget in an orderly basis (MoD Table 1).⁶¹
- 3.18 Now that the threshold has been reached, remaining projects are held in a date ordered queue (MoD table 2)⁶² and await the release of allocated budget by any scheme (within MoD Table 1) failing to gain planning permission or consent under the Electricity Act 1989.
- 3.19 There is also the opportunity for prospective developers to demonstrate whether the predicted ground vibration could be mitigated so as to allow a scheme to progress where it would otherwise have not been able to do so.
- 3.20 Against this background the answer to the question posed in the first part of the main issue as to whether the threshold has been reached is 'yes'; albeit it is accepted that in terms of sites consented and constructed the answer is 'not quite'.
- 3.21 The matter at issue is whether sites that have been identified later in the process should be allowed to queue jump those still awaiting determination (e.g. Ewe Hill and Earlsbaugh wind farms).⁶³ If that were to be the case, it would certainly lead to an uncertain and unpredictable outcome.
- 3.22 Some of the arguments raised in this Inquiry are common to those made at the Rowantree Public Inquiry⁶⁴ and the closing submissions there on behalf of the Ministry of Defence.⁶⁵ In this regard: -
- (i) the Ministry of Defence's safeguarding process is well established and well understood and until recently has gone without 'challenge';
 - (ii) the appellants are acting in pursuit of commercial interests rather than the public interest;

⁵⁷ Proof of Evidence (Boyd): paragraphs 4.11 – 4.14

⁵⁸ The cumulative effect depends on first calculating the sum of the squares of the vibration predicted for each turbine considered in the consultation zone, before taking the square-root.

⁵⁹ Proof of Evidence (Boyd): paragraphs 4.5 – 4.10

⁶⁰ Proof of Evidence (Boyd): paragraphs 7.4 – 7.5

⁶¹ Statement of Common Ground: Appendix 1

⁶² Statement of Common Ground: Appendix 1

⁶³ 16 turbines at Ewe Hill are constrained by an objection from NATS; Earlsbaugh has partial budget allocation but the overall project depends on mitigation

⁶⁴ Currently awaiting a decision by the Scottish Ministers

⁶⁵ CD9.20

- (iii) the precedent established would interfere with the Ministry of Defence's management of risk; which would be particularly serious given the number of 'consenting authorities' within the consultation zone;⁶⁶
 - (iv) the suggestion that the allocation of the budget should occur at the time of approving or consenting a scheme would amount to an '*ad hoc*' change in the Ministry of Defence's policy which would be unsupported by any requirements in the planning system – it would be premature given the steps taken by the Scottish Government to chair the reconstituted Eskdalemuir Working Group to investigate the very same issue;
 - (v) the only obligation under the consultation Directions⁶⁷ is for local authorities to consult at the time of application; there is no obligation to re-consult immediately prior to determination.
- 3.23 The above points also apply to the proposed Newfield wind farm which is currently at Public Inquiry.⁶⁸ This scheme does not hold budget (MoD Table 2). Although that project includes the consideration of possible mitigation measures, the question of queue jumping remains material and has relevance to other undetermined schemes.
- 3.24 Against this background the Ministry of Defence must protect the Array, and maintain its objections to these appeals until and unless earlier projects in the queue are refused and release budget for re-allocation. The Ministry of Defence, as a public body, has a duty to act consistently, clearly and fairly; and this is what the current approach provides.
- 3.25 The appellants suggest that there is another way. The current process of allocating budget (if available) at the point of initial consultation, would be replaced by a process which would not allow budget to be allocated (if available) until shortly before decision stage up on confirmation that there were no other impediments to the granting of permission or consent. This would involve a multiple-consultation process leading to a second consultation at decision stage by the decision making authority whether it be the Scottish Ministers, the Secretary of State, Reporters, the Planning Inspectorate, or one of the many local planning authorities.⁶⁹
- 3.26 Such an approach would be practicably unworkable and it would not provide a proper basis for the Secretary of State to depart from established procedure. In particular, it would not be the consistent approach expected by the wind industry in that: -
- (i) the illustration of the proposed amended planning process⁷⁰ is incomplete in that it does not cover all potential outcomes;

⁶⁶ Mr Michie's written statement to the Rowantree Inquiry (paragraph 19 – listing some 16 authorities) – appended to Proof of Evidence

⁶⁷ Town and Country Planning Act 1990: Town and Country Planning (General Development Procedure) Order 1995 – Eskdalemuir Seismic Recording Station; and Town and Country Planning (Scotland) Act 1997: Town and Country Planning (General Development Procedure) (Scotland) Order 1992: Ministry of Defence (Eskdalemuir Seismic Recording Station) Technical Site Direction 2005 (CD9.9)

⁶⁸ Inquiry to be resumed in February 2013

⁶⁹ Proof of Evidence (Michie): paragraphs 31, 32

⁷⁰ CD9.31

- (ii) the timing of any reply up on re-consultation could not be dictated;
 - (iii) the Consultation Directions for both England and Scotland would need rewriting;⁷¹ and
 - (iv) the appellants' approach would effectively add two more layers of consultation and monitoring at the time of a decision and at a future unknown date when the scheme is finally determined. This would increase bureaucracy in the face of national policy to reduce it; and added stages in the process could potentially increase the risk of breaches to the threshold.⁷²
- 3.27 In this regard, it would be theoretically possible for a wind farm to be approved or consented on the basis that at the time of decision the threshold would not be breached. However, by the time of implementation, circumstances may have changed causing that development to exceed the budget.⁷³
- 3.28 Moreover, if the consenting authority were to look at the threshold at the time of when the decision is taken, that authority would need to be satisfied that there was a mechanism in place within the planning system to ensure that no other scheme, which would exceed the threshold, would be consented or approved. In effect this would pass responsibility for the protection of the Array to decision taking authorities rather than the Ministry of Defence.⁷⁴
- 3.29 Additionally, it would be premature to reach the conclusion on mitigation being irrelevant at other sites; and to the outcome of other sites yet to be determined.
- 3.30 There would also be a significant resource implication in that the Ministry of Defence receives in the order of 300-400 consultation requests a month in respect of on-shore and off-shore wind farm proposals. It also acts as statutory consultee for around 350 sites across the UK; and a consultee on the licensing of marine developments and the extraction of hydrocarbon resources in the UK continental shelf area.⁷⁵ The managed approach to the Array is therefore of utmost importance.
- 3.31 This new multiple consultation would only benefit the appellants if there was budget available within the seismic ground vibration threshold; hence, their arguments that other non-determined sites with allocated budget should be removed⁷⁶ as there is no suggestion that the budget should be increased. This approach should be rejected.

⁷¹ Proof of Evidence (Michie): paragraph 33

⁷² Proof of Evidence (Michie): paragraphs 27, 34

⁷³ Proof of Evidence (Michie): paragraph 28

⁷⁴ Proof of Evidence (Michie): paragraph 29

⁷⁵ Proof of Evidence (Boyd): paragraph 8.8

⁷⁶ CD9.29; CD9.30

What is the 'budget' or seismic ground threshold now available?

- 3.32 There is no question that the 0.336nm of seismic ground vibration is the point at which an absolute objection applies. In policy terms, this is the best available science to identify where a significant adverse effect is possible. The point has been reached where the effect of the number of developments proposed would exceed the permissible threshold.
- 3.33 Although the appellants have sought to demonstrate remaining budget, based on the hypothetical situation of removing and reassigning the budget allocated to Earlshaugh, the table (Further Modified MoD Table 1)⁷⁷ on which they rely contains a number of assumptions which are not agreed.
- 3.34 In this regard, Clyde wind farm was assessed as a project comprising 152 turbines each with an installed capacity of 3 megawatts; but those erected are rated at 2.3 megawatts. As the resultant Electricity Act consent sets an upper limit to the development (456 megawatts) there would be scope to repower the installed machines to the limit specified and within the allocated budget (assuming that the works did not amount to further 'development'). Similarly, the Minsca wind farm, where 16 of the 17 approved turbines have been erected, each some 0.2 megawatts less than approved, could subsequently take up the budget originally allocated.
- 3.35 In terms of existing consents and permissions, the approach remains to only impose conditions where necessary. In this regard, the Ministry of Defence has assumed that each approved wind farm would be able to work at the power notified to the Ministry of Defence at some time in its permitted life, unless limited by the terms of the conditions in any particular permission or consent.
- 3.36 Whilst Electricity Act consents specify a maximum installed capacity, the equivalent restriction is generally not imposed on a grant of planning permission under the Planning Acts; and the installed capacity of schemes so approved could increase without triggering consultation with the Ministry of Defence. That risk could however be avoided on future permissions by imposing a condition restricting the installed capacity of the project.
- 3.37 Although it is claimed that the likelihood of repowering, without amounting to 'development', would be minimal, it has to be remembered that a 'low risk' is still a risk and the onus remains on the appellants to counter that. In this regard the safe and reasonable approach is to assume that the budget allocated to approved schemes will remain capable of being taken up to its maximum level within the life-time of the consent or permission.
- 3.38 The proposed wind farm at Ewe Hill (22 turbines) has taken on a larger importance, due partly to the separate approval of 6 turbines (each 3 megawatts capacity) as the remaining 16 turbines are constrained by an objection from National Air Traffic Services. However, the budget allocated to that site remains as originally assessed, namely 22 @ 2.3 megawatt turbines. The greater output of the approved turbines does not change the overall budget allocation to that site; as to do so would have breached the Ministry of Defence's orderly queue approach.

⁷⁷ CD9.29

The Eskdalemuir Working Group and potential mitigation

- 3.39 It is acknowledged that it might be possible to mitigate the seismic ground vibration from wind turbines. Accordingly, the Ministry of Defence has accepted that if a developer can demonstrate that mitigation technology would result in a lower level of vibration than predicted by the model in the 2005 Styles report, then the merits of the technology would receive due consideration.⁷⁸ However, there is nothing to suggest that mitigation would be likely to achieve a nil contribution to seismic ground vibration (indeed, the effective mitigation of the proposed Newfield wind farm depends on mitigation to a number of turbines at another site).
- 3.40 Since May 2011 further research has been undertaken on the impact of wind turbine development on the Array and on potential mitigation, principally in connection with the proposed Newfield wind farm.⁷⁹
- 3.41 The research which has been undertaken into technical mitigation remains ongoing and has highlighted the technical complexities which are inherent in such mitigation and the management of the Eskdalemuir threshold.⁸⁰
- 3.42 In light of the continuing interest in wind turbine development within the consultation zone, the recent research, and in accordance with its commitment to the 2020 Routemap for Renewable Energy in Scotland,⁸¹ the Scottish Government decided to reconvene the Eskdalemuir Working Group. Membership of the Group includes representatives of the Ministry of Defence and the Department of Energy and Climate Change, Scottish Renewables and RenewableUK. Meetings were held in February, August and November 2012.⁸²
- 3.43 Although the original terms of reference related to examining the possible availability of additional budget, as opposed to the operation of the existing budget, there is an element of uncertainty in the Group's remit which remains to be clarified through the, yet to be published, minutes of the November meeting.

Earlshaugh and Newfield and mitigation

- 3.44 Neither of these proposals should be ignored in that what is being argued by the appellants is highly artificial, and simply a matter of convenience for these appeals. The planning witness for the Beck Burn Peat Works site will be appearing at the Newfield Inquiry and advancing a case which argues that Newfield could be accommodated without mitigation; whereas the case to support Beck Burn assumes the removal of Newfield as it is dependent on mitigation. Both cannot be correct; such an approach is unhelpful and the appellant's evidence on this point, at least, is wholly incomplete and partial. Accordingly no reliance should be placed on it.
- 3.45 It is clear that the mitigation remains a material consideration, as indicated in the Statement of Common Ground, and it is therefore correct to include the sites in any cumulative assessment.

⁷⁸ Proof of Evidence (Pallester): paragraph 6.2

⁷⁹ Proof of Evidence (Bowers): Section 5; Statement of Common Ground

⁸⁰ Proof of Evidence (Pallester): paragraphs 6.9; Proof of Evidence (Bowers): paragraphs 1.4 – 1.6; CD9.27 CD7.35

⁸² Proof of Evidence (Pallester): paragraphs 6.7, 6.8

The appellants' calculations

- 3.46 The appellants have sought to demonstrate that there is sufficient remaining budget for both of the proposals before the Inquiry. Their revised tables (Further Modified MoD Table 1 and Table 2),⁸³ which seek to manipulate the Ministry of Defence's budget tool (MoD Table 1 and Table 2),⁸⁴ are of no real utility in that they reflect a harsh 'dog eat dog' land, with no predictable planning and where existing projects awaiting determination are ignored as others come forward according to administrative internal timetables.
- 3.47 They are also unreliable as the cumulative seismic ground vibration becomes distorted as early as the second entry in the Further Modified MoD Table 1⁸⁵ because a fifth turbine could still be constructed at Carlesgill (Craig) within the terms of its 2004 planning permission.
- 3.48 The basic point is that if large wind farms are removed from consideration there is, as a matter of logic, spare capacity within the threshold for others to come forward; and, in general terms, the release of a wind farm nearer to the Array will make provision for a larger development at a greater distance from it.
- 3.49 The elimination of projects already in the queue would come as unwelcome news to the promoters of Ewe Hill and Earlsbaugh; and others that would now face an objection. This makes obvious the issue of fairness.
- 3.50 In conclusion, MoD Table 1 should be accepted as the beginning and end of the calculations. It reflects a fair and consistent approach and remains so until the work of the Eskdalemuir Working Group is concluded.

Planning conditions

- 3.51 If permission is to be granted, where very limited budget is available, it would be necessary and reasonable⁸⁶ to ensure that the seismic ground vibration could not be exceeded by reference to the installed capacity proposed for each wind farm.

Other matter: aviation (Hallburn Farm)

- 3.52 The Statement of Agreement between the Ministry of Defence and REG Windpower Limited explains the importance of safeguarding radar operations at RAF Spadeadam; and confirms that a scheme of mitigation could be secured by conditions with a reasonable prospect of being secured within the life-time of any permission.

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⁸³ CD9.29; CD9.30

⁸⁴ Statement of Common Ground: Appendix 1 - MoD Table 1

⁸⁵ CD9.29

⁸⁶ Within the terms of Circular 11/95

4. The Case for REG Windpower Limited (Hallburn Farm)

Introduction

- 4.1 Whilst 4 reasons for refusal were set out in the decision notice, all but the impacts on the Eskdalemuir Seismological Array were satisfactorily addressed prior to the opening of the Inquiry.
- 4.2 In terms of reason 2, relating to the potential impacts on the operational effectiveness of air traffic control radar at RAF Spadeadam, the appellant has reached a pragmatic arrangement with the Ministry of Defence to provide any necessary mitigation leading to the withdrawal of the objection.⁸⁷
- 4.3 The third reason related to the potential impacts on bird species which constitute qualifying interests of the Upper Solway Flats and Marshes Special Protection Area. A mitigation strategy has been agreed with the Council and relevant consultees and its provisions will be secured through a Planning Obligation.
- 4.4 In terms of the fourth reason, concerning impacts on the ability to comprehend Roman military planning and land use, relative to the Outstanding Universal Value of Hadrian's Wall World Heritage Site, English Heritage withdrew its objection following the submission of further visual material.⁸⁸ Its concerns about future grid connection are unfounded as the proposed grid connection point would be to the existing 33kv line crossing the site and there is no basis for concluding that there would be any adverse impact on the historic asset.⁸⁹
- 4.5 There is substantial agreement between the appellant and the local planning authority on the acceptable nature of effects relating to other issues such as landscape and visual matters, noise, and the overall policy imperative articulating the need for renewable energy development and in particular on-shore wind.⁹⁰ Accordingly, the decision turns on whether the impacts on the Array are such that they should prevent an otherwise acceptable scheme from being granted planning permission.

Planning policy

- 4.6 National planning policy has at its heart a presumption in favour of sustainable development and explicit encouragement is given to the generation of renewable energy. This reflects both the planning and energy policy imperative to develop as much renewable generating capacity as possible, and as quickly as possible, to meet the challenges of securing the UK's energy supply and tackling climate change. That imperative remains stronger than ever despite the passing of the Localism Act, the potential revocation of the Regional Spatial Strategy, various press stories and apparent mixed messages from some Members of Parliament.

⁸⁷ Statement of Common Ground

⁸⁸ CD12.27; CD12.7

⁸⁹ Proof of Evidence (Hutchinson): paragraph 3.14

⁹⁰ CD12.1

- 4.7 National Policy Statement for Renewable Energy Infrastructure (EN-3) sets out the need and urgency for new energy infrastructure to be consented and built. Overarching National Policy Statement for Energy (EN-1) aims to speed up the transition to a low carbon economy; to contribute positively towards improving the vitality and competitiveness of the UK energy market; and improving security of supply.⁹¹
- 4.8 At the regional level, the Regional Spatial Strategy is underpinned by the aim to reduce emissions and adapt to climate change (Policies DP1, DP9 and EM15).⁹² Policy EM17 sets out the targets to achieve by 2010 at least 10% (rising to at least 15% by 2015 and at least 20% by 2020) of the electricity which is supplied within the region from renewable energy sources.⁹³
- 4.9 More locally, Saved Policy R44 of the Cumbria and Lake District Structure Plan supports proposals for renewable energy development subject to 3 broad criteria being satisfied relating to: -
- (i) effect on landscape character, biodiversity and the natural and built heritage;
 - (ii) effect on local amenity, local economy, highways or telecommunications;
 - (iii) impact on landscape, environmental, nature conservation, historical and local community interests.
- 4.10 Paragraph 8.2 of the Structure Plan indicates that , following the panel's report into the partial review of the Regional Spatial Strategy the indicative target for new additional installed capacity for renewable energy in Cumbria to 2016 is 243 megawatts.
- 4.11 The Carlisle Local Plan looks favourably on renewable energy development, in Policy CP8, provided that the criteria within the policy are satisfied. These include the 'normal' range of considerations and the avoidance of unacceptable cumulative effects. The supporting text acknowledges that renewable energy developments will almost always have some local environmental implications and any significant adverse impact will be weighed against the wider social, economic and environmental benefits including those of reducing emissions from greenhouse gases.

The need for renewable energy development

- 4.12 The commitment of the UK and the EU to the exploitation of its renewable energy resources, including wind, remains steadfast. Key documents include: -⁹⁴
- (i) **Energy White Paper (2003)** - 10% renewables by 2010;
 - (ii) **The Energy Challenge (2006)** - 20% renewables by 2020;
 - (iii) **Stern Review (2006)** - scientific evidence on climate change;
 - (iv) **The Energy White Paper: Meeting the Energy Challenge (2007)** - identified the need to overcome the barriers hindering energy from renewable sources;

⁹¹ Proof of Evidence (Frampton): paragraphs 4.18 – 4.20

⁹² Proof of Evidence (Frampton): paragraphs 4.3 – 4.5

⁹³ Proof of Evidence (Frampton): paragraph 4.6

⁹⁴ Proof of Evidence (Frampton): Section 3

- (v) **EU Climate Change and Energy Package (2008)** - measures to dramatically increase the use of renewable energy in each country and set legally enforceable targets for governments to achieve them;
- (vi) **Climate Change Act 2008** – legally binding targets;
- (vii) **Energy Act 2008** – implements the legislative aspects of the 2007 Energy White Paper;
- (viii) **Planning Act 2008** – includes provisions for national policy statements and nationally significant infrastructure projects;
- (ix) **EU Climate and Energy Package (2009)** – UK target to deliver 15% of renewable energy by 2020;
- (x) **EU Renewable Energy Directive** – commits Member States to set national targets for consumption of energy from renewable sources;
- (xi) **UK Renewable Energy Strategy (2009)** – sets out the means by which the UK will meet legally binding targets, with reporting steps every 2 years;
- (xii) **UK Low Carbon Transition Plan (2009)** – establishes a 'roadmap' for the decarbonisation of the UK;
- (xiii) **The 2nd Progress Report of the UK Committee on Climate Change (2010)** – reiterates that a 'step change' is required in the pace of emissions reductions;
- (xiv) **Renewable Energy Action Plan (2010)** – reiterates and extends support for renewable energy;
- (xv) **Annual Energy Statement (2010)** – The Secretary of State identified a 'challenge' as being 'to spur the capital investment required for new energy infrastructure';
- (xvi) **Renewable Energy Review (2011)** – The Committee on Climate Change concluded that the large-scale investment and new policies would be required in order to realise the UK Government's 2020 ambition; and acknowledged that, compared with on-shore wind, most other renewable energy generation technologies are expensive and likely to remain so until at least 2020;
- (xvii) **Electricity Market Reform White Paper (2011)** – 'The policy proposals within this White Paper form part of a much wider DECC⁹⁵ agenda aimed at energy decarbonisation and security of supply';
- (xviii) **UK Renewable Energy Roadmap (2011)** – 'sets out our shared approach to unlocking our renewable energy potential' and to 'accelerate renewable energy in the UK';
- (xix) **Carbon Plan 'Delivering our Low Carbon Future' (2011)** – 'if we are to cut our emissions by 80% by 2050, there will have to be major changes in how we use and generate electricity' and 'the Government is committed to ensuring that the low carbon technologies with the lowest costs will win the largest market share'.

4.13 Overall, the need for renewable energy and on-shore wind is not diminishing; the Structure Plan target date is fast approaching and performance in Cumbria is poor. Accordingly, great weight should be given to the contribution that this project would make towards meeting this urgent need which is a legal and policy requirement.

⁹⁵ Department of Energy and Climate Change

Other matters: introduction

- 4.14 Given the broad area of agreement, the appellant's evidence,⁹⁶ in all matters apart from those related to the Array, stands unchallenged. In terms of the points raised by local residents and interested parties, those issues are either satisfactorily addressed by the conclusions of the Environmental Statement, the suggested conditions or the section 106 Agreement. As such they raise no issues that warrant dismissal of this appeal.

Other matters: residential amenity

- 4.15 A number of local residents have referred to the impacts of the proposal on their residential amenity in terms of visual impact, noise or shadow flicker. In terms of visual impact the conclusions of the residential amenity study within the Environmental Statement⁹⁷ lay unchallenged in evidence.
- 4.16 In this regard, with particular reference to visual effects, the residential amenity study shows that at least 26 isolated properties, or groups of properties, would experience a '*significant*'⁹⁸ visual effect on their views in the direction of the appeal site. Of these, 4 would be within 1 kilometre of the scheme, notably: - Hallburn Farm (500 metres); Hallburn Farm Cottage (600 metres); Whytesyke Farm (650 metres); and Low Hallburn (620 metres). The first two are under the control of the landowner of the appeal site.
- 4.17 A further 7 properties would be located at distances of between 1 kilometre and 1.5 kilometres. These include: - Whingate, Deborah's Wood, Jenet's Hill, Brisco Hill Cottage, High Moorhead Cottage, Hallburncroft and a dwelling along the A6071.
- 4.18 The Environmental Statement records that whilst a number of dwellings close to the site would experience a '*significant*' change to a view or views, none would unduly suffer from negative visual effects such as visual dominance or overbearing impact. It is also acknowledged that a number of residential properties on the eastern edge of Longtown would have views of the turbines; but this would not adversely affect living conditions.
- 4.19 Whilst it is an inevitable consequence that '*significant*' visual effects would be experienced at properties close to the wind farm with an unobstructed view of it, none of them have been assessed as experiencing an overwhelming or overbearing effect such as to make that property an unattractive place to live.⁹⁹
- 4.20 It is also to be noted that the Officer's Report to the Development Control Committee, having expressly considered impacts on the closest properties to the site, came to the conclusion that whilst the presence of the turbines would be noticeable, they would not appear dominating or overbearing due to the intervening planting and buildings, the oblique relationships, and the degree of separation.¹⁰⁰

⁹⁶ Proof of Evidence (Frampton)

⁹⁷ Appendix 5.3

⁹⁸ For the purposes of the Environmental Impact Assessment Regulations

⁹⁹ Proof of Evidence (Frampton): paragraph 5.19(i); CD6.13 (Secretary of State Decision) - paragraphs 10, 11

¹⁰⁰ CD12.1: paragraphs 6.32 – 6.37

- 4.21 As to the concerns raised on behalf of the residents of Virginia Lodge Care Home, there is no evidence to suggest that dementia sufferers are particularly sensitive to wind farm development, and the suggested conditions would ensure that the noise impacts from the scheme would be kept within appropriate limits.¹⁰¹
- 4.22 In terms of shadow flicker, Virginia Lodge is some 1.6 kilometres from the nearest proposed turbine and well beyond the 10 times rotor diameter distance which is regarded to be the limit of potential shadow flicker effects.¹⁰²
- 4.23 The Environmental Statement¹⁰³ sets out, on a worst case assessment, the extent of potential shadow flicker effects for properties within the vicinity of the proposed wind farm. It also indicates that automatic shutting down of the causative turbine(s) could be achieved, in the event that all of the factors likely to lead to shadow flicker coincide. Such mitigation could be secured by condition.

Other matters: landscape and visual impact

- 4.24 The Environmental Statement identifies the site as a disused airfield set within farmland approximately 2.5 kilometres to the south-east of the market town of Longtown. The landscape character type for the area is 'Lowland';¹⁰⁴ and the sub-type is defined as 'Low Farmland'. These form a broad lowland sweep of land extending over a large area which surrounds the relatively remote coastline and estuary of the Solway Firth. The lowland plain, with its intensively managed, predominantly pastoral, landscape is framed by contrasting upland landscapes.
- 4.25 Specific guidance on the sensitivity of this landscape character type to wind energy development¹⁰⁵ indicates that the landscape could accommodate a small group (3 - 5 turbines) and, exceptionally, a large group (6 - 9 turbines) where the landscape is broad and sweeping. The landscape within the vicinity of the site exhibits such characteristics and it is degraded by former airfield use and current non-farming activity on the site.
- 4.26 Overall, assessment of effects on local landscape elements, the host landscape character type and the surrounding landscape character types show '*no significant effects*'.
- 4.27 It is to be noted that the Environmental Statement was assessed by consultants, acting on behalf of the Council, who independently endorsed its findings; and the Planning Officer's assessment was broadly similar. In this regard it was accepted that the proposal would have a moderate to large adverse effect on the immediate landscape character type, which is no more than to be expected for a project of this type; and no '*significant*' effect on any adjacent landscape character types.¹⁰⁶

¹⁰¹ As provided for by ETSU-R-97: The Assessment & Rating of Noise from Wind Farms

¹⁰² CD2.1: paragraph 76; CD2.5: paragraph 2.7.64

¹⁰³ Environmental Statement Vol. 1A: Section 14

¹⁰⁴ Cumbria County Council (1995) Cumbria Landscape Classification

¹⁰⁵ Cumbria Wind Energy Supplementary Planning Document (2007)

¹⁰⁶ CD12.1: paragraphs 6.28, 6.29

4.28 As to protected landscapes it is notable that the Planning Officer states: -

'There is also agreement with the ES¹⁰⁷ conclusion that there would be no significant effects on the landscape setting of the Solway Coast AONB¹⁰⁸ due to the extent of intervening elements such as topography and vegetation between the site and the AONB boundary'.¹⁰⁹

4.29 Reference is also made to the Longtown Conservation Area, from which there would be no more than limited and occasional filtered glimpses of the proposed development with no '*significant*' effects on the designated area.

4.30 Cumulative effects were also assessed in combination with wind farms that were approved or the subject of planning applications at the time of the Environmental Impact Assessment.¹¹⁰ No '*significant*' effects were recorded.

Other matters: ecology and nature conservation

4.31 The Environmental Statement identifies affected habitats as arable and improved grassland of local value for ecology and nature conservation. Impacts during construction, operation and decommissioning are predicted to be not '*significant*'. Site works would be undertaken in accordance with a Site Environmental Management Plan detailing mitigation options and timing of construction works. A Habitat Management and Enhancement Plan would also secure enhancement to wildlife through, for example, improved field boundary habitats, connectivity, new verge habitats, bat roosting boxes and barn owl boxes.

4.32 In terms of concerns (expressed by Natural England, the Royal Society for the Protection of Birds and Cumbria Wildlife Trust) about impacts on Pink-footed Geese, a qualifying feature of the Upper Solway Flats and Marshes Special Protection Area, the Council commissioned an independent Assessment of Likely Significant Effects.¹¹¹

4.33 The conclusions reached were that the proposal was not directly connected with or necessary to the management of the site for nature conservation; and that the development at Hallburn Farm was unlikely to have a significant effect alone on the interest features of the Special Protection Area, subject to a management plan being put in place to provide an alternative feeding area for Pink-footed Geese and an alternative nesting habitat for breeding waders.

4.34 In addition, as the proposed development was considered to have no net negative effect on the Special Protection Area, it was not likely to act in combination with any other projects (i.e. Beck Burn Peat Works). The overall conclusion reached was that an 'Appropriate Assessment' was not required.¹¹²

¹⁰⁷ Environmental Statement

¹⁰⁸ Area of Outstanding Natural Beauty

¹⁰⁹ CD12.1: paragraph 6.28

¹¹⁰ The submission of the Beck Burn Peat Works proposal post-dated the Environmental Impact Assessment

¹¹¹ The Conservation of Habitats and Species Regulations 2010: Regulation 61

¹¹² CD12.8

Other matters: archaeology and built heritage

- 4.35 The Environmental Statement identifies the presence of significant archaeological assets in the form of Hadrian's Wall World Heritage Site some 8 kilometres to the south of the site; and the route of a Roman road northwards linking the wall with Netherby Fort in a secluded setting to the north of the appeal site. There would be no physical effect on either asset; or impact on the understanding of the assets in relation to Roman military planning and land use.
- 4.36 Although English Heritage has confirmed that the proposed turbines would be visible in views along the Roman road, from Carlisle to the outpost fort at Netherby, the turbines would be sufficiently distant and offset from the route so as not to distract or otherwise harm an appreciation of the route. As such it raises no objection.¹¹³
- 4.37 Forty-three listed buildings were recorded in the study area; the majority have either no views of the appeal site or they would be shielded from the proposed turbines by intervening features. In terms of the setting of these assets none of the impacts would be '*significant*'.
- 4.38 Consideration was also given to a Registered Battlefield and the site of the battle of Solway Moss between Henry VIII of England and James V of Scotland in 1542. The rough uncultivated battlefield landscape of gorse and birch scrub has given way to managed farmland, regular field patterns and an important landscape feature has been lost. Although there are views eastward from the battlefield site towards the appeal site, the area to the east of the battlefield did not form an important part of the battle.
- 4.39 The overall conclusion is that the proposal would not have '*significant*' effects in relation to archaeology, built heritage and historic landscape.

Other matters: transport and access

- 4.40 The Environmental Statement acknowledges that construction traffic would have to pass through the centre of Longtown (Swan Street, Mary Street and Moor Road). However, a Traffic Management Plan would be implemented to minimise the effects of increased traffic and abnormal loads during the construction phase and, where relevant, the decommissioning stage.
- 4.41 Reference is made to the possibility of timing heavy goods vehicle movements to minimise impacts on Longtown Primary School, Pear Tree Nursery and Longtown Children's Centre on Moor Road. The Traffic Management Plan, with consideration of traffic movements and timing, could be achieved by a condition imposed on any planning permission.

Other matters: decommissioning

- 4.42 In response to the Council's request for the appellant to provide a financial bond (or indemnity insurance policy) to guarantee site restoration, draft planning conditions 4 and 5 would provide the local planning authority with the relevant safeguards through the submission, approval and implementation of a scheme.

¹¹³ CD12.7

- 4.43 As a condition (or conditions) could adequately secure decommissioning and restoration, a Planning Obligation would not be necessary. The Council has correctly set out the powers open to it and ultimately a charge could be secured over the land.
- 4.44 Looking at a range of wind farm appeal decisions,¹¹⁴ it is clear that a Planning Obligation to secure restoration is an entirely rare occurrence; and where it has been employed there are specific circumstances relating to the particular scheme.

Eskdalemuir Seismological Array

- 4.45 There is no dispute between the appellant and the Ministry of Defence as to the importance of the Array; the primacy of safeguarding its effective operation to enable the UK to comply with its obligations under the Comprehensive Nuclear-Test-Ban Treaty; and that the threshold at which the effectiveness of the Array is compromised is 0.336nm of ground displacement. In addition, the calculations ('Further Modified MoD Table 1') are also agreed.¹¹⁵
- 4.46 The difference between the respective parties concerns the way in which the Ministry of Defence approaches its assessment of the availability of budget and consequently responds to any consultation when an application is submitted which would have an impact on the Array.
- 4.47 Applications are logged according to the date on which the Ministry of Defence receives formal consultation and budget is then allocated to projects on a 'first come first served' basis. Each project with a budget retains its allocation and only loses it if permission or consent is refused, allowing for any appeal and/or legal challenge, (or the proposal is withdrawn) irrespective of how long that takes. If budget becomes available it is then allocated to the next project appearing chronologically in the list; the Ministry of Defence is insistent that this is the only effective way of managing the budget to safeguard the Array.¹¹⁶
- 4.48 Such an approach has severe shortcomings and is illustrated by reference to the proposed wind farms at Earlsbaugh and Ewe Hill.
- 4.49 Earlsbaugh (24 @ 3 megawatt turbines), submitted in July 2008, is the point at which the budget threshold would be exceeded. The scheme enjoys budget allocation up to the threshold, for 2 turbines only, but implementation of the entire project would be dependent on an agreed scheme of mitigation. It is common ground that such mitigation is not currently available; and the Ministry of Defence has objected to the application.
- 4.50 Perversely, the Ministry of Defence has allocated budget to a project which it objects to in order to safeguard the Array. The scheme has been in the planning system for over 4½ years and has little prospect of being consented in the near future having been returned to the Energy Consents Unit of the Scottish Ministers as it is not ready to proceed to determination.

¹¹⁴ CD6.4; CD6.5; CD6.10; CD6.29; CD6.31

¹¹⁵ CD9.29

¹¹⁶ Proofs of Evidence (Boyd & Michie)

- 4.51 Worse still, Ewe Hill has been in the planning system for over 7 years. Whilst 6 turbines have been approved, subject to a section 75 Agreement,¹¹⁷ the remaining 16 are subject to an objection from National Air Traffic Services.
- 4.52 It is not known when either scheme is likely to be determined and, in the meantime, budget will remain with those projects. Consequently, the entire 50 kilometres consultation zone, which is an area with a valuable wind resource, has been in effective lock down since 2008, preventing what are otherwise acceptable schemes from coming forward. Hallburn Farm, and indeed both Beck Burn Peat Works and a scheme at Rowantree,¹¹⁸ could all be constructed within the budget currently sterilised by Earlshaugh.¹¹⁹
- 4.53 It is also apparent that the Ministry of Defence operates its budget on the basis of the proposal on which it was consulted and not what was subsequently constructed: - at Clyde (152 turbines) 2.3 megawatt machines were installed despite budget being allocated to 3 megawatt turbines. That project will retain the balance of its budget for its entire lifespan on the theoretical possibility that the turbines could be 'upgraded' to 3 megawatt machines without consent, thereby sterilising that element of budget for future projects.
- 4.54 Although it is claimed that the Electricity Act consent authorises a maximum installed capacity (152 @ 3 megawatts) there would be no reason to suppose that a developer, aiming to maximise output from a consented scheme, would install turbines of a lesser capacity and contemplate replacing them at a future date. Whilst it might be theoretically possible to repower the existing turbines, it is likely that related works (e.g. change in appearance, larger substation, noise implications or engineering operations) would take the project outside the terms of the original consent. Such theoretical concern is unlikely to translate into a practical proposition.
- 4.55 Moreover, the Ministry of Defence's point only applies to Electricity Act consents as there is no comparable basis for planning permissions to be subject to a restriction relating to maximum installed power. In this regard, the Ministry of Defence has not sought to limit the scope of planning permissions and, if the point has materiality, there is no comparable control over the installation of up-rated machines (assuming no development is involved). In these circumstances the Secretary of State is invited to adopt a pragmatic approach, but it is not something on which the appellant relies in order to make its case.
- 4.56 The Ministry of Defence acknowledges that there is no policy support for its 'first come first served' approach. That procedure was adopted out of a need to ensure predictability for developers in the system and to ensure that the budget would not be exceeded. However, that would also be achieved by allocating budget to projects without other objections or constraints and it would allow Hallburn Farm, Beck Burn Peat Works and Rowantree to be approved or consented within budget.

¹¹⁷ The Scottish equivalent to an agreement under section 106 of the Town and Country Planning Act 1990

¹¹⁸ Rowantree wind farm was heard at Public Inquiry in 2012 and a decision by Scottish Ministers is awaited

¹¹⁹ CD9.30

- 4.57 It is also admitted that there is budget available to be used. However, the current allocation system is blocking otherwise acceptable schemes because they would breach the budget threshold. Decisions are therefore being taken on a false premise in reliance on the Ministry of Defence's consultation response.
- 4.58 The inescapable conclusion is that the Ministry of Defence's approach is no longer fit for purpose; and it is hardly surprising that developers are now seeking to challenge it.
- 4.59 It should also be remembered that the Ministry of Defence's role is as a consultee in the planning process and not the decision maker. However, the allocation of budget to projects as they enter the planning system, rather than at the point of decision, effectively bestows on the Ministry of Defence a power of veto which pre-empts the planning judgement of the decision maker.
- 4.60 Nevertheless, it is common ground that *'it is for the consenting authorities to decide whether, in the circumstances before them, it is for one particular development to make use of the available threshold, subject to their taking account of the Ministry of Defence's representations on the management of the threshold'*.¹²⁰ It was also agreed that it is open to the Secretary of State to reach his own conclusion based on the evidence before him rather than to rely on the Ministry of Defence's consultation response.
- 4.61 In support of the Hallburn Farm project it can be demonstrated that the operational effectiveness of the Array would not be compromised by granting permission for the proposed development. In the absence of other planning objections the need for on-shore wind projects, as articulated in national, regional and local planning policy, demands that planning permission should be granted.
- 4.62 Taking Further Modified MoD Table 1,¹²¹ the effect of removing Earlshaugh would release sufficient budget to accommodate Hallburn Farm, Beck Burn Peat Works and Rowantree. That would continue to apply even if all of the schemes in the planning system, and with no objection from the Ministry of Defence (relating to the Array), are constructed at the levels on which the Ministry of Defence was consulted.
- 4.63 Therefore, irrespective of whichever figures the Secretary of State might consider to be the correct baseline, the inescapable conclusion is that there is sufficient budget to accommodate the appeal scheme; and there would be no need for the Ministry of Defence to change its position of non-objection to any project.
- 4.64 Moreover, the effect of releasing the budget held by the 16 turbines at Ewe Hill (the subject of an objection by NATS¹²²), with a total capacity of 32.4 megawatts, would allow 21 other projects, with an overall capacity of 469 megawatts, which are the subject of an objection by the Ministry of Defence, to proceed (subject to being acceptable on all other grounds).¹²³ This clearly demonstrates the benefits of allocating the available budget at the point of decision and to avoid stagnant projects from sterilising it.

¹²⁰ Statement of Common Ground: paragraph 5.5: Proof of Evidence (Michie): paragraph 26

¹²¹ CD9.29

¹²² National Air Traffic Services

¹²³ CD9.30

- 4.65 It can be shown that the 'first come first served' approach is not the only way to effectively safeguard the Array. The appellant's alternative approach would maintain consultation with the Ministry of Defence following receipt of an application;¹²⁴ the Ministry of Defence could issue a 'holding objection' (or raise no objection in the event of no or negligible effect on the Array); and at the point of decision the decision maker would re-consult the Ministry of Defence; if budget remained available it could be allocated to the project provided that a permission was (i) issued within a stated period of time and (ii) the decision maker would provide confirmation of the issue of permission or consent to the Ministry of Defence.
- 4.66 It would be reasonable to assume that the Ministry of Defence would not manage its consultation responses in such a way as to release too much budget leading to the threshold being breached; and, barring a decision maker acting contrary to the Ministry of Defence's position, it would therefore continue to safeguard the Array.
- 4.67 Such an approach would not place the Array at any greater risk than it faces under the current procedure. Although it was, in effect, accepted that the alternative approach was feasible, the reason for rejecting it was that was not the way in which the Ministry of Defence had chosen to deal with it. That provides no credible reason to resist Hallburn Farm which is ready and able to proceed.
- 4.68 The Ministry of Defence's justification of its approach condenses to one of fairness to participants in the system and the possible premature allocation of budget ahead of the completion of the ongoing work of the Eskdalemuir Working Group. However, the impression gained by the Ministry of Defence's witness as to the future remit of the Group, and the consideration of the management of the existing budget, is not supported by documented material.
- 4.69 The appellant maintains that the concept of fairness advanced by the Ministry of Defence is a unique approach. Across all other development sectors (e.g. housing and retail), those promoting schemes accept that there is an element of commercial risk to any project, and where there is a finite capacity in a particular area (such as for housing numbers or retail floorspace) then it is the scheme that crosses the finishing line first that gains the advantage.
- 4.70 In terms of protecting the Array, there is no reason for a different approach which rewards those who get to the start line first regardless of the merits of that particular proposal or the ability to approve acceptable projects, in a timely manner, in the public interest.
- 4.71 Overall, the Ministry of Defence's approach is factually wrong; and its rigid adherence to its current methodology fails to engage with the appellant's argument that there is a better way. As a consequence the renewable energy policies of the Secretary of State are being undermined by the unjustified and dogmatic stance of the Ministry of Defence.

¹²⁴ CD 9.9(A) and CD 9.9(B)

- 4.72 Overall, there is currently budget available for Hallburn Farm to be approved. If the Secretary of State is minded to grant planning permission he should, before issuing his decision, re-consult the Ministry of Defence to ensure that the budget which is currently available is allocated to Hallburn Farm and allows planning permission to be granted.

Conclusions

- 4.73 On the basis of the appellant's uncontested evidence the conclusion must be that the Hallburn Farm project is in accordance with the provisions of the development plan.
- 4.74 If the appellant's approach to the management of the seismic ground vibration budget is followed, the Array would still be safeguarded if permission is granted; and there are no other material considerations which outweigh the presumption in favour of the proposal in accordance with the need expressed in the development plan, the National Planning Policy Framework, national policy statements and relevant energy policy.

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5. The Case for EDF Renewables Limited (Beck Burn Peat Works)

Introduction

- 5.1 In this Inquiry there has been no real disagreement on the 'usual' planning matters, save for some concerns from local residents about their living conditions. Indeed, had it not been for the Array, the Planning Officer's recommendation would have been for planning permission to be granted. The implications of the development for the Eskdalemuir Seismological Array and the planning balance represent the main issue.

Renewable energy policy background

- 5.2 The evidence on need and policy is agreed and set out in the Statement of Common Ground. In short, it is evident that there is a strong policy drive to continue to develop renewable energy and there is a need for developments that are acceptable in planning terms to be approved.
- 5.3 International and national commitments have been made to address the effects of climate change and to achieve greater security in the domestic supply of energy. This in turn has directly influenced a response through the land use planning system. The Regional Spatial Strategy still has a central role and emphasis in the attainment of renewable energy targets.
- 5.4 The regional renewable energy base studies make consistent points, namely that the North West region has a significant potential to increase its delivery of renewable energy sources and that on-shore wind is a principal source of renewable energy.
- 5.5 The following key points strengthen the need case for the proposed development: - ¹²⁵
- (i) at a European level, the targets for the generation of renewable energy are 'ambitious' – 20% of all its energy from renewable sources by 2020 and for 15% of all energy consumed in the UK to come from renewable sources by 2020;
 - (ii) the consequential UK targets are challenging (e.g. the level in 2011 was approximately 3.8% against the 15% target for 2020);
 - (iii) the UK Renewable Energy Strategy is aimed at contributing to the security of energy supplies in the UK through reductions in demand for fossil fuels of approximately 10% and gas imports by between 20 - 30% against forecast use in 2020;
 - (iv) the 'Renewables Statement of Need' is a material consideration which deserves significant weight; and
 - (v) the Government has a strong policy drive to achieve electricity decarbonisation and security of supply within the overall framework of energy policy.
- 5.6 It is clear that Government policy on renewable energy forms part of a much wider international picture of ever more ambitious policy targets designed to tackle climate change. Long term strategies have been put in place to further those aims and, so far as the UK is concerned, on-shore wind is regarded to be an essential component for the time-being and foreseeable future.

¹²⁵ Proof of Evidence (Bell): Section 4

- 5.7 There remains a shortfall on a national (and a regional basis in this case) against targets for renewable energy generation; and the targets are not capped. Although the progress of renewable technologies, and on-shore wind specifically, may be reasonably healthy in terms of achieving the 2020 target, much depends on proposals already in the planning system, such as the appeal proposal, coming to fruition. Given the Government's ambitions, beyond 2020, further projects will need to come forward.
- 5.8 In summary, there is a very strong need for the proposed development which is not undermined by its comparatively 'small' contribution to overall Government targets.

Other matters: ornithology and ecology

- 5.9 In terms of potential impacts arising from the proposed development on the Upper Solway Flats and Marshes Special Protection Area, initial objections were received from Natural England, the Royal Society for the Protection of Birds and the Wildlife and Wetlands Trust. All three bodies now have no objection to what is proposed subject to the institution of a scheme to safeguard and improve the interests of the species of geese which are part of the qualifying interest of the Special Protection Area.
- 5.10 The proposed goose management scheme, to be secured through a completed Planning Obligation, represents an essentially unopposed demonstration that the operation of the development would not give rise to any likely significant effects on the interests of the Special Protection Area. On that basis no 'Appropriate Assessment' is required from the Secretary of State. The goose management scheme would, in fact, produce net benefits for the species of geese dependent on the Special Protection Area.
- 5.11 Assessment of the proposal under the Habitats Regulations involves a series of steps.¹²⁶ Taking these in turn, the proposal is not directly connected with or necessary to site management for nature conservation; and it would not result in a likely significant effect on the designated area. Although Natural England initially took a different view, it has subsequently reached the conclusion that no significant effects would arise if the proposed goose management scheme is implemented.¹²⁷ Consequently, 'permission may be granted'.
- 5.12 However, if it were to be concluded that the proposal would be likely to have a significant effect on the designated area, there is nothing to suggest that the proposal would adversely affect the integrity of the relevant area. The critical factors in this conclusion are: -
- (i) there would be no loss of any Special Protection Area habitat;
 - (ii) there would be no effect on the Special Protection Area itself; and no significant disturbance from any other habitat used by Special Protection Area populations;
 - (iii) there would be negligible collision risk; and
 - (iv) no species would be displaced from the site and there would be no direct habitat loss within the Special Protection Area.¹²⁸

¹²⁶ Environmental Statement Vol. 4: Appendix E3 'Appropriate Assessment' (page 25) – ref: Circular 06/2005

¹²⁷ Written Statement (Percival): paragraph 3.9, 3.10; CD12.6 (letter from Natural England dated 3 June 2011 '.....NE advise that a conclusion of No Likely Significant Effect can be reached')

¹²⁸ Environmental Statement Vol. 4): Appendix E3 'Appropriate Assessment' (page 20)

- 5.13 Again, 'permission may be granted'.¹²⁹ Thus, the goose management scheme is not considered to constitute required mitigation, although it would reduce potential effects on the Special Protection Area; but, if the Secretary of State disagrees, the scheme can be treated as mitigation.¹³⁰
- 5.14 Although criticism has been made of the bat survey (in relation to one property) the Environmental Statement found the open peat areas to be mainly avoided by bats and very little bat presence (being limited to up to three soprano pipistrelles, common pipistrelles or noctule bats at any one time). The first two species are known to fly well below blade height; and whilst noctule bats fly at a height which might coincide with the lower blade zone, bat activity declines beyond 50 metres from hedgerows and tree lines. Here the nearest turbine (T2) would be 100 metres away from the woodland edge. Consequently, potential operational impacts would be likely to be low.

Other matters: residential amenity

- 5.15 Although several local residents have expressed concerns about the impacts that there would be on residential amenity, site visits to the relevant properties will have confirmed that, while '*significant*' visual effects would inevitably arise for houses within a certain distance of the wind turbines and with a clear view of them, no dwelling would come to be regarded as an unattractive place in which to live. This provides the recognised threshold or test as endorsed by the Secretary of State in his decision on a proposed wind farm at Burnthouse Farm.¹³¹
- 5.16 The Landscape and Visual Impact Assessment within the Environmental Statement undertook an assessment of the visual effects on the residential amenity of all properties within 2.4 kilometres of the proposed wind farm. It found that at 55 locations (comprising a mix of individual dwellings and groups of properties) '*significant*' effects to visual amenity would be experienced.¹³²
- 5.17 A review of that study for the purposes of providing evidence to the Inquiry concurred with the original assessment, save for a small number of instances where it was considered that effects would not be '*significant*'; but this does not undermine the overall conclusion that, taking account of intervening distance, the size of the turbines and the proportion of the view occupied by the development, the effects on residential amenity would not be overbearing, overwhelming or oppressive.
- 5.18 In this regard, within 1 kilometre of the wind farm only 6 properties would have open views towards the proposed turbines: - Gaitle, 3 dwellings at Gaitle Bridge, Red Brae and Close Gap.¹³³ In Springfield, some 1.2 kilometres to the south-west of the proposed wind farm, the greatest visual effects on residents would apply to those living on the eastern and southern edge of the settlement where there would be full views of the turbines from rear gardens with some partial screening by garden

¹²⁹ The submissions relating to the Special Protection Area apply to the Ramsar Site (for which an 'Appropriate Assessment' might be required as a matter of policy)

¹³⁰ Written Statement (Percival): paragraphs 3.11 – 3.13

¹³¹ CD6.13; Proof of Evidence (Bell): paragraph 5.3.21; Proof of Evidence (Welch): paragraphs 8.9 – 8.15

¹³² Environmental Statement: Vol. 4 (Appendix 3); Vol. 3 ((Figure 9.6)

¹³³ Various referred to as 'Closegap'

vegetation. Views from other parts of the settlement would, generally, be more restricted.

- 5.19 Additionally, in preparing evidence for the Inquiry, a new property, Trackside, on the edge of Springfield was noted. Although it would experience a '*significant*' visual effect, due to its open outlook towards the site, the dwelling is well beyond the range, approximately 1.4 kilometres from the nearest proposed turbine, to be adversely affected.¹³⁴
- 5.20 It should also be noted, in response to the concerns raised by the owners of Westgillsyke, that an error was found in the original wireframe visualisation relating to their property;¹³⁵ but this was subsequently corrected.¹³⁶ The landscape witness (who was not involved in the preparation of those visualisations) has confirmed that his own checks of the visual material show, with the exception of the original image for Westgillsyke, the visual aids to be accurate and to an appropriate standard.¹³⁷

Other matters: landscape and visual

Landscape and visual impact assessment

- 5.21 The Landscape and Visual Impact Assessment for the proposal was prepared by a chartered landscape architect; it was scrutinised independently on behalf of the Council;¹³⁸ and a third chartered landscape architect prepared evidence for the Inquiry. All three independently considered that the proposal would not lead to any unacceptable effects in landscape, visual or cumulative terms.¹³⁹
- 5.22 It is also noted that the City Council's Officer's Report acknowledges that the proposal would not cause unacceptable harm to the local landscape character; it would not give rise to significant effects on the setting of the Solway Coast Area of Outstanding Natural Beauty; visual impacts would be mitigated by distance and woodland screening; the development would not appear dominant or oppressive from residential properties; and in combination with existing, consented, or proposed wind farms the development would not have significant cumulative effects.¹⁴⁰

Landscape character

- 5.23 The proposed wind farm site covers an area of some 21 hectares and lies within a vast and broadly flat area of land known as Solway Moss which is used for peat extraction. It is located wholly within the Coastal Margins Landscape Character Type (Coastal Mosses Sub-Type). The site is currently used for peat extraction with the exception of woodland areas (Moss Wood and Gapmoor Wood). It is a dramatically altered landscape which contrasts markedly with its surroundings; peat extraction is permitted until 2040.¹⁴¹

¹³⁴ Proof of Evidence (Welch): paragraph 8.14

¹³⁵ Environmental Statement Vol. 3 (Figures): Visualisation 1b

¹³⁶ CD11.10: Visualisations 1c, 1d, 1e

¹³⁷ Proof of Evidence (Welch): paragraph 3.8

¹³⁸ Proof of Evidence (Welch): Section 10

¹³⁹ Proof of Evidence (Welch): paragraph 1.3; see also paragraphs 3.10, 3.11 re Erratum within the original Landscape and Visual Impact Assessment

¹⁴⁰ Proof of Evidence (Welch): Section 11

¹⁴¹ Proof of Evidence (Welch): paragraphs 7.2, 7.3

- 5.24 The predominant land use in the Coastal Mosses is the peat extraction area with improved pasture, which is often in large square fields on flatter areas or long narrow fields on the undulating land. Tree cover is made up of belts of mixed woodland.
- 5.25 The local landscape in the vicinity of the appeal site has a high concentration of 'man-made' elements including a disused Ministry of Defence facility immediately to the east; and an operational facility approximately 400 metres to the south-east. There is an overhead electricity transmission line to the west of the site; the West Coast railway line runs approximately 1.2 kilometres to the south-west; and the M6 motorway is some 2.0 kilometres away in the same direction.
- 5.26 The Cumbria Wind Energy Supplementary Planning Document identifies the Coastal Margins as having a low/moderate capacity to accommodate a small turbine group (3 - 5 turbines) and exceptionally a large turbine group (6 - 9 turbines). It is noted however that the quality and condition of landscape character and landscape fabric are relatively low for Solway Moss due to the level of human influences on the landscape.
- 5.27 Effects on the landscape character type and sub-type up to a distance of 4 kilometres from the site are identified as '*significant*' but beyond this the magnitude of change would not be '*significant*'. It is acknowledged that from within a number of adjacent landscape character types that there would be simultaneous visibility beyond 4 kilometres with the operational wind farms at Minsca and Craig within Dumfries and Galloway. No '*significant*' adverse effects are recorded.
- 5.28 Overall, although effects on landscape character would be '*significant*' within the immediate locality of the site, the landscape character has an inherent degree of capacity to absorb a wind farm of the size and scale proposed. In landscape terms, the site would be a suitable location for the proposed development.¹⁴²

Landscape designations

- 5.29 The Solway Coast Area of Outstanding Natural Beauty is located approximately 3.4 kilometres to the south-west of the proposed wind farm at its closest point and extends out to 25 kilometres; the quality of the coastal plain pastoral landscape is enriched by its relationship with the coast, its seascapes and dominant sky. Views of the wind farm from the designated area would include other 'man-made' elements and it would be seen in the context of wide open views and horizons. The effects would not be '*significant*'.
- 5.30 The Landscape and Visual Impact Assessment identifies a '*significant*' effect on the Liddel Water Landscape of County Importance (which runs to the north-east of the site for a distance of 2 - 18 kilometres) where it lies generally within 4 kilometres of the site. However, this amounts to a small proportion of the designated area and woodland cover would serve to reduce the visibility of turbines to a substantial degree.¹⁴³

¹⁴² Proof of Evidence (Welch): paragraphs 7.8 – 7.30

¹⁴³ Proof of Evidence (Welch): paragraphs 7.5 - 7.7

- 5.31 Overall, the effects on landscape designations would be localised and they would not amount to an unacceptable level of impact.¹⁴⁴

Visual effects

- 5.32 The Landscape and Visual Impact Assessment illustrates the type and extent of visibility of the development that might be experienced in and around settlements, transport routes and visitor destinations.
- 5.33 In terms of communities, whilst a number of properties on the edge of Springfield village would have direct views of the turbines, a large number of houses within that settlement, and also within Gretna, Gretna Green and Longtown, would not have any view of the wind farm on account of tightly knit built form and intervening screening.¹⁴⁵
- 5.34 For example, from Gretna Green the most noteworthy views are said to be from the south-eastern edge of Glasgow Road with turbine blades apparent at a distance of some 2.2 kilometres away. Similar views, at a slightly greater distance, would be available from parts of Gretna.
- 5.35 In terms of Longtown, properties on the western and southern edges of the settlement, and from the northern edge of Netherby Road, would have the clearest views but these would often be partially screened by vegetation. From Netherby Hall, approximately 4.5 kilometres to the north-east of the site, visibility would be heavily influenced by mature woodland within the estate.¹⁴⁶
- 5.36 In terms of roads, railways, footpaths and cycle routes, it is acknowledged that there would be '*significant*' effects on sections of a number of routes within 4 kilometres of the wind farm. However, such effects would be entirely consistent with many other wind farms which have been found to be acceptable elsewhere.¹⁴⁷

Cumulative effects

- 5.37 The Cumulative Landscape and Visual Impact Assessment found limited incidences of '*significant*' cumulative landscape effects between the two projects due to separation distance and the concentration of intervening screening.¹⁴⁸
- 5.38 In terms of cumulative visual effects, it was found that the addition of the appeal proposal to the baseline containing Hallburn Farm would result in likely '*significant*' effects for some residents of Springfield, Longtown and some individual properties. However, the developments would often be viewed in opposite directions and the level of tree cover would also result in limited incidences of notable inter-visibility.¹⁴⁹
- 5.39 Overall, there would be no instances beyond a range of 2 to 3 kilometres where there would be '*significant*' cumulative landscape or visual effects. Moreover, the separation distance of some 5 kilometres between the sites would ensure that each project retained its own identity.¹⁵⁰

¹⁴⁴ Proof of Evidence (Welch): paragraphs 7.5 – 7.7

¹⁴⁵ Proof of Evidence (Welch): paragraphs 8.4, 8.7

¹⁴⁶ Viewpoint 9

¹⁴⁷ Proof of Evidence (Welch): paragraphs 8.6 – 8.8

¹⁴⁸ Proof of Evidence (Welch): paragraph 9.4

¹⁴⁹ Proof of Evidence (Welch): paragraph 9.5

¹⁵⁰ Proof of Evidence (Welch): paragraphs 9.6

Other matters: cultural heritage

- 5.40 The Environmental Statement concludes that there would be no '*significant*' effects in relation to the Solway Moss Battlefield or Hadrian's Wall World Heritage Site. Although an effect of moderate significance was predicted on the setting of Netherby Hall (Grade II* Listed building), English Heritage raised no objection and the case planning officer concluded that the proposal would be acceptable in terms of its impact on the historic environment.¹⁵¹

Other matters: peatland restoration

- 5.41 The appeal site is located within a peat extraction site which is subject to a planning permission which, on expiry of the works, seeks restoration of the peatland to a good quality lowland blanket bog. The site has been extensively drained by the current extraction works which has led to changes in the structure of the peat through drying out.
- 5.42 The proposed wind farm would be constructed in a manner which would not exacerbate these ongoing effects, for example, by covering and creating peat and silt bunds around turbine bases and adjacent to the undrained peat. Clay bunds would also be used alongside access tracks to ensure that the adjacent peat remains protected.¹⁵²
- 5.43 In response to a matter raised by an interested party,¹⁵³ concerning the retention of concrete foundations as part of the proposed decommissioning works, concrete cannot float in a medium less dense than itself. The mass of concrete and clay forming the foundation would be tied into the mineral soil underlying the peat. Therefore, as the concrete clay mix forming the turbine foundations would be significantly denser than wet peat, basic Archimedean principles dictate that there would be no possibility of a concrete foundation rising through the peat. This would be valid irrespective of the thickness of the peat remaining at the time of decommissioning.¹⁵⁴
- 5.44 Initial concerns about potential conflict between the restoration of the wind farm component and the successful restoration of the peatland has been resolved by a Planning Obligation.¹⁵⁵

Other matters: noise and shadow flicker

- 5.45 It is confirmed that the predicted wind turbine noise levels at all residential locations would meet both the day-time and night-time noise limits, set out in ETSU-R-97: The Assessment & Rating of Noise from Wind Farms, under all wind conditions.
- 5.46 In terms of shadow flicker, 16 properties were assessed within the potential shadow flicker zone of influence on a 'worst-case' basis and assuming no mitigation. Although there are no set guidelines in the UK relating to the threshold by which shadow flicker becomes a nuisance, the common standard in other European countries is 30 hours per year, or 30 minutes at one time.

¹⁵¹ Environmental Statement Vol. 2 : Chapter 13; Proof of Evidence (Bell): paragraph 5.4.2

¹⁵² Beck Burn Wind Farm – Clarification Report on Peat – 23 June 2011 (Appeal Documents Bundle – Tab 8)

¹⁵³ Mr Wilson

¹⁵⁴ CD9.32

¹⁵⁵ ID21; ID22; ID23

- 5.47 The modelling indicates that Close Gap, based on the above assumptions, could potentially experience 51.7 hours of shadow flicker per year and a predicted duration of more than 30 minutes. Irrespective of the conservative nature of the assessment, it is to be noted that Gap Wood currently provides significant screening and would have some influence in mitigating effects. Nonetheless, a planning condition could be imposed to protect living conditions.

Other matters: tourism

- 5.48 Research on wind farms and tourism provides no evidence to indicate that the presence of wind turbines affects visitor numbers, visitor spend and tourism businesses to an unacceptable extent.¹⁵⁶ A review of various wind farm appeal decisions shows that there is no compelling evidence to support concerns about the tourism industry being undermined to a material degree by wind farm development.

Eskdalemuir Seismological Array

- 5.49 The core matter in relation to the Array is its protection from vibration that would cause a threshold agreed under an international treaty to be exceeded. The need and importance of such protection is common ground. The sole issue in contention is the method by which the Ministry of Defence advise planning decision makers on whether or not there is any available budget for proposed development.
- 5.50 The essence of the Ministry of Defence's approach is as follows: -
- (i) the budget tool is operated on a 'first come first served' basis, the critical date being the entry of a project into the planning system;
 - (ii) until a scheme which enjoys an allocation of budget is finally refused planning permission, or is withdrawn, it retains that budget;¹⁵⁷ and
 - (iii) if and when budget becomes available it is absorbed by the next development in the queue.
- 5.51 The Ministry of Defence is no more than a consultee in the planning process and it is agreed that *'it is for the consenting authorities to decide whether, in the circumstances before them, it is for one particular development to make use of the available threshold, subject to their taking account of the MoD's representations on the management of the threshold'*.¹⁵⁸ It is therefore common ground that the Secretary of State is not bound to follow the approach of the budget tool.
- 5.52 The appellant considers the current approach to be deeply flawed: -
- (i) there is very strong national policy support for renewable energy development, including on-shore wind farms; the current proposal should be allowed if the impact of the development would fall below the threshold thereby safeguarding the operational effectiveness of the Array;

¹⁵⁶ Proof of Evidence (Bell) – Section 5.8 & Appendix 4

¹⁵⁷ 'MoD Table 1' within the Statement of Common Ground shows the schemes which currently enjoy budget;

¹⁵⁸ Statement of Common Ground: paragraph 5.5

- (ii) taking into account all built and permitted schemes there is more than sufficient available budget to allow the construction of Beck Burn wind farm (and those proposed at Hallburn and Rowantree);¹⁵⁹
- (iii) there is budget headroom for Beck Burn (and Hallburn and Rowantree) even if all the schemes in the planning system, with no objection from the Ministry of Defence, were built (including Ewe Hill if subsequently consented);¹⁶⁰
- (iv) approving Beck Burn would not require the Ministry of Defence to raise an objection, where it has not done so hitherto, to any scheme currently in the planning system and listed in 'MoD Table 1';¹⁶¹
- (v) the futility and sterility of the Ministry of Defence's current approach is illustrated by reference to the allocation of the remaining available budget to the proposed Earlsbaugh wind farm. Only 2 turbines out of a layout of 24 have budget; the remainder of the development requires mitigation; there is currently no proven mitigation available; and the project awaits a Public Inquiry and a decision which is likely to be some 2 years away;¹⁶²
- (vi) the removal of budget from the Earlsbaugh project would not result in prejudice as that scheme could only proceed if a scheme of mitigation is agreed;
- (vii) the Ministry of Defence admitted that if a scheme with budget dropped out, the allocation of the returned budget would go to the next scheme in the queue even if the allocation was insufficient for the project as a whole to be implemented, and irrespective of other constraints; consequently, other schemes below it would remain blocked; and
- (viii) the proposed Newfield wind farm also requires mitigation.¹⁶³ If that scheme and the 16 outstanding turbines at Ewe Hill are discounted, then, in return for approximately 37 megawatts of capacity at Ewe Hill,¹⁶⁴ budget would become available for over 450 megawatts of capacity (based principally on the greater distance of queuing schemes from the Array and the dissipation of vibration with distance).¹⁶⁵

5.53 Overall, the manner in which the Ministry of Defence operates its budget tool is, absurdly, sterilising available budget and precluding schemes which would be able to use it from proceeding. This demonstrates the abject failure of the Ministry of Defence's approach in terms of the objective of delivering substantial renewable energy capacity without endangering the Array threshold.

¹⁵⁹ CD9.28 i.e. the developments at Ewe Hill and Earlsbaugh are neither approved nor constructed

¹⁶⁰ CD9.28 i.e. all developments apart from Earlsbaugh

¹⁶¹ Statement of Common Ground: Appendix

¹⁶² Proof of Evidence (Bell): paragraph 1.8.2(b)

¹⁶³ Public Inquiry was due to resume in February 2013

¹⁶⁴ The budget allocation is based on 22 turbines @2.3MW; approval has been granted for 6 turbines @ 3MW with the remaining 16 constrained – if the 6 turbines were constructed the balance of the budget would be 32.6MW

¹⁶⁵ CD9.30 inevitably a hypothetical exercise because there may well be projects within corrected MoD Table 2 that could not proceed to planning permission for other reasons. However, should that be the case then budget becomes available for further projects within MoD Table 2 or yet to be submitted.

- 5.54 Moreover, the Ministry of Defence does not up-date its budget tool in light of wind farms that have been constructed. In this regard the Clyde wind farm was allocated a budget of 456 megawatts comprising 152 turbines @ 3 megawatts; yet 2.3 megawatt machines have been installed. Nonetheless, the unexpended balance of the budget remains with that project in the event of the developer deciding to upgrade the turbines within the life-time of the consent. This is unreasonable because: -
- (i) no wind operator behaving rationally would, having chosen a turbine for good commercial reasons, decide to replace 152 generators;
 - (ii) it is not at all clear that a larger capacity generator could be acceptably installed within an existing turbine;
 - (iii) the Ministry of Defence has produced no evidence to suggest that planning permission (and hence re-consultation with the Ministry of Defence) would not be required for such an operation; and
 - (iv) although it was accepted that there might be a theoretical possibility of repowering turbines already installed, the likely practical consequences, persuasively, led to a different conclusion in that, given the scale of Clyde, a developer would have undertaken a rigorous commercial assessment before choosing the turbines to be installed. Taking into account engineering infrastructure and investment there was an extremely low risk of the operator re-powering to the consented limit.
- 5.55 This example underlines how valuable budget is unreasonably shut away for more than 25 years for an unlikely event. Thus, the renewable energy policies of the Secretary of State are being handsomely frustrated by the unnecessary, illogical, mechanistic and sterile application of the Ministry of Defence's budget tool.
- 5.56 It is notable that the Ministry of Defence does not take issue with any of the above factual evidence leading to the conclusion that Beck Burn could otherwise proceed.
- 5.57 The Ministry of Defence argues that its allocation of the budget is known to all participants in the planning system; and it should be followed as it represents the best (and indeed the only way in present circumstances) of pragmatically and effectively managing the threshold. However, this depends on adopting the principle that planning decisions should not be made in the light of circumstances prevailing at the date of the decision, but rather should be based on maintaining the 'first come first served' approach, even if that fails to maximise the deployment of renewable energy in a timely fashion.
- 5.58 The Ministry of Defence's approach is unique in the planning process and stands unsupported by national or local policy in protecting would-be developers from risk and investor confidence.¹⁶⁶ Developer risk is an inevitable feature of the planning system; for no other type of development could a developer secure budget (for example highway capacity, housing land, retail floorspace) simply by submitting a planning application and thereby reserving capacity for a potential future project.

¹⁶⁶ Proof of Evidence (Michie): paragraph 34

- 5.59 Although the Ewe Hill scheme might still receive planning permission, it is wrong to allow projects to hold budget for an inordinate length of time; or to allow proposals, such as Earlshaugh, to retain an allocation which cannot be used. The resultant effect of preventing other projects from proceeding serves no useful planning purpose.
- 5.60 As to the Ministry of Defence's fear that the appellant's approach would remove its ability to safeguard the overall budget, the current means of consultation would remain;¹⁶⁷ it is to be noted that the Directions applicable in England or Scotland do not specify the scope of the Ministry of Defence's consultation response, or the number of times that it may be consulted on any given scheme. Accordingly, the appellant's suggested approach would not necessitate amended Directions.
- 5.61 Whilst the Ministry of Defence is legitimately concerned that if it were to respond to the effect that there was budget available for any given scheme, the position could change between the date of its consultation response and a grant of planning permission. However, this could be remedied by issuing a 'holding objection' at the initial point of consultation which also indicated any actual availability of budget. A decision maker, intending to grant planning permission for the project, would, at that stage, revert to the Ministry of Defence to determine whether there was at that point in time available budget. If sufficient budget were to be available, the Ministry of Defence could allocate it to that project provided that a permission was issued within a stated period;¹⁶⁸ and thereby safeguard its position.
- 5.62 The Secretary of State is entitled to assume that any planning decision maker would behave reasonably and therefore not put the threshold at risk by granting a planning permission against the background of a 'holding objection' by the Ministry of Defence. Even if the view is taken that there was a risk of such unreasonable action, that risk exists now under the 'first come first served' approach.
- 5.63 As to the claim that a second stage of consultation would impose unacceptable resource requirements, consultation requests relating to the Array are a small proportion of the Ministry of Defence's overall work; and the organisation must accept the need to achieve maximum renewable energy generation even if there is a price to be paid in terms of the resources it requires.
- 5.64 In any event, the additional demand on resources could be mitigated by changing procedures. It is suggested that the budget tool spreadsheets could be updated more regularly and made available online to provide up-to-date information without the need for developers or local planning authorities having to consult the organisation.
- 5.65 In turn, if the appellant's arguments are accepted, the Secretary of State and the Scottish Ministers could issue further guidance on the application of the Directions, making it clear that it would only be appropriate to approach the Ministry of Defence to see if the 'holding objection' might be lifted when the issue of a permission was imminent. There are ways of managing resources in an acceptable way.

¹⁶⁷ CD9.9(A) & CD9.9(B) – the Directions require consultation before permission is granted

¹⁶⁸ CD9.31

- 5.66 Turning to the Ministry of Defence's prematurity argument,¹⁶⁹ the suggestion that the Eskdalemuir Working Group, which was originally convened to examine the management of any 'new' budget that might become available as a result of further research,¹⁷⁰ could be looking at a revision to the management of the existing budget, there is nothing documented to verify that. Additionally, there is nothing to demonstrate that the Scottish Government, which sets the remit of the Group, is certainly set on such a revision.
- 5.67 However, to the extent that the management of the existing budget may become a topic for the Eskdalemuir Working Group, this simply demonstrates a recognition that the existing approach is not working. Why else would the topic be examined?
- 5.68 In any case, a prematurity argument only has planning merit if there is some event, which was desirable in planning terms, which could be prejudiced by a decision in advance of the sanction or occurrence of that event. It could not be undesirable in any circumstances for the Secretary of State to sanction the suggested approach if he was satisfied that the only precedent set would be for further acceptable development and that such development could be managed in a manner so as to not prejudice the Array through the management of the threshold.¹⁷¹ It has already been demonstrated that a desirable outcome can be achieved.
- 5.69 In conclusion, it is clear that there is available budget for Beck Burn wind farm; and, if the Secretary of State agrees that planning permission can be granted, then further consultation should be undertaken with the Ministry of Defence to ascertain confirmation of budget availability before allowing the appeal. That simple step would entirely safeguard the budget threshold.

Conclusions

- 5.70 Given that the Array is not a topic addressed in the development plan, it has been demonstrated that the proposed development accords with the provisions of the development plan, set out in the Regional Spatial Strategy, the saved policies in the Cumbria and Lake District Joint Structure Plan and the saved policies within the Carlisle Local Plan.¹⁷²
- 5.71 In terms of national policy, there is no disagreement between the appellant and the local planning authority on the way that national energy and national planning policy should be approached in this appeal.¹⁷³ Moreover, despite claimed incoherence and disarray within Government on its energy policy direction, the strong positive policies of the Government towards renewables, including on-shore wind, remain as they were when the Coalition Government came into being. There are no national policy documents which indicate any weakening of resolve in terms of renewable energy deployment, against the background of the UK's legal obligation to source 15% of its energy needs from renewables by 2020.

¹⁶⁹ Proof of Evidence (Boyd): paragraph 13

¹⁷⁰ CD9.23: Minute 6

¹⁷¹ CD2.4: paragraph 5.4.9

¹⁷² CD1.1, CD1.2, CD1.3

¹⁷³ Proof of Evidence (Bell): Sections 3 - 5

- 5.72 At a more local level, significant weight should be given to the notable shortfall in meeting the renewable energy deployment targets for 2010 and to the correspondingly massive challenge for meeting 2015 and 2020 targets. These targets, and the database supporting them, will continue to be of material consideration and significant weight even when the Regional Spatial Strategy is abolished. In this specific context, following the lead given by the Inspector in the Spaldington decision,¹⁷⁴ greater weight should be given to the need for renewable energy in circumstances where there has been a failure to achieve a target.
- 5.73 That is not to say that every single wind energy project should be allowed to proceed in order to meet targets as inappropriate development should never proceed. However, the proposed Beck Burn wind farm would be the right wind farm in the right place. The environmental effects of the development would be acceptable. The development accords with the provisions of the development plan as a whole and is supported by material considerations. Again, the wind farm would make a material and useful contribution to the achievement of challenging targets.
- 5.74 Finally, in the case of some proposed wind farms (and indeed any development) there may be some very particular local environmental effect, which dominates the mind of the decision maker. This is not such a case. There is nothing unusual about Beck Burn wind farm. Its landscape and visual effects would not extend beyond those that would be expected for any development of this kind. In addition, the case made by the appellant in relation to the Array represents a robust and correct planning approach to this issue; and this should guide the outcome of the appeal.

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¹⁷⁴ Proof of Evidence (Bell): paragraph 3.4.2; CD 6.17

6. The Case for Local Organisations and Interested Persons

Hallburn Farm: written representations at application stage

- 6.1 The Council's Committee Report indicates that at the time of preparing the report some 355 letters or emails of representation had been received; 266 opposing the proposal and 89 expressions of support.¹⁷⁵ A petition bearing 289 signatures opposed the application. Further representations before determination included objections from Rory Stewart MP, a County Councillor and 19 pro forma objection letters/cards.¹⁷⁶
- 6.2 The main objections are summarised as: -
- landscape and visual, including impacts on the landscape and the setting of Hadrian's Wall;
 - economic with concerns relating to the tourist industry, the local economy and house prices;
 - impacts on living conditions and health, notably noise and flicker;
 - effects on the natural environment, with particular reference to nature conservation and protected species, and on the historic environment;
 - aviation impacts; and
 - concerns about traffic, highway safety and the comparative utility of wind power.¹⁷⁷
- 6.3 The supporting representations are largely based on the advantages of clean energy, the acceptable appearance of turbines and the location of the site away from any populated areas.
- 6.4 Consultation responses include objections from; -
- **Royal Society for the Protection of Birds, Natural England and Cumbria Wildlife Trust** but subsequently withdrawn following agreement on a management plan;
 - **Solway Coast AONB Unit** in relation to visual impacts;
 - **Carlisle Airport** but subsequently withdrawn;
 - **Cumbria County Council** setting out conflict with the development plan and adverse landscape and visual amenity impacts and potential impacts on biodiversity;
 - **English Heritage** but later withdrawn following availability of further visualisations; and
 - **Campaign to Protect Rural England/Friends of the Lake District** given likely landscape and visual impacts and conflict with development plan policies.

¹⁷⁵ Additional objections

¹⁷⁶ CD12.2

¹⁷⁷ CD 10.3

Hallburn Farm: written representations at appeal stage

- 6.5 Letters at appeal stage, some of which relate jointly to the Beck Burn Peat Works project, include the following points of objection: -
- local communities have given an unfavourable response; and decisions should be taken locally;
 - visual dominance;
 - impacts on the local economy including tourism and a care home;
 - adverse effects on important wildlife habitats and birds;
 - traffic (volume, type, and nature of roads) passing a school and other community facilities;
 - impacts on peat bogs, ground contamination;
 - cumulative effects of wind farm development in the wider locality;
 - compromising the ability of the Esdalemuir Monitoring Station;
 - inadequacy of ETSU-R-97 for assessing noise;
 - taking account of mis-statements about the benefits of wind energy in reducing carbon dioxide gases, and the requirement for the European Union to reassess renewables policy (in order to comply with the Aarhus Convention), a moratorium should be placed on all wind farm appeals;
 - Hallburn Farm is adjacent to the historically important area of the 'Debatable Lands'; and
 - the lateness of the environmental risk assessment is unacceptable and to the material disadvantage of those who wish to make a case against the project; it betrays a lack of local knowledge and raises more questions than it answers; the site was used for incineration during the foot and mouth outbreak in 2001.
- 6.6 A letter from Rory Stewart OBE MP confirms his strong opposition to the proliferation of wind turbines in his constituency.
- 6.7 One letter of support expresses the view, based on observations of several operational wind farms, that the proposal is unlikely to create any real problems given its isolated location. A number of pre-printed cards and letters also offer support given the positive contribution that wind power makes in tackling climate change.

Hallburn Farm: oral representations at the Inquiry

- 6.8 **Julie Walsh**,¹⁷⁸ the owner/manager of Virginia Lodge Care Home (which provides care for 32 residents - many with dementia), explained the benefits of a safe, peaceful and tranquil setting and expressed concerns about health effects arising from flicker, noise and vibration. The care home is also important to the local economy, employing 35 staff.
- 6.9 **Eileen Naude**,¹⁷⁹ a resident of Longtown, pointed to conflict with the Cumbria Wind Energy Supplementary Planning Document and the indication that the landscape capacity was for up to 5 turbines and exceptionally for a group of 6 – 9.

¹⁷⁸ IP1

¹⁷⁹ IP2

- 6.10 The development would also have unacceptable traffic impacts, including damage to roads, conflict with other vehicles especially in the main shopping areas of Longtown. Parts of the route are within the Longtown Conservation Area which deserves appropriate respect.
- 6.11 Concerns were expressed about landscape and visual impacts (views to the Lakeland Fells, Scottish borders and in parts to the Solway Firth). The proposal would be harmful to the tourist industry, which was growing following the devastation of the foot and mouth outbreak in 2001, and there would be impacts on Hadrian's Wall World Heritage Site and the Roman Fort at Netherby some 2 kilometres from the site. Consideration should also be given to cumulative impacts of other wind farm developments and proposals in the locality.
- 6.12 Additional points included the effects on the residents of Virginia Lodge; Cumbria receiving more than its fair share of wind farm applications; and local 'reward' schemes provide no basis for invasive and inefficient energy generation.
- 6.13 **Karen Johnson**, on behalf of Arthuret Parish Council, endorsed the comments of Eileen Naude and expressed additional concerns about impacts on migratory birds, historic heritage, highway issues, visual impacts, adverse health effects and impacts on health and property values.
- 6.14 **Professor John Parratt**, who lives in Longtown, rehearsed his written representations,¹⁸⁰ and added that the Government had put in place powers for local communities to shape their neighbourhoods. Even though English Heritage and the Royal Society for the Protection of Birds had withdrawn their objections, and the Ministry of Defence was not opposing the proposal on aviation grounds, local residents remained concerned. Similarly, although the local planning authority were not raising objections on grounds of noise, visual impact and environmental damage, such matters still merited consideration.
- 6.15 **John Armstrong**, a resident of Hethersfield, questioned why his proposal for two small turbines had been turned down yet this large scale proposal was under consideration. He also pointed to traffic concerns in Longtown.
- 6.16 **Maynard Hall**,¹⁸¹ a resident of Curthwaite, referred to the danger that the proposal could cause to national defence systems and air traffic control. He also made reference to the area being under siege from wind farm proposals; damage to the landscape; penalties to UK electricity users; proper insulation of buildings would achieve more than wind energy; and the role of tidal flows and hydro-power.
- 6.17 **Will Tillotson**,¹⁸² from Longtown, expressed the view that turbines do not work and add nothing to the local economy; there would be risks to wildlife and migrating birds; concrete bases could contaminate ground water; and the likely adverse effects on physical and mental health. He drew on the example of another County setting an embargo on wind farms; noted the need for subsidies; and referred to the recent Aarhus Convention ruling.

¹⁸⁰ Letter dated 27 August 2012

¹⁸¹ IP5

¹⁸² IP6

- 6.18 He also reported the recent licensing of the Lochinvar coalfield and the increase in coal-fired generation in Germany to compensate for fluctuating generation by wind. Additional points included noise, wildlife and landscape effects. Mention was also made of the recent statement of the Rt Hon Owen Paterson MP, Secretary of State for Environment, Food and Rural Affairs, that wind farms were not the answer to climate change.
- 6.19 **Mr Hannah**, who lives to the north of the site, drew attention to an inaccuracy in the residential amenity survey in that the main outlook from his cottage towards the wind farm was not recorded; a photograph with the turbines superimposed shows the impact on his living conditions.¹⁸³
- 6.20 **Diana deGruyther**,¹⁸⁴ made reference to the Keele University Dunlaw Report (2005) and asked (in relation to page 84, question 11, of the report) whether the consistently poor performance of turbines was a reason to increase their numbers and (in relation to page 80, question 7, of the report) whether there was evidence of new foundation designs or active dampening to achieve lower source noise levels.
- 6.21 **Graham Denby**,¹⁸⁵ a local young farmer, set out his support for the proposal,¹⁸⁶ highlighting the use of local labour, the benefits of the community fund; and the future role of wind power.¹⁸⁷

Beck Burn Peat Works: written representations at application stage

- 6.22 The Council's Committee Report indicates, at the time of preparation, that some 275 letters or emails of representation had been received; 161 raising objections and 110 expressing support. A petition objecting to the application and 3 letters of comment were also recorded. An additional letter of objection was reported when the application came before the Committee.¹⁸⁸
- 6.23 The main objections are summarised as:-
- landscape and visual, including cumulative impacts on the landscape and the setting of Hadrian's Wall World Heritage Site, the Bewcastle Fells, The Scottish borders, historic Carlisle, Lake District National Park, the Pennine Way, Solway Coast Area of Outstanding Natural Beauty, Netherby Hall and the battle of Solway Moss;
 - damage to the local economy and tourist industry (especially Gretna Green and proposals for a sculpture on the border by the Gretna Landmark Trust);
 - impacts on living conditions and health, notably noise and flicker;
 - effects on the natural environment, with particular reference to nature conservation, and protected species, and the delicate ecosystem of the peat moss;
 - aviation impacts; and
 - concerns about traffic, highway safety, television reception, mobile phone signals and the comparative utility of wind power.¹⁸⁹

¹⁸³ IP14

¹⁸⁴ IP13

¹⁸⁵ IP4

¹⁸⁶ Including the support of over 100 young farmers to the appeal and 83 who supported the original application

¹⁸⁷ John Armstrong, a local resident, questioned the contributor's impartiality in view of his imminent relationship by marriage to the landowner's family and the sponsorship of the young farmers' event by a wind company.

¹⁸⁸ Appendix 2 to Mr Hutchinson's proof of evidence

¹⁸⁹ Appeal Document 14

6.24 The supporting representations are largely based on the advantages of clean energy, the acceptable appearance of turbines and the location of the site away from any populated areas.

6.25 Consultation responses included objections from; - ¹⁹⁰

- **English Heritage** but subsequently withdrawn following further information and visualisations;
- **Natural England, Royal Society for the Protection of Birds, Cumbria Wildlife Trust and the Wildfowl and Wetlands Trust** but subsequently withdrawn subject to a planning obligation to secure (i) a goose refuge area; (ii) post-construction monitoring; and (iii) evidence that the proposal would not preclude the restoration of the Solway Moss to lowland raised mire;
- **Dumfries and Galloway Council** on negative visual impact (individually and cumulatively) and the potentially harmful effect on the Gretna Landmark Project and its ability to achieve the intended economic impact;
- **Solway Coast AONB Unit** on the grounds of views into and out of the Area of Outstanding Natural Beauty and the landscape and its setting;
- **Cumbria County Council** setting out conflict with the development plan and referring to inadequate evidence to assess whether there would be significant adverse effects on a number of matters;
- **Campaign to Protect Rural England/Friends of the Lake District** identify conflict with development plan policies; and
- **Kirkandrews Parish Council** expressed concerns on ecological grounds; the effects of concrete foundations; height of turbines; and noise and flicker (health effects).

Beck Burn Peat Works: written representations at appeal stage

6.26 Matters of concern include: -

- impacts on living conditions of nearby dwellings;
- adverse effects on ecology, birds and other species;
- contrary to new legislation regarding distances between wind turbines and residential properties;
- will prejudice the reinstatement of the peat moss;
- cumulative effects of wind energy development in Cumbria and a developing ring of turbines around the Lake District border;
- adverse effects on tourism and the local economy with particular reference to the world famous tourist attraction of Gretna Green;
- noise, sleep disturbance, shadow flicker and health effects;
- safety concerns in relation to a proposed nearby methane gas extraction plant; and the effects of peat combustion on the safety of the turbines;
- road safety due to increased traffic during construction;
- historical importance of Solway Moss (the battle of Solway Moss); and
- the apparent inefficiency of wind turbines; and the financial benefits to the energy companies and land owners.

¹⁹⁰ Consultation responses and representations contained in blue wallet (Questionnaire): 2177996
see also CD12.30 – 12.33

Beck Burn Peat Works: oral representations made at the Inquiry

- 6.27 **Mrs Trotter**,¹⁹¹ a local resident, speaking on her own behalf and as proxy for a neighbour, reflected on the biased nature of the Environmental Statement and the impact of concrete foundations on the reinstatement of the Solway Moss to blanket bog. It was said that the environmental information was based on an inadequate assessment of bats, with insufficient regard to local measures to increase wildlife, and out of date information. Safety concerns were also raised about proposed coal-mining under the site and the proposed gas extraction boreholes at Becklees.
- 6.28 It was also relevant to note that all levels of local government had objected to the proposal; numerous homes would suffer adverse visual effects; and shadow flicker would be experienced at a number of properties and on local roads, cycling routes and fields. In addition, the turbines would be out of scale with their surroundings with adverse effects on living conditions, tourism and property values.
- 6.29 **Mr S Hudson**, a resident of Longtown, reflected on the beauty of the area and adverse impacts on those who live there and on means of conserving and producing energy.
- 6.30 **Mrs Siddle**,¹⁹² who has views of the site, claimed that the proposed turbines would appear dominating and overpowering from her house and would create unacceptable noise with risks to her health and could make her house unsalable.
- 6.31 **David Wilson**,¹⁹³ on behalf of Kirkandrews on Esk Parish Council and Springfield and Gretna Green Community Council, explained the importance of the Solway Estuary to birds and the risk of swans and geese colliding with the turbine blades. Further concern related to the retention of the concrete bases and their resultant contamination of the Moss and potential to surface above the peat as an unsightly scar; the removal of the concrete should be legally binding. Another concern was impacts on tourism and the unprecedented role of Gretna Green for weddings.
- 6.32 **Eileen Naude**,¹⁹⁴ who also spoke in relation to the Hallburn Farm proposal, set out the location of existing and proposed wind farms, within a radius of 30 kilometres, to reinforce concerns about cumulative effects and impacts on tourism. Her statement also refers to the decision of the UN Aarhus Convention Compliance Committee, which met on 29 April 2012, and the lack of democratic accountability and absence of legal rights for the development to proceed. Further debate by the Compliance Committee was due on 12 December 2012.
- 6.33 In this regard, a paper released by the European Platform against Windfarms reports: -¹⁹⁵

¹⁹¹ IP7

¹⁹² IP8

¹⁹³ IP9

¹⁹⁴ IP10

¹⁹⁵ Following IP10

'The Compliance Committee of the United Nations Economic Commission for Europe (UNECE), which enforces the Aarhus convention to which the EU is a party, has issued draft findings and recommendations which criticize the European Commission for failing to bide by the terms of the Convention with regards to the determination of its renewable energy policy Draft recommendations are unlikely to be substantially modified when, after an ultimate input from the parties, they are converted into final ones'.

The Compliance Committee found that the EU did not comply with the provisions of the Convention in connection with its programme '20% renewable energy by 2020', and its implementation throughout the 27 Member States by National Renewable Energy Action Plans (NREAP). In particular, the Committee opines that the EU did not ensure that the public had been provided with the necessary information within a transparent and fair framework, allowing sufficient time for citizens to become informed and to participate effectively in the decision process'.

..... Finally, there is another 'twist to this tale'..... 'as the Convention is part of EU law, there is now a legal ruling that this law has not been complied with. There are long established legal procedures where if a Member State does not comply with EU law, the citizen can seek damages made good'.

- 6.34 **Professor John Parratt**,¹⁹⁶ who also opposes the Hallburn Farm proposal, was critical of the limited time between the submission of the proofs of evidence, including the amount of material to be considered, and the hearing of the Beck Burn proposal.
- 6.35 He claimed that both projects would seriously compromise the balance between capitalising on Cumbria's significant assets for renewable energy generation and recognising and protecting its outstanding natural environment. The obsession with targets was misplaced given the Government's intention to revoke the Regional Spatial Strategy; Cumbria is rich in alternative sources of renewable energy; wind farms are not the magic bullet to counter harmful emissions; and the 'reversibility' of such projects was a myth.
- 6.36 He explained that concerns remained about water pollution and landscape impacts; and that damage to the region's most iconic scenic beauty could not be justified. Criticism was made of the appellant's assessment of tourism impacts based on alleged ignorance of local context and reliance on flawed studies.
- 6.37 In this regard, one study¹⁹⁷ was published in 2004, long before wind turbines became an intrusive and common feature in the landscape. Those turbines were well under half the height of those proposed; and the survey was merely 286 day visitors out of an estimated total of 26 million tourists to the region. The report was also commissioned and paid for by the energy company promoting that development.
- 6.38 The second study¹⁹⁸ was commissioned by the Scottish Government. Although it had serious methodological issues and an unrepresentative sample size it is not as dismissive on the impacts of tourism as the appellant suggests.

¹⁹⁶ IP11 and attached correspondence

¹⁹⁷ Fullabrook Wind Farm Proposal: Geography Research Unit, University of West of England

¹⁹⁸ The Moffatt Report: Economic Impacts of Wind Farms on Scottish Tourism (2008)

- 6.39 Other studies¹⁹⁹ have shown that wind turbines had serious impacts on tourism and the local economy. Since tourism, along with farming, is Cumbria's main source of income and employment, any impact which would compromise this essential part of the county's economy should be resisted.
- 6.40 On the matter of heritage sites, reference was made to correspondence between Professor Parratt and English Heritage which confirmed that English Heritage had taken a narrow definition of 'heritage' and that it was less concerned about views from Hadrian's Wall than most tourists would be who visited the World Heritage Site to experience history in its natural setting. Criticism was also made of English Heritage's evidence about the location of the battle of the Solway (1542) and acceptance by academic historians that the main encounter took place on Solway Moss itself and the very area proposed for the wind farm.
- 6.41 **June Kirkbride**,²⁰⁰ a resident of a farm to the north of the appeal site, expressed concerns about the impact of noise on horses at livery and loss of amenity to horse riders and cyclists. Reference was made to inaccurate visualisations from the farm; the inadequacy of the bat survey; impacts on geese flying over the site; damage to a potential carbon sink; and the loss of television signals and mobile phone reception. It was also queried why, as a resident of Scotland, her property did not benefit from a 2 kilometre zone of protection.
- 6.42 **Bruce Coulthard**, spoke about the protection of the countryside; low wind speeds in the locality; the effects on children's health; green tax; and impacts on rural businesses and telecommunications.
- 6.43 **Nicola Hudson**, supported the concerns of June Kirkbride in relation to impacts on horse riding.

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¹⁹⁹ Including: - Investigation into the potential impact of turbines into tourism in Scotland (2011); Impact of Wind Turbines on Tourism: Literature review prepared for the Anglesey CC by the Tourism Company (Feb 2012)

²⁰⁰ IP12

7. Planning Obligations and Conditions

(a) Planning Obligations

Hallburn Farm: Planning Obligation - Habitat Management Measures

- 7.1 An agreement (dated 19 December 2012) under section 106 of the Town and Country Planning Act 1990, between the developer, Carlisle City Council and two land owners, provides for habitat management measures for wintering geese and breeding waders.²⁰¹
- 7.2 The obligation has been submitted to overcome objections to the proposed wind farm made by the Royal Society for the Protection of Birds and Cumbria Wildlife Trust. In this regard, in order to mitigate potential impacts on wintering Pink-footed Geese and on breeding waders (Lapwing and Curlew) both organisations suggested that an area of land equivalent to the proposal site (14 hectares) should be managed for the benefit of these species. This would provide an alternative feeding habitat in a location which would encourage less Pink-footed Geese to fly through the wind farm; and nesting areas for any breeding waders displaced by the development.
- 7.3 The proposed conservation management area comprises a parcel of land (14 hectares) which is currently grassland with rushes and a secondary area (4.2 hectares) which is arable. The former would be subject to the main management prescriptions;²⁰² with the secondary area identified as potentially providing an opportunity for some additional enhancement to be undertaken.
- 7.4 The Council, in being a party to the document, has indicated that the document has been signed without prejudice to its position that the restoration of the appeal site should be secured by a restoration bond.

Beck Burn Peat Woks: Planning Obligation - (i) Goose Refuge

- 7.5 A Unilateral Undertaking (dated 19 December 2012), pursuant to section 106 of the Town and Country Planning Act 1990, signed by the developer, land owners and two 'lenders' provides for a goose refuge to address the key ornithological issue with the proposed wind farm, namely to reduce the numbers of goose flights through the collision risk zone and hence the likelihood of collision.²⁰³
- 7.6 The goose management scheme has been developed and agreed between the developer, Natural England and the Royal Society for the Protection of Birds, in order to deliver a scheme that will reduce the potential effects of the wind farm on Pink-footed Geese and Barnacle Geese and to give additional confidence that the wind farm would not result in an adverse effect on the integrity of the Upper Solway Flats and Marshes Special Protection Area. It follows a principle which has been successfully adopted for several other wind farms with similar issues.²⁰⁴

²⁰¹ ID16

²⁰² ID16: Appendix 1: Management Prescriptions and Additional Management Prescriptions

²⁰³ ID18: Written Statement (Dr Percival): paragraph 4.1

²⁰⁴ Written Statement (Dr Percival): paragraph 4.2

- 7.7 The scheme would provide a goose refuge area, between the proposed wind farm and roosting areas, to increase the attractiveness of that area to feeding geese, reinforced with management prescriptions set out in the Undertaking. The goose monitoring programme also includes monitoring of the refuge in order to determine its effectiveness and provide feedback for fine-tuning of the future management of the refuge.²⁰⁵

Beck Burn Peat Works: Planning Obligation - (ii) Site Restoration

- 7.8 A Unilateral Undertaking (dated 19 December 2012) is made between the three land owners, the peat extraction operator and the wind farm operator (or their respective successors in title). Its purpose is to procure the appropriate remediation of the site following completion of both the peat extraction and the operation of the proposed wind farm.
- 7.9 In this regard, the parties would not commence construction of the wind farm until the wind farm operator has consulted the peat extraction operator in the preparation of a restoration scheme to ensure, as appropriate, either the continued extraction of peat or the contemporaneous restoration of the site as required by conditions attached to the planning permission for mineral operations. In addition, a restoration bond, in a sum to be agreed, would be established in favour of Carlisle City Council and Cumbria County Council.

(b) Planning conditions

- 7.10 As a result of discussions during the course of the Inquiry, the proposed conditions for Hallburn Farm and Beck Burn Peat Works generally share common purpose and consistent drafting.²⁰⁶ Some further minor amendments, generally for precision and clarity, have been incorporated in to the lists of conditions set out in Appendix A and Appendix B, respectively, to this report. Each condition is followed by a brief supporting reason which is largely self-explanatory; but more detailed commentary is provided, as necessary, below.
- 7.11 Condition 1 proposed for Hallburn Farm differs from that drafted for Beck Burn Peat Works in that the latter requires notification of the commencement of the development to the local planning authority; this would appear to be prudent and justified for both schemes for the avoidance of doubt and to ensure effective compliance with other conditions.
- 7.12 Condition 2, as originally drafted for Beck Burn Peat Works, needs to be amended as the provision for the variation to approved drawings 'as may subsequently be approved in writing by the local planning authority' is imprecise and should be deleted.
- 7.13 Condition 3 requires notification of the First Export Date of electricity to the grid. The period differs; but, 14 days for notification would appear ample as opposed to the more generous 28 days proposed for Beck Burn Peat Works.

²⁰⁵ ID18; Written Statement (Dr Percival): paragraphs 4.3 – 4.8

²⁰⁶ ID13, ID14, ID15

- 7.14 Each project would have specific site restoration conditions (conditions 4 and 5) which reflect the need, in the case of Beck Burn, to co-ordinate peatland restoration.
- 7.15 A condition is required to secure appropriate site access (condition 6); and the submission, approval and implementation of a Construction Traffic Management Plan and Construction Method Statement to minimise impacts during the construction phase (conditions 7 and 8). In terms of the former, the condition survey of the construction traffic route should occur both before and after the construction phase.
- 7.16 The conditions relating to hours of operation and hours of delivery (conditions 9 and 10) need to be reworded to preclude operations outside defined hours (as opposed to operations within certain hours).
- 7.17 Details of the turbines and related buildings need to be approved before works commence; and restrictions requiring underground cabling and, in the case of Hallburn Farm only (as the Beck Burn Peat Works has night-time illumination) precluding permanent illumination are required to minimise visual impacts (conditions 11 – 15 and 11 – 14 respectively).
- 7.18 Both projects require limited tolerance for micro-siting, in accordance with the assessments in the Environmental Statements, primarily to allow for variations in ground conditions (condition 16).
- 7.19 In terms of the micro-siting of the turbines at Hallburn Farm, the Environmental Statement assessed impacts with a 30 metres tolerance. Although the local planning authority sought to reduce this to 20 metres in relation to Turbine 3, due to its proximity to Whitesyke, the site visit confirmed that this dwelling does not have direct aspect in the direction of the wind farm. Moreover, its rear curtilage is small and a tree outside the garden would provide some filtering of views. As such there is insufficient reason to make the micro-siting more restrictive.
- 7.20 The need to safeguard bats, badgers and breeding birds is reflected in a condition requiring pre-construction checking and mitigation (condition 17). Condition 18, relating to Hallburn Farm, also requires the submission and implementation of an approved Habitat Enhancement and Management Plan to offset any unavoidable removal of vegetation; and condition 19 makes provision for a scheme of archaeological investigation. A condition requiring further survey work in relation to geology and groundwater at Hallburn Farm should also be imposed (condition 23).
- 7.21 In terms of the aviation conditions (conditions 20 and 21), relating solely to Hallburn Farm, to safeguard air traffic control interests at RAF Spadeadam, the approach of the appellant in acquiescing to a condition as a matter of pragmatism needs to be assessed. In this regard, paragraph 96 of The Companion Guide to Planning Policy Statement 22, makes it clear that if Defence Estates raises an objection on radar grounds, the onus is on the appellant to prove that the proposal would not have an adverse effect on aviation interests. As the appellant has not submitted any technical evidence to this effect, safeguarding conditions relating to a scheme of 'radar mitigation' are necessary; and such conditions would fulfil the test of Circular 11/95: The use of conditions in planning permissions.

- 7.22 Both projects should be subject to a condition which provides for the installation of aviation lighting given the height of the turbines and the use of the area by low flying aircraft (conditions 22 and 18 respectively).
- 7.23 In terms of potential television interference occurring, a condition setting out defined steps would safeguard the amenity of local residents. The condition proposed for Beck Burn refers to 'terrestrial television' and whilst satellite television reception is less likely to suffer from interference, it would be prudent to omit the 'terrestrial' qualification (conditions 24 and 19 respectively).
- 7.24 The conditions to protect nearby residents from shadow flicker (conditions 25 and 20 respectively) differ in drafting; but this reflects local circumstances and the assessment of a single 'affected' property in relation to the proposed Beck Burn wind farm.
- 7.25 For Beck Burn, the Environmental Statement identifies the possibility of interference with a communications link across the site; but this can be safeguarded by a condition requiring an agreed scheme of mitigation (condition 15).
- 7.26 The condition relating to contamination risk, specific to Hallburn Farm (condition 26), requires minor re-wording to omit reference to 'any changes to these components require the express consent of the local planning authority'. This is superfluous in light of the accompanying requirement for the schemes to be implemented as approved.
- 7.27 Both proposals should be subject to a condition specifying maximum installed capacity to ensure that the projects do not result in ground vibration beyond that assessed so as to safeguard the operation of the Array (conditions 27 and 21 respectively).
- 7.28 The noise conditions reflect the assessment and findings of the Environmental Statements having particular regard to ETSU-R-97: The Assessment & Rating of Noise from Wind Farms (conditions 28 and 22 respectively).

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8. Conclusions and Recommendations

Introduction

- 8.1 The references in brackets^[x] are to the principal paragraphs in my report of the cases from where my conclusions are drawn.

(a) Matters common to Hallburn Farm and Beck Burn Peat Works

Energy policy context

- 8.2 A succession of international and national obligations, directives and policy statements legally bind the Government to reducing carbon dioxide emissions. The Coalition Government's firm commitment to renewable energy and energy decarbonisation builds on *The UK Renewable Energy Strategy* (2009) and manifests itself in a series of later documents including: UK Low Carbon Transition Plan (2009); The 2nd Progress Report of the UK Committee on Climate Change (2010); Renewable Energy Action Plan (2010); Annual Energy Statement (2010); Renewable Energy Review (2011); Electricity Market Reform White Paper (2011); UK Renewable Energy Roadmap (2011); and the Carbon Plan 'Delivering our Low Carbon Future' (2011).^[1.30, 4.12, 4.13, 5.2 – 5.8]
- 8.3 The consequences and challenges can be illustrated graphically by reference to the European set target for 20% of all EU energy to come from renewable sources by 2020; and for 15% of all energy consumed in the UK to come from renewable sources by the same date. The level in the UK at 2011 was approximately 3.8% and it is self-evident that a 'step change' is required in the pace of reducing emissions in the UK.^[5.5]
- 8.4 A number of representations seek to deflect from the importance of renewable energy and to undermine the consistent endeavours of successive Governments;^[6.2, 6.12, 6.16, 6.18, 6.23, 6.26, 6.35, 6.42] but there is nothing to suggest that there is any weakening in resolve in terms of achieving electricity decarbonisation and security of supply within the overall framework of energy policy and the acknowledged role of on-shore wind power.^[5.71]
- 8.5 Objections based on the relative merits of wind power, in terms of efficiency and the need for back-up from carbon sources; the levels of subsidy and the benefits to energy companies and landowners and the resultant inflated electricity prices to consumers; recorded local 'policy' embargoes; and suggestions about alternative technologies are of no real materiality in that they seek to question Government policy and legally binding obligations enshrined in international and national legislation, directives and policy statements.
- 8.6 Several objectors make reference to The Compliance Committee of the United Nations Economic Commission for Europe in relation to the Aarhus Convention and public participation.^[6.5, 6.17, 6.32, 6.33] Its draft ruling will, no doubt, have come to the attention of the UK Government. However, neither of the appellants drew my attention to any relevant documents by way of response; and, in the absence of any formal statement by Government, there would appear to be no basis to impose an embargo on the consideration of wind farm proposals.

- 8.7 The commitment of Government is also set out in recent national policy documents namely: - Overarching National Policy Statement for Energy (EN-1); and National Policy Statement for Renewable Energy Infrastructure (EN-3). ^[1.30, 1.33, 2.7, 4.6, 4.7, 5.2] These documents explain the key role that renewables will play and the policy for securing the delivery of major energy infrastructure. By way of example, Paragraph 3.4.3 of EN-1 acknowledges that *'on-shore wind is the most well-established and currently the most economically viable source of renewable electricity available for future large-scale deployment in the UK'*.
- 8.8 Additionally, the National Planning Policy Framework, at paragraph 98, indicates that *'when determining applications local authorities should: not require applicants for energy development to demonstrate the overall need for renewable or low carbon energy and also recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions; and approve the application (unless other material considerations indicate otherwise) if its impacts are (or can be made) acceptable'* ^[2.7]
- 8.9 Brief reference, as set out above, to the increased commitment to renewable energy generation does not undermine the strength and the seriousness of intent on the part of Government. In short, there is express recognition that the wider environmental and economic benefits of renewable energy projects, whatever their scale, should be given significant weight; and that on-shore wind farms have a vital role to play.

The main issue (relating to both Hallburn Farm and Beck Burn Peat Works) Eskdalemuir Seismological Monitoring Station (the Array)

- 8.10 The main issue between the principal parties is common ground. ^[1.46, 1.53, 2.3, 2.4, 3.1] There is also agreement on: -
- (i) the importance of the Array;
 - (ii) the international obligation to protect its operational integrity;
 - (iii) the express recognition in Overarching National Policy Statement for Energy (EN-1) that it is important that new energy infrastructure does not significantly impede or compromise the safe and effective use of any defence assets;
 - (iv) the 'science' which shows that wind turbines cause ground vibration;
 - (v) the extent of the exclusion and consultation zones;
 - (vi) the overall threshold of up to 0.336 nanometres (nm) of permissible ground vibration within the consultation zone; and
 - (vii) based on the Ministry of Defence's current method of allocating budget, the threshold has been reached and no further projects may be consented or approved unless projects which hold budget subsequently relinquish their allocation. ^[1.35 - 1.40, 3.2 - 3.16, 3.32, 4.5, 4.45, 5.1, 5.48, 5.49]
- 8.11 The essence of the disagreement between the appellants and the Ministry of Defence is the manner in which the Ministry of Defence allocates the available budget. ^[3.17, 3.18, 3.21, 3.25, 4.46, 4.47, 5.50]

- 8.12 When the budget, or cumulative threshold, of 0.336 nm of permissible ground vibration within the consultation zone was established in 2005, the Ministry of Defence devised a simple approach of allocating budget to wind farm developers on formal notification of a project.^[3.17] There can be no doubt that the system was transparent, easily understood and fair; and it provided developers with certainty at an early stage in the planning process. The operation of the budget was widely accepted and there was no need for it to be questioned whilst ever spare budget remained and whilst the next would-be developer anticipated its 'share'.^[3.22]
- 8.13 However, that was set to change when promoters, with well-developed projects, found progress thwarted by schemes holding budget yet constrained by other factors.^[3.18] In effect, the initially apparently infallible system has reached gridlock and it will take the final withdrawal or refusal of an obstructing scheme, and the reallocation of its returned budget to the next project in the date-sequential queue, to release hindered potential capacity.
- 8.14 But even then, the allocation of the released budget to the next project in the queue could be tinged with futility if that scheme were to be hindered either by non-Array factors or by inadequate budget for the entire project.^[1.42, 4.48, 5.52] In this regard, a project would be awarded budget up to the threshold, even if that was insufficient for the development as a whole, and with no certainty of it proceeding in part up to the level of the threshold.
- 8.15 It is a simple matter to identify the schemes with an allocation which are holding back others.^[1.41] The submission of the Earlishaugh wind farm, in July 2008, was the first project to cross the threshold with a partial allocation, up to the limit of the threshold, for 2 of the proposed 24 turbines. However, the implementation of the scheme as a whole would require a scheme of mitigation to reduce ground vibration. There is no technology which the Ministry of Defence has found to be acceptable to achieve this; and future consideration of the application by Scottish Ministers is still some time away. Hence its allocation of budget is unusable.^[4.49 - 4.52, 5.53 - 5.55]
- 8.16 A second scheme, at Ewe Hill, comprising 22 turbines, is also an historic 'obstruction' in that it has been in the planning system since November 2005. Although that scheme has undergone modification, in that 6 larger turbines than those initially proposed have been approved, the balance of the scheme is constrained by an air traffic control objection with no known time-scale for determination. Consequently, its budget remains unused.^[4.51]
- 8.17 The Ministry of Defence does not dissent from the above matters of fact.^[5.56] Whilst it was steadfast in the defence of its well-established system, there is no doubt that the delivery of wind energy is being severely hampered by a process which pays little regard to the finite and scarce resource of the budget and the urgent need to maximise sources of renewable energy. In essence the Ministry of Defence's administration of the budget is set in an era of 'plenty' whereas the reality is manifestly otherwise.^[3.24] It clearly points to an urgent need to review process and procedure.^[4.58, 4.59, 5.53]

- 8.18 The temptation to plan or, as in this case, to allocate budget by appeal has its pitfalls in that it can be seen to be a reactionary response, serving individual interests, rather than a pro-active drive with appropriate consultation and an outcome in the wider public interest.^[3.46] However, set against the Government's overall aims and obligations to secure decarbonisation, there would be an inevitable public interest in changing the allocation process in favour of schemes which are otherwise unhindered. Allowing schemes to 'sit on' budget, with no immediate prospect of delivering renewable energy, works against the public interest.^[4.71, 5.57, 5.58]
- 8.19 The degree to which this could lead to uncertainty and unpredictability in the operation of the budget is overstated in that it would be possible to devise a scheme whereby no wind energy project would be allocated budget at initial consultation stage following the making of an application for planning permission, or for consent under the Electricity Act 1989.^[3.25 - 3.29, 4.56, 4.65] Allocation of budget, if available, could take place at the point when it was known that the project was otherwise unconstrained following a local planning authority resolution to grant planning permission or a Ministerial 'minded to allow' or 'minded to consent' letter.
- 8.20 The Ministry of Defence raises a valid concern about its management of risk in that the consultation zone spreads across numerous administrations in both England and Scotland.^[3.25, 4.66, 5.60 - 5.62] That is accepted to the point that it would be a complex, but not an impossible, task which could be operated on any allocation of budget requiring the grant of permission, or consent, to be issued within a, short, defined time period. That would inevitably require robust administrative procedures both within the Ministry of Defence and amongst all of the various decision makers; but that is not an unreasonable expectation.
- 8.21 As to the suggestion that such an '*ad hoc*' change would be unsupported by the requirements of the planning system, on both sides of the border, it is true that the relevant safeguarding directions require a local planning authority to consult the Ministry of Defence within the defined consultation zone. The expectation would be for the local planning authority to instigate consultation as soon as reasonably practicable.^[3.26, 4.65, 5.60]
- 8.22 However, so far as concerns England, section 10 of The Town and Country Planning (General Development Procedure) Order 1995 (as amended) relates to 'consultations before the grant of permission'. It does not specify at what point consultation should be undertaken but safeguards the interests of the consultee by precluding the determination of the application until at least 14 days has expired from the date of notification.
- 8.23 Whilst it would be reasonable to assume that consultation should continue to take place at the outset, there would be nothing to preclude the Ministry of Defence from lodging a 'holding objection' requiring subsequent re-consultation immediately prior to any intended favourable decision.^[4.65, 5.62] On this basis the suggestion that new or amending legislation would be required appears to be unfounded; and, at most, the publication of formal guidance or protocol could specify and clarify the process to be adopted.^[5.65]

- 8.24 It is true that the Beck Burn appellant's 'flow diagram' of process was incomplete; ^[3.26] but that is of no real consequence in that the fundamental principles of the suggested process are sufficiently clear; and it would be a matter for the appropriate authorities to consider, in due course, whether to supplement the illustrative material already provided.
- 8.25 There is no doubt that re-consultation would add another 'bureaucratic layer', and timescales would need to be clearly defined, but that would be a small price to pay for a process that would more adequately liberate potential 'ready-to-go' renewable energy projects whilst still safeguarding the Array. ^[3.26, 5.63, 5.64]
- 8.26 Similarly, the suggestion that control of the budget would pass from the Ministry of Defence to other authorities is without foundation. It would be for the Ministry of Defence to maintain a log of schemes with budget and not to allocate budget beyond the threshold. Close reign could be kept by making any allocation time-limited, in terms of the period in which a favourable decision could be issued; and an approved project would retain that budget other than in the event of the permission not being implemented within the defined time period. The prospect of over-lap or undercounting need not arise. ^[4.61, 4.66, 4.67, 5.60 - 5.62]
- 8.27 The mitigation of ground vibration might, at a future date, provide further opportunities for wind farm development within the consultation zone, albeit the prospect of 100% mitigation appears to be in doubt and some level of budget is likely to be required. ^[3.19, 3.39, 3.45] However, a revised process, along the lines set out above, would not prejudice to any material degree the consideration of mitigation. Indeed, it would have the advantage of removing the current anomalous situation of a scheme straddling the threshold, requiring mitigation where none exists and yet stymieing other projects which could proceed without mitigation.
- 8.28 In terms of the resource implications for the Ministry of Defence, there is no doubt that the organisation is kept 'more than busy' with consultations; but those relating to the Array are but one comparatively small element of overall workload. ^[3.30, 5.63] Whilst additional, limited, resources might be required, there is nothing to suggest that the scale would be so substantial to represent a sound and convincing reason to resist change and to frustrate the delivery of wider Government objectives.
- 8.29 The Ministry of Defence is quite right that the new process would only benefit the appellants, or other developers, if budget was available. ^[3.31] The aim at the Inquiry was to 'discredit' the prospects of stalled historic projects; and a secondary exercise to garner capacity from schemes which have been implemented without taking their full budget allocation. ^[3.33]
- 8.30 Such exercises are inevitably somewhat hypothetical; but they can be taken to be 'illustrative' of the drawbacks arising from current policy and practice. In this regard the already cited examples of Ewe Hill and Earlsbaugh speak for themselves in terms of creating a total impasse in delivering the wider benefits of renewable energy. There is something evidently wrong with allowing projects to hold budget for several years, and continuing to do so, whilst they are still some way from a decision and shrouded in uncertainty.

- 8.31 With hindsight some of the attempted manipulations to MoD Table 1 [CD9.28], which shows schemes with budget, were of little real consequence in supporting the main point which the appellants sought to make; but these should not be passed over without some analysis and comment. [4.55]
- 8.32 Taking these in turn, only 4 of the 5 turbines approved at Carlesgill (Craig) were erected; but the fifth could still be erected under the terms of the 2004 permission. Irrespective of the degree to which this might be likely, the reassignment of the balance of its budget would not be without some risk of exceeding the budget for the Array, particularly if the same view was taken on projects under similar circumstances. [3.34, 3.47]
- 8.33 Moving on to Clyde wind farm, budget was allocated for 152 (3 megawatt) turbines; and, as an Electricity Act consent, the project has a defined maximum installed capacity. The installation of 2.3 megawatt machines, suggests, at first sight, that the unexpended budget should be available to other projects. [3.34, 4.54, 5.54]
- 8.34 In this regard, given the scale of that wind farm, and the assumption that the developer would have sought to maximise commercial returns, the possibility of replacing the machines with more powerful ones does not appear credible. The degree to which minor works might achieve greater output is also uncertain, as is the extent to which such undefined works might require planning permission, thereby triggering consultation with the Ministry of Defence. Nonetheless, like Carlesgill, any assumption, that modifications to the project, in one form or another, would not increase ground vibration would be injudicious. [3.37, 4.53, 4.54]
- 8.35 Similar caution is also required in relation to Minsca wind farm which, in proposing 17 (2.5 megawatt) turbines, has installed 16 (2.3 megawatt) machines; and for Langhope Rig where 1.6 megawatt turbines will be installed instead of 2.3 megawatt structures originally proposed. [3.34]
- 8.36 However, maintaining the status quo in relation to approved or consented schemes does not materially change the main case advanced by the appellants as this relies principally on stripping Earlsbaugh of its allocated budget [CD9.28]. [4.62, 4.63, 5.52, 5.59]
- 8.37 The case is reinforced by reference to Ewe Hill, where the effect of expunging the larger part of the project (which is constrained by an air traffic control objection), at a cost of some 32 - 37 megawatts, would release budget for queuing schemes (including Hallburn Farm and Beck Burn Peat Works), which, if approved, could deliver over 450 megawatts of installed capacity. [4.62, 4.64] Other projects [CD9.30 – after Blackwood] form part of a longer queue and provide opportunity to replace earlier schemes which might not be approved or consented.
- 8.38 The above scenario depends on the omission of the proposed Newfield wind farm from MoD Table 2 [CD9.30], since it lies ahead of both Beck Burn and Hallburn Farm in the queue of schemes subject to objection by the Ministry of Defence, and (without mitigation) it too would take more budget than might be available. Nonetheless, the overall proposition that the removal of an apparently dormant project would create benefits, in terms of significantly greater potential installed capacity, and at an earlier date, as in the case of these proposals, is convincingly made out.

- 8.39 In terms of the Beck Burn planning witness running a case to support the appeal proposal, which relied on mitigation at Newfield (and at the same time promoting a case for Newfield which was not dependent on mitigation), demands caution.^[1.44, 3.44] However, the respective schemes fall to be determined on merit in light of evidence to the respective Public Inquiries.
- 8.40 The repercussions of removing budget from Ewe Hill and Earlishaugh would no doubt be unwelcome to those promoters; but no other scheme with budget would face a change in status.^[3.49] It would however, improve the prospect of several other schemes, although it has to be recognised that this also assumes the 'sacrifice' of Newfield holding its position in the queue.
- 8.41 Whilst it is acknowledged that the preparation of wind farm projects takes place over a considerable period of time and, no doubt, at substantial expense and investment with the anticipation of financial return, these considerations are essentially private ones.
- 8.42 It might be argued that changing the rules was unfair;^[3.24, 3.50, 4.68] but, in light of changed circumstances relating to the budget being 'spent' and the need to ensure that it is reappraised and allocated to maximise the prospect of securing renewable energy returns, as soon as possible, and in the public interest, the case for change is very strong.
- 8.43 The outcome would be no different to other areas of planning, including the provision of major housing or retail schemes, where developers often run in open competition. Whilst the support of the two appellants for such an approach may be based on self-interest, there is no apparent reason why the wind industry should be treated any differently to other development sectors.^[4.69, 4.70]
- 8.44 There is one further factor to be borne in mind, namely the role of the re-convened Esdalemuir Working Group and whether revisions to the process of allocating budget, secured through these appeals, would be prejudicial to the remit of that Group.^[1.45, 3.22, 3.42]
- 8.45 Although its reported purpose included exploring the possibility of additional budget for the Array, there is a cloud of uncertainty (even in the minds of attendees on behalf of the Ministry of Defence and giving evidence to the Inquiry) as to the role of the Group and whether its remit should include consideration of the operation of the existing budget.^[3.43, 5.66, 5.67]
- 8.46 The minutes of the November meeting, to be published on behalf of The Scottish Government, might make that clear; but they were not available before the close of the Inquiry. This might be a matter on which the Secretary of State would need to seek clarification and further representations as necessary.
- 8.47 For my part, assuming the original and narrower remit of the Group, acceptance of the appellants' case by the Secretary of State, with the expressed intention of intending to allow these appeals, subject to the re-assignment of sterilised budget, would confirm the counter-productive manner in which the Ministry of Defence operates the budget.

- 8.48 To my mind, the question must be asked whether the process continues to be fit for purpose as it might be said that it is one which should have been subject to review as the allocation of the budget up to the threshold grew nearer; and, that should have become evidently more urgent when the process came to a standstill as early as mid-2008. As a consequence the development of valuable wind resource and the development of much needed wind energy seemingly stand unnecessarily constrained.
- 8.49 If, on the other hand, the remit of the Group was, or has become, charged with reappraising the allocation of the original budget, the point about potential prejudice to its consideration was no more than a matter of principle. Nothing was said as to the degree of potential prejudice or what that would mean for the Group and the Ministry of Defence. Without clear evidence, I can only surmise that, whilst allowing these appeals might precipitate wider consideration of the budget allocation by the Working Group, albeit largely in retrospect and with its hands already tied, it would not necessarily rule out the development of a more detailed protocol in light of the Secretary of State's decisions. ^[5.68]
- 8.50 Drawing together the threads of the main issue, the need to protect the Array from excess ground vibration is an absolute one. The threshold of 0.336 nm has already been reached in terms of wind farm projects holding budget. Approving either Hallburn Farm or Beck Burn Peat Works would lead to the budget for the Array being exceeded. It follows that the operation of the facility in its vital role of detecting distant nuclear tests under the Comprehensive Nuclear-Test-Ban Treaty would be compromised.
- 8.51 However, that conclusion ignores the fact that 2 projects which hold budget cannot, at present, proceed due to identified constraints; and, moreover, their progress has been frozen for several years. An anomalous situation has arisen where these projects are blocking otherwise unconstrained schemes which do not have budget allocation. ^[4.52, 4.56, 4.57, 4.61, 5.69]
- 8.52 It follows that the appellants have clearly shown that the current administration of the budget works against the desire to maximise the delivery of acceptable renewable energy schemes; and that there is a compelling need to address the matter by reviewing practice and procedure. The revised process advocated by the appellants has convincing merit, in principle, in that no scheme would be allowed to hoard its allocation and the consideration of allotting budget would only arise as and when a project approached the final stage through the planning process.
- 8.53 The parties are agreed that so far as safeguarding the Array is concerned the role of the Ministry of Defence in the planning process is as a consultee; and it would be open to the Secretary of State to reach his own conclusion based on the evidence given at the Inquiry. ^[1.43, 4.60, 5.51]
- 8.54 I return to the consideration of this issue in the overall planning balance.

Other matters: tourism and the rural economy

- 8.55 Local concerns remain about the impact of the proposed wind farms on the recovery of the tourist industry following the foot and mouth epidemic in 2001; and impacts on the role of the nearby world famous tourist attraction of Gretna Green. ^[6.2, 6.5, 6.11, 6.23, 6.26, 6.28, 6.31, 6.32, 6.42] Whilst the utility of some tourism studies was questioned, there was no clear cut evidence before the Inquiry of how the other studies might have direct application to these appeal proposals and local circumstances. ^[6.36 - 6.39, 5.48]
- 8.56 Similarly, although Dumfries and Galloway Council, and others, have drawn attention to the regeneration objectives of the Gretna Landmark Project, the representations are of a generalised nature without any assessment of how the proposals might have a resultant impact. ^[6.25, 6.26] In addition, references to potential negative impacts on a wider economic strategy are not supported in a meaningful manner.

Other matters: noise, sleep disturbance, health effects and shadow flicker

- 8.57 A number of other matters can be considered in tandem, with representations made to both schemes to a greater or lesser extent.
- 8.58 In terms of concerns about noise, ETSU-R-97: The Assessment & Rating of Noise from Wind Farms continues to be recognised by Government as the appropriate methodology. ^[6.2, 6.5, 6.8, 6.14, 6.18, 6.23, 6.25, 6.26, 6.30] Both projects are supported by robust noise predictions, endorsed by the local planning authority, which can be secured by conditions. ^[4.5, 4.14, 4.15, 4.21, 5.45, 7.28] This would provide adequate safeguards.
- 8.59 The references to publications which conclude that wind farm noise has the potential to cause sleep disturbance and subsequent health effects, and references to excess amplitude modulation, represent generalised concerns which are not supported by evidence of substance in relation to site specific circumstances.
- 8.60 As to shadow flicker, the respective Environmental Statements indicate the extent to which residential properties could possibly experience shadow flicker effects. The assessments are made on a worst case basis (which assumes that the sun will always be shining with sufficient intensity; the turbine will always face a receptor (wind related); and that there is no intervening screening) with every likelihood that the duration of any shadow flicker would be significantly less than predicted. In addition, appropriate mitigation could be secured by a condition which would provide for the automatic shut down of any offending turbine for the duration of the predicted adverse effects, or mitigation by other means. ^[4.14, 4.15, 4.22, 4.23, 5.46, 5.47, 6.2, 6.5, 6.8, 6.13, 6.17, 6.23, 6.26, 6.28, 6.30, 6.42, 7.16, 7.24]

Other matters: aviation impacts

- 8.61 There are no objections on aviation grounds, relating to air safety, from either National Air Traffic Services or Carlisle Airport. The Ministry of Defence raises no concerns in relation to Beck Burn Peat Works.
- 8.62 As to Hallburn Farm, the Ministry of Defence initially identified conflict with air traffic control radar systems and operations at RAF Spadeadam; but, following discussions with the appellant, reached agreement on the principle of mitigation secured by condition and withdrew its objection. ^[1.9, 2.1, 2.2, 3.52, 4.2, 6.2, 6.23] Conditions, as set out in Appendix A (conditions 20 and 21) may appropriately be imposed. ^[7.21]

Other matters: television reception and mobile phones

- 8.63 The concerns about possible impacts on television reception is a matter which can be dealt with by condition; and there is, following consultation with the appropriate bodies, nothing to suggest widespread potential conflict with the operation of mobile phones. Although a single issue has been identified concerning Vodafone and possible interference arising from the Beck Burn turbines, this too can be resolved by a condition requiring mitigation. *[6.23, 6.41, 6.42, 7.23, 7.25]*

Other matters: traffic

- 8.64 The construction of a wind farm would, inevitably, result in noticeable traffic impacts which, so far as concerns Hallburn Farm, are likely to be focused on Longtown itself and the primary route to the site through the centre of the settlement and past a number of community facilities. However, such effects can be managed and minimised by a condition requiring agreement on, and implementation of, a Construction Traffic Management Plan which would also take account of highway safety issues. A similar condition is advocated for the Beck Burn Peat Works proposal. *[4.40, 4.41, 6.2, 6.5, 6.10, 6.13, 6.23, 6.26, 7.15]*
- 8.65 It is also commonplace for developers to undertake a pre-construction survey of identified routes, in consultation with the highway authority, and following the commissioning of the wind farm, in order to identify any damage that might be attributable to the additional traffic. Any damage during the construction process would be a matter for the highway authority to monitor and rectify as necessary.

Other matters: local democracy and Human Rights

- 8.66 Reference has been made to the Localism Act 2011 and putting power into the hands of local communities. *[6.5, 6.14]* Although the Act provides new rights and powers for local communities, alongside the commitment to make the planning system clearer, more democratic and more effective, it does not provide local people with an outright power of veto; and individual views have to be considered in light of the democratic decisions reached by elected Councils.
- 8.67 In these cases the City Council's concerns are very narrow and follow the advice of the Ministry of Defence. Whilst all views have been considered, (and noting that there are also expressions of support for the proposals *[6.3, 6.7, 6.21, 6.22, 6.24]*) these have to be placed alongside the wider environmental benefits arising from renewable energy generation.
- 8.68 Regard has also been had to the implications of the proposed developments in relation to Article 1 and Article 8 of the First Protocol to the European Convention on Human Rights, with particular reference to property values, noise and quality of life. However, no material interference has been alleged or established and there is no need to consider the matter further.

Other matters: separation distances and property values

- 8.69 Although reference was made to legislation in Scotland stipulating minimum distances between turbines and residential properties, this does not extend to the consideration of wind farm applications.^[6.41] Rather, it was devised as an indicative factor in identifying general areas of search for wind farm development with the proviso that individual applications would be judged on a case by case basis.
- 8.70 Concerns about loss of property values and saleability are of a generalised nature and are not a compelling basis to oppose the projects.^[6.2, 6.13, 6.30]

(b) Matters relating specifically to Hallburn Farm

Other matters: landscape and visual impact

- 8.71 The starting point is to record the general agreement between the findings of the Environmental Statement; the Council's consultants; the assessment by the Council's Planning Officer; and the decision of the Development Control Committee in relation to landscape matters. Representations from interested organisations and individuals, primarily relating to visual impacts, are expressed in very general terms.^[4.5, 4.24 - 4.30, 6.2, 6.5, 6.11, 6.14, 6.18]
- 8.72 First of all, in terms of landscape character, the landscape within the vicinity of Hallburn Farm derives its character from its medium to large scale field pattern, significant blocks of woodland, and limited variation in topography. It is a working landscape with a number of 'man-made' elements.^[1.47 - 1.49] Given the simple layout of the proposed wind farm, in terms of spacing, alignment and elevation of the turbines, and instances of woodland foreground or backdrop, the project falls within the general circumstances of where a large turbine group (6 – 9 turbines) might be accommodated.^[6.9]
- 8.73 With the benefit of specific representative visualisations, Viewpoint 1 (minor road near Low Hallburn) illustrates very limited impacts arising from a compact group of turbines beyond a foreground of agricultural buildings and tall trees. Moving slightly further away to Viewpoint 2 (A6071 near Bush-on-Lyne Farm) the group is wider but so too is the overall coherence of the landscape aided by the spread of intermediate woodland.
- 8.74 More open views are to be gained from Viewpoint 3 (High Moorhead) where the vista is notably broad and deep, and typified by large fields with mature boundaries. Even with a distant backdrop of, seemingly, comparatively diminutive hills, the proposed turbines would be well-related to the character of the landscape and would not be visually dominant.
- 8.75 Although the foreground landscape of Viewpoint 4 (Kirkclinton Church) is more parkland in character, it has a broad green sweep, enhanced by middle-ground woodland. The proposed turbines beyond this foreground would not represent a substantial component of landscape character; and the visual impacts of the project would be mollified by simple grouping, consistent scale and standing in relation to the intermediate and limited backdrop landscape.

- 8.76 Moving out to Viewpoint 5 (Longtown), the proposed turbines would sit comfortably in context with a broad, mature, landscape and a distant backdrop of hills with very limited impacts on the character and appearance of the landscape.
- 8.77 Looking from more distant viewpoints (Viewpoints 6 – 12) the impact of the turbines on the landscape, in terms of character and appearance, would become demonstrably less apparent taking account of the general conclusions in relation to Viewpoints 1 – 5.
- 8.78 From Hadrian's Wall Path, Viewpoint 13 (near Bleatarn), the proposed turbines would be over 8 kilometres away. Even with the combined, more distant, presence of the wind farms at Minsca and Craig, the proposed wind farm would be a minor component in a large scale landscape; with no material adverse effects on the heritage asset itself. *[4.35 – 4.39, 6.2, 6.4, 6.11, 6.13, 6.14]*
- 8.79 In terms of potential impacts on protected landscapes, and having other known wind farms in mind, the combination of distance, intervening topography and/or landscape features would provide sufficient safeguards to their wider setting and views from these areas. *[4.28, 6.2, 6.4, 6.5, 6.11, 6.14]*
- 8.80 Finally, taking account of the statutory duty to have regard to the desirability of preserving or enhancing the character or appearance of conservation areas, the Longtown Conservation Area is generally tight-knit and inward looking. In this regard, the presence of the wind farm would not have any material adverse impacts. In addition, there is nothing to suggest that construction traffic would have any permanent physical effects. *[4.29, 4.30, 6.10]*

Other matters: visual effects

- 8.81 The Environmental Statement (*Volume 2: Appendix 5.3*) includes a visual assessment of all residential properties within 2 kilometres of the site. *[4.15 - 4.20]* It is material to note that the local planning authority does not take issue with its findings. However, there are two particular matters that need to be addressed.
- 8.82 The first is Virginia Lodge, a care home, some 1.6 kilometres from the site in a generally north-westerly direction. *[6.8]* My site visit showed that some of its north-easterly and south-easterly facing rooms would have an oblique, but not direct, aspect in the direction of the wind farm. However, given that the residents' rooms and day areas are on the ground floor, and hedges border much of the curtilage, any views of the turbines would be marginal to the living conditions at Virginia Lodge. Although the turbines might be more apparent from the enclosed courtyard area outside the sitting room, boundary screening would offer some protection and the effect of distance would ensure that the turbines were neither dominating nor overbearing.
- 8.83 As to concerns about shadow flicker, Virginia Lodge lies well beyond the distance where such effects might be experienced. *[6.8]* In terms of noise, the noise assessment for Low Hallburn Farm (some one kilometre closer to the site - between Virginia Lodge and Hallburn Farm) demonstrates that the amenity of that dwelling would not be affected to a material degree; and the effect of distance and the further separation of Virginia Lodge from the proposed turbines would ensure even greater protection.

- 8.84 The second concerns the veracity of the residential amenity survey for High Moorhead in light of the owner's confirmation of open aspect in the direction of the proposed turbines.^[6.19] His representation of turbines added to a photograph (IP14) can usefully be compared with Viewpoint 3 in the Environmental Statement which provides an accepted 'industry standard' photomontage related to focal length, accurate positioning of the turbines and correct comparative scale. Based on Viewpoint 3, close to High Moorhead, and the known distance of about 1.3 kilometres between the dwelling and the site, there is nothing to suggest that the proposed turbines would have an overwhelming presence on the principal outlook of this house.

Other matters: ecology and nature conservation

- 8.85 A scheme to safeguard bird species and provide enhanced habitats is to be assured through a Planning Obligation and will overcome the initial concerns of statutory consultees.^[2.1, 2.2, 6.4]
- 8.86 In this regard the habitat management measures would secure a nearby parcel of land, equivalent in area to the appeal site, and a smaller adjacent area, to provide a feeding habitat for wintering geese to compensate for displacement and to minimise the prospect of geese flying through the wind farm. Habitat enhancement would also provide alternative nesting habitats for breeding waders to compensate for displacement during construction work.^[1.10, 4.31 - 4.34, 6.2, 6.5, 6.13, 6.17, 7.1 - 7.3] The obligation fulfils the three requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and merits substantial weight.
- 8.87 On this basis, potential adverse effects on the integrity of the Upper Solway Flats and Marshes Special Protection Area would be avoided; and the assessment of Likely Significant Effects undertaken on behalf of the Council confirms that an 'Appropriate Assessment' is not required.^[1.11]

Other matters: archaeology, built heritage and historic landscape

- 8.88 There are no outstanding objections, from the appropriate statutory consultee, in relation to impacts on heritage assets with particular reference to Hadrian's Wall World Heritage Site and the ability to comprehend Roman military planning and land use.^[1.12, 1.13, 2.1, 2.2, 4.4, 6.4]
- 8.89 In terms of the concerns expressed by interested persons about impacts on Hadrian's Wall World Heritage Site^[6.2, 6.11] my conclusions in relation to Viewpoint 13 (at paragraph 8.78 above) can be taken to be representative of potential impacts on the heritage asset as a whole in the absence of any more specific evidence from those alleging general adverse impact.
- 8.90 As to potential effects on the Roman Fort at Netherby, and its connection with Hadrian's Wall, it is notable that it lacks inter-visibility with the World Heritage Site. Given that the appeal site lies some distance to the east of the Roman road, and taking account of the resultant scale of the turbines in the landscape, and the screening effects of woodland and mature field boundaries, the proposal would not have any demonstrable adverse effect on these historic assets.^[4.35, 4.36]

- 8.91 Finally, with reference to the Battle of Solway Moss,^[6.5] the proposed wind farm would be located away from the principal battleground and within a landscape which has undergone considerable change since the time of the battle. In this context, the proposed development would not make more difficult the ability to place the battle in history.

Other matters: site contamination

- 8.92 Despite the criticism made of the preliminary risk assessment,^[6.5] the purpose of the document was to identify 'risks' that might exist and to indicate the area of further study required before any works start on site.^[1.15 - 1.18] In this regard it is 'fit for purpose' and the imposition of a planning condition requiring further, more detailed, assessment and compliance with an approved remediation strategy would provide appropriate safeguards.^[7.26]

Restoration bond

- 8.93 It is vital to ensure that there is an effective means to secure the removal of the proposed turbines either at the end of the duration of the planning permission, or sooner should they become redundant.^[2.12 - 2.18, 4.42 - 4.4] Although the recognised process is normally by a condition requiring the implementation of an agreed scheme of decommissioning, the local planning authority's preference is for a bond or indemnity provided by means of a Planning Obligation.
- 8.94 However, there is no such obligation before the Inquiry and without one the question to be posed is whether this should lead to the dismissal of the appeal. It has to be accepted that, should it prove necessary to enforce the conditions requiring site restoration, the Council could become involved in a costly process and an ongoing financial encumbrance. However, there is nothing to suggest any greater risk of that occurring here than in countless other wind farm approvals which have not been accompanied by an obligation; and the singular reference to Yelvertoft provides no substance to the circumstances which led to the conclusion of an agreement there.
- 8.95 It also has to be remembered that the National Planning Policy Framework indicates that obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. In this case, notwithstanding the possible pitfalls, the enforcement provisions within the Town and Country Planning Act 1990 provide the means to enforce conditions aimed at addressing the unacceptable impact of turbines remaining beyond their intended life-span.
- 8.96 Whilst an obligation would no doubt provide the Council with reassurance, it cannot be said that an obligation would be necessary to make the development acceptable in planning terms.^[7.8, 7.9] Thus, one of the three requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) would not be met. Overall, the lack of a bond or indemnity is not a reason to dismiss the appeal.
- 8.97 The situation at Beck Burn Peat Works, where a Unilateral Undertaking provides for a restoration bond, is entirely different in that the main consideration there is the inter-relationship of the proposed turbines with the extraction of peat and the eventual restoration of the site to peatland mire.

(c) Matters relating to Beck Burn Peat Works

Other matters: landscape and visual impact

- 8.98 As for Hallburn Farm it is relevant to record the general agreement between the findings of the Environmental Statement; the Council's consultants; the assessment by the Council's Planning Officer; and the decision of the Development Control Committee in relation to landscape matters. ^[2.4, 5.1, 5.21, 5.22] Representations from interested organisations and individuals, primarily relating to visual impacts, are expressed in vey general terms. ^[6.23, 6.26, 6.28, 6.29, 6.32, 6.35, 6.36, 6.42]
- 8.99 First of all, in terms of landscape character, the landscape within the vicinity of Beck Burn Peat Works is generally low-lying, flat, farmland with scattered development and woodland. The site is an operational peat extraction site and large areas of land to the south of the site are in use by the Ministry of Defence. ^[1.50, 1.51] The local landscape in the vicinity of the appeal site also contains significant transport and power distribution infrastructure. ^[5.25] Having regard to the regular layout of turbines, in three lines with similar spacing, the 'flat' nature of the site, and some woodland screening, a large turbine group (6 – 9 turbines) could be accommodated here. ^[5.26 - 5.28]
- 8.100 Taking a selection of visualisations by way of example, Viewpoint 1 (Gaitle Bridge) shows a simple, flat, large scale landscape broken by a generally even tree line. The regularity of the proposed turbines would sit comfortably within this setting.
- 8.101 Moving on to the Viewpoint 3 (near Plumpe Farm), the landscape is broad and large in scale, and farm buildings and electricity pylons provide 'man-made' references. These factors, in combination with minor undulations in topography, which serve to provide some foreground screening to the proposed turbines, would ensure that the overall scale of the development would have limited impact.
- 8.102 From Viewpoint 4 (Springfield) the proposed turbines would stand in the middle ground of a wide and deep vista backed by distant hills. Again, the landscape is large in scale, with pylons, transmission lines and a railway, where the proposed development could be accommodated without serious damage to the character and appearance of the landscape.
- 8.103 Moving on to Viewpoint 5 (Longtown), at the point of leaving the town over the old bridge crossing the river, the proposed turbines would stand apart from the settlement as a backdrop in a broad vista whose linear nature is reinforced by the corridor of the river and the line of pylons and transmission lines beyond. ^[5.35]
- 8.104 From more distant viewpoints, with similar large scale landscape characteristics (Viewpoints 6 – 10) the impacts of the proposed turbines on both the character and appearance of the landscape would diminish with distance.

- 8.105 Whilst impacts from views from the west are of particular concern to a number of objectors (Viewpoints 11, 13 – 16)^[6.23, 6.26] the landscape character of the Solway takes on even larger, more open, characteristics, backed by distant hills where the proposed development, even in combination with other wind farms, including the Hallburn Farm proposal, would not, as alleged by the Campaign to Protect Rural England, undermine the distinct characteristics of this landscape type; or result in damaging visual impacts.
- 8.106 In terms of views from Hadrian's Wall (Viewpoints 18 and 19), there is nothing to suggest that the proposed wind turbines would be prominent, unduly distracting, with the nearest turbine some 14.5 kilometres away, or harmful to the understanding and appreciation of the World Heritage Site.
- 8.107 As to other valued or protected landscapes (e.g. Viewpoint 21), the combination of landscape characteristics, and more particularly distance, would ensure that the proposed wind farm, either alone or in combination with others, would not be unduly damaging to their enjoyment or wider setting.^[5.29 - 5.31]
- 8.108 In terms of the statutory duty to have regard to the desirability of preserving or enhancing the character or appearance of conservation areas, the Longtown Conservation Area is generally tight-knit and inward looking. In this regard, the presence of the wind farm would not have any material adverse impacts. The Beck Burn and Hallburn wind farms would lie in opposite directions and the two would not be seen in combination from the designated area; and, moreover, there was no evidence to show that sequential views would occur to any material degree.^[5.38]

Other matters: visual effects

- 8.109 The Environmental Statement (*Volume 3: Figures 9.6 – 9.6d; and Residential Viewpoints 1 -3; Volume 4: Appendix F3; and CD11.10*) provides a visual assessment of all dwellings within 2.4 kilometres of the site. The local authority does not take issue with its findings.^[5.15 – 5.17, 5.32] However, the concerns of local residents need to be assessed;^{6.23, 6.26, 6.27, 6.30, 6.41]} and this has been informed by site visits to a number of properties.
- 8.110 Looking from public vantages, the dwellings bordering the road to the south of the site and in the vicinity of Gaitle Bridge and Smalmstown would generally lack significant direct views of the proposed turbines due to a combination of orientation, aspect and woodland screening.^[5.18] Whilst turbine blades would be visible above the woodland tree line from some dwellings, (and acknowledging the Environmental Statement records the effects as '*significant*') the proposed turbines would not appear as overtly dominant or oppressive from any of these properties.
- 8.111 Moving round to Close Gap, ground floor and first floor living rooms face in the direction of the proposed site.^[1.51, 5.18] Existing woodland provides a good measure of screening; but, in the event of it being cleared within the life time of the proposed wind farm, the field of view to the two foreground turbines would be relatively narrow and at some 760 metres away would not be overly dominant; and the remaining turbines, whilst taking on a wider spread, would appear more distant and smaller in scale. The combined effects, although forming a significant component of the principal view from the house, would not cross the threshold of being overwhelming or seriously harmful to living conditions.

- 8.112 At Orchard Bank, some 1.4 kilometres from the proposed wind farm, direct views would be experienced from rooms at the front of the house, including sitting room, conservatory and bedrooms and from the front and side gardens. Residential Viewpoint 3 is indicative (being slightly offset from the house and with two turbines hidden), but all 9 turbines could be visible depending on the position of the viewer relative to foreground vegetation.
- 8.113 Assuming the worst case, the proposed turbines would be present in the middle distance of an extensive open landscape; they would be well-ordered in terms of spacing and relative height; and, whilst they would inevitably take on a daily presence, their scale, diminished by distance, would not be sufficient to have serious adverse effects on overall living conditions. This conclusion remains in the knowledge that the Minsca wind farm, at a greater distance, is said to be visible from rooms with a north-westerly aspect, including the conservatory and one of the front bedrooms which would also face the proposed wind farm.
- 8.114 Mosside is situated to the rear of Orchard Bank and further away from the Beck Burn site. The foreground dwelling and extensive garden vegetation would afford considerable screening or filtering; and the extent to which open views of the turbines would be apparent would not be sufficient to adversely affect living conditions to a material degree.
- 8.115 Viewing from public vantages in the vicinity of Sark Hall and Scotsdyke, beyond the 2.4 kilometre radius from the wind farm, despite the presence of open views across the landscape, the overall scale of the landscape and the significantly reduced size of the turbines in the distance point to no material adverse impacts.
- 8.116 Taking in Westgillsyke, at 1.25 kilometres from the site, and with the benefit of corrected visualisations (*CD11.10*), the degree to which the proposed turbines would be visible, even in winter with reduced vegetation cover, would be very limited.^[5.20, 6.41] Although Westgillsyke is elevated and main rooms face in the direction of the proposed wind farm, the impacts on living conditions would not be noticeably harmful.
- 8.117 In terms of views out from the settlement of Springfield, particularly concerning dwellings on its eastern edge where there are some open views, the turbines would be in the order of 1.5 kilometres distant; and set within a large scale layered landscape with 'man-made' elements.^[5.33] As such there would be no material harm to residential amenity.

Other matters: ecology and nature conservation

- 8.118 Statutory consultees who objected at the outset, due in particular to potential adverse impacts on Pink-footed Geese and Barnacle Geese, have withdrawn their objections subject to specified works to be secured by a Planning Obligation.^[1.23, 1.24, 1.26, 5.9 – 5.13] The measures set out provide, amongst others, for a goose refuge area and management prescriptions to minimise the prospect of fatalities associated with Pink-footed Geese flying through the wind farm. It is proportionate and fulfils the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and it merits considerable weight.

- 8.119 On the basis of securing the measures referred to above, Natural England has confirmed that a conclusion of 'No Likely Significant Effect' can be reached. Accordingly an 'Appropriate Assessment' is not required.^[5.11]
- 8.120 In terms of the alleged limitation of the bat survey, the overall balance of the evidence is that the proposed wind farm is unlikely to have any material impact on very small bat populations.^[5.14, 6.41]

Other matters: site restoration and safety

- 8.121 Mining operations for peat within the Beck Burn Peat Works site are subject to a planning permission which requires the submission and implementation of a site restoration scheme aimed at securing future habitat restoration to lowland mire. It is therefore vital that the construction and decommissioning of the proposed wind farm does not conflict with this long term aim. The Unilateral Undertaking is directly related to this valid objective and it provides a clear demonstration of intent for the relevant parties to co-operate in securing the restoration of the site and to provide future surety. It is a relevant material consideration in resolving the concerns of Natural England, the local planning authority and the minerals planning authority; and in responding to local representations.^[1.26, 5.41 - 5.44, 6.23, 6.25, 6.26, 6.41, 7.8, 7.9]
- 8.122 As to concerns about the impacts of concrete foundations on the peat, a technical paper provides convincing evidence to explain why local fears of concrete 'floating' to the surface would not arise.^[5.43, 6.31] The overall balance of the evidence is that the proposed wind farm would not prejudice the reinstatement of the peat moss.
- 8.123 With reference to the local projects for coal mining and gas extraction, local anxiety was not matched by any technical evidence of any potential conflict with the proposed wind farm.^[6.26]

Other matters: archaeology and heritage

- 8.124 Although there is apparent dispute about the precise location of the Battle of the Solway, even if it were to have taken place on the appeal site, the ability to imagine or appreciate the characteristics of the landscape at that date have been compromised by more recent peat extraction and other changes in the landscape.^[5.40, 6.23, 6.26, 6.40] The erection of turbines as proposed would not result in any further loss to the understanding of the battle.
- 8.125 In terms of the impact of the proposal on Hadrian's Wall World Heritage Site, English Heritage, in its consultation response, acknowledged that the proposed turbines would be visible in views to and from the World Heritage Site. However, it came to the conclusion that the development would not harm the asset's Outstanding Universal Value in relation to appreciating and understanding how the Roman frontier system functioned.
- 8.126 Whilst it is acknowledged that tourists to the area would see the proposed wind farm, generally at a considerable distance and in a wider vista,^[6.25, 6.40] such a small 'blemish' to a view would not fundamentally take away the ability to comprehend an important era in history.

(d) The overall planning balance

- 8.127 Starting with the development plan, Policy EM 17 of the Regional Spatial Strategy confirms that local planning authorities should give significant weight to the wider environmental, community and economic benefits of proposals for renewable energy schemes subject to the consideration of various criteria which I have discussed, where relevant, in my assessment of 'other matters' above and also in relation to my conclusions on the development plan as a whole. ^[1.27, 1.31, 4.8] Policies DP1, DP9 and EM15, concerning adapting to climate change and providing for sustainable energy production, ^[1.27] are consistent with general Government objectives.
- 8.128 It is also relevant to note that, although there are local concerns that the county is bearing a disproportionate burden of on-shore wind development, and there are concerns about cumulative impacts, Cumbria has not met its 2010 indicative target. In addition there remains a material shortfall in progress towards the aspiration for 2015; and also with the indicative Structure Plan target for new installed capacity in Cumbria by 2016. ^[1.29, 2.21, 2.22, 4.10, 5.7, 5.72] These are factors of significant weight.
- 8.129 The Regional Spatial Strategy remains part of the development plan and it continues to merit weight even against the background of the Government's intention to secure its formal revocation. ^[1.28, 1.32] The development of the targets therein and the justification for them, set against national and international targets, are, irrespective of the status of the Regional Spatial Strategy, strong material considerations.
- 8.130 Saved Policy R44 of the Cumbria and Lake District Structure Plan also requires significant weight to be given to the benefits of renewable energy proposals and indicates that favourable consideration will be given to projects which avoid significant adverse effects on landscape character; biodiversity; natural and built-heritage; local amenity; the local economy; highways or telecommunications; and it takes all practicable measures to reduce any identified adverse impacts. ^[1.27, 1.31, 4.9, 4.10]
- 8.131 In addition, safeguards would be put in place, through planning conditions, to ensure that those underlying interests could be safeguarded. The Planning Obligations provide particular solace in relation to bird species and peat restoration and there would be no material conflict with Saved Policy DP7 of the Carlisle District Local Plan. ^[1.27, 1.31]
- 8.132 At a more local level the Carlisle District Local Plan, through Saved Policy CP8, favours renewable energy projects subject to certain safeguards, none of which would be compromised by the proposed schemes, subject to the imposition of the recommended planning conditions. ^[1.27, 1.31, 4.11] Again, with Planning Obligations in place, there would be no conflict with Saved Policy DP7 and its protection of European Natura 2000 sites.
- 8.133 Consideration of the above principal policies of relevance leads me to endorse the main parties' consensus that the proposals would be in accordance with the development plan. ^[4.73, 5.73]
- 8.134 I have already set out the extent and importance of national policy on renewable energy and the binding nature of various international and national obligations to reducing carbon dioxide emissions; and the thrust of Government policy in seeking security of energy supply. Again, none of this is contested between the main parties and it adds to the support of the development plan.

- 8.135 From my discussion of 'other matters', as set out in earlier paragraphs, there is no demonstrable evidence to support local objections on a wide range of issues; particularly where matters of legitimate concern can be mitigated by planning conditions or the Planning Obligations. As such, none of the matters raised suggest material conflict with any aspect of the development plan.
- 8.136 For the avoidance of doubt, given the relative proximity of Hallburn Farm to Beck Burn Peat Works, and setting aside the main issue of the Array, there are no matters sufficient to warrant refusal of either scheme. Taking full account of other wind farms in the wider locality both projects could be accommodated without material harm to the 'planning matters' already discussed. As such the proposals, individually and together, would be in accordance with the provisions of the development plan when read as a whole.
- 8.137 This leads to the return to the main issue, namely the impact of the projects on the Eskdalemuir Array. There are no development plan policies of relevance to its protection; but, Overarching National Policy Statement for Energy (EN-1) makes specific reference to the Array and the importance of ensuring that new energy infrastructure does not significantly impede or compromise the safe and effective use of such assets. ^[3.10, 3.11]
- 8.138 From my previous consideration of the absolute need to safeguard the Array, I have found that the current budget is fully allocated and approval of either proposal would compromise its operation. However, two 'aged' projects which hold budget are subject to constraints and are preventing otherwise unconstrained schemes from gaining approval. That all arises from the means of allocating budget at an early stage in the processing of an application for a wind farm; and it could be remedied by considering the allocation of budget as 'the last hurdle'.
- 8.139 Essentially, there are three avenues available to the Secretary of State. The first would be to dismiss the appeals due to adverse impacts on the Array in light of the Ministry of Defence's objection based on the manner in which it operates the budget tool.
- 8.140 The second option would be to acknowledge the apparent shortcomings of the existing budget tool, and the manner in which it hinders the delivery of much needed renewable energy by specific reference to the Ewe Hill and Earlsbaugh projects. And, if the Secretary of State were to agree that there was no other reason to dismiss these appeals, to re-consult the Ministry of Defence with a 'minded to allow' letter subject to the availability of budget and on the assumption of the Ministry of Defence re-assigning already allocated budget to proposed schemes which await determination, thereby allowing these projects to proceed.
- 8.141 The third, would arise if the Secretary of State were to come to the conclusion that, notwithstanding the urgent need to up-date the means by which budget is to be allocated, formal process should be followed either through the Scottish Government and the Eskdalemuir Working Group or by a Government department taking the lead in seeking a more effective system. In that case planning permission would have to be refused pending formal consideration and any changes in due course.

8.142 To my mind there are several factors which stand out. There is an urgent need to deliver more renewable energy projects both nationally and locally; the current system of allocating budget has ground to a halt; there are otherwise unconstrained projects which could come to fruition if sterilised budget were to be reallocated; and the manner in which the Ministry of Defence appeared to portray change as a 'problem' rather than a 'solution'. ^[4.67, 4.71] Against this background I would commend the second 'option' as described in paragraph 8.140 above.

(e) Recommendations

Recommendation 1:

Land at Hallburn Farm, Hallburn Longtown, Carlisle, CA6 5TW

8.143 I recommend that the appeal be allowed and planning permission be granted for six wind turbines with a tip height not exceeding 126.5m, access tracks, crane hardstandings and outrigger pads, control building, underground electrical cables and temporary construction compound in accordance with the terms of the application, Ref: 11/0118, dated 11 February 2011, subject to: -

- (i) the Secretary of State receiving confirmation from the Ministry of Defence, following re-consultation, that there is sufficient 'budget'²⁰⁷ (and of course implicitly a revision in the way that the budget is assigned) to accommodate the scheme (taking account of projects which have been approved, consented or constructed); and
- (ii) the conditions set out in Appendix A to this report.

Recommendation 2

Beck Burn Peat Works, Springfield, Longtown, Carlisle, CA6 5NH

Summary of Recommendation: The appeal be allowed subject to:

8.144 I recommend that the appeal be allowed and planning permission be granted for the erection of 9 wind turbine generators, transformer housings, control room, 80m high meteorological mast and formation of associated laydown area, crane pads, and access tracks in accordance with the terms of the application, Ref: 10/1102, dated 6 December 2010, subject to: -

- (i) the Secretary of State receiving confirmation from the Ministry of Defence, following re-consultation, that there is sufficient 'budget'²⁰⁸ (and of course implicitly a revision in the way that the budget is assigned) to accommodate the scheme (taking account of projects which have been approved, consented or constructed); and
- (ii) the conditions set out in Appendix B to this report.

David MH Rose

Inspector

²⁰⁷ Relating to the Eskdalemuir Seismological Array

²⁰⁸ Relating to the Eskdalemuir Seismological Array

Appendix A

Schedule of recommended planning conditions: Hallburn Farm

Commencement

1. The development hereby permitted shall be commenced before the expiration of three years from the date of this decision. Written confirmation of the commencement of development shall be provided to the local planning authority no later than one week after the event.

Reason: To comply with s91 of the Town and Country Planning Act 1990 (as amended)

Approved drawing

2. The development hereby permitted shall be carried out in accordance with the following approved plan: Figure 1.2 Scheme Layout (Environmental Statement Volume 1B - September 2010).

Reason: For the avoidance of doubt and in the interests of proper planning so as to ensure that the development is carried out in accordance with the approved plan

Duration of planning permission

3. This permission shall endure for a period of 25 years from the date when electricity is first exported from any of the wind turbines to the electricity grid ('First Export Date'). Written notification of the First Export Date shall be given to the local planning authority no later than 14 days after the event.

Reason: In recognition of the expected lifespan of the wind farm and in the interests of safety and amenity once the plant is redundant

Site restoration

4. No later than 12 months prior to the end of this permission, a decommissioning and site restoration scheme shall be submitted for the written approval of the local planning authority. The scheme shall make provision for the removal of the wind turbines and associated above ground works approved under this permission and details of the depth to which the wind turbine foundations will be removed. The scheme shall also include the management and timing of any works; a traffic management plan to address potential traffic impact issues during the decommissioning period; location of material laydown areas; an environmental management plan to include details of measures to be taken during the decommissioning period to protect wildlife and habitats; and details of site restoration measures. The approved scheme shall be fully implemented within 12 months of the expiry of this permission.

Reason: To ensure the development is decommissioned and the site restored at the expiry of the permission

5. If any wind turbine generator hereby permitted ceases to export electricity to the grid for a continuous period of 12 months a scheme shall be submitted to the local planning authority for its written approval within 3 months of the end of that 12 month period for the repair or removal of that turbine. The scheme shall include, as relevant, a programme of remedial works where repairs to the identified turbine are required. Where removal is necessary the scheme shall include a programme for removal of the turbine and associated above ground works approved under this permission, details of the depth to which the wind turbine foundations will be removed and for site restoration measures following the removal of the relevant turbine. The scheme shall thereafter be implemented in accordance with the approved details and timetable.

Reason: In the interests of visual amenity

Site access

6. No development shall take place until details of the proposed construction, materials and surfacing of the site access road and its junction with the public highway have been submitted to and approved in writing by the local planning authority. These details shall include proposed boundary treatments (including any gates); swept path diagrams for turbine delivery vehicles using the site entrance; and reinstatement of the land after decommissioning of the development hereby approved. The development shall then be carried out in accordance with the approved details and thereafter retained as such.

Reason: To ensure that an adequate and safe access is provided to the site

Construction Traffic Management Plan and Construction Method Statement

7. No development shall take place 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 proposals for the routing of construction traffic; scheduling and timing of movements; a condition survey of the construction traffic route before and after the construction phase; the management of junctions to, and crossings of, the public highway and other public rights of way; details of escorts for abnormal loads; temporary warning signs; temporary removal and replacement of highway infrastructure/street furniture; reinstatement of any signs, verges or other items displaced by construction traffic; details of the site access; and banksman/escort details. The approved Construction Traffic Management Plan, including any agreed improvements or works to accommodate construction traffic where required along the route, shall be carried out as approved.

Reason: In the interests of highway safety

8. Prior to the commencement of development, a Construction Method Statement shall be submitted to and approved in writing by the local planning authority. Thereafter the construction of the development and pre-operational reinstatement shall only be carried out in accordance with the approved statement, subject to any minor variations approved in writing by the local planning authority. The Construction Method Statement shall include: -
 - a) details of the temporary site compound including temporary structures/buildings, fencing, parking and storage provision to be used in connection with the construction of the development;
 - b) details of the proposed storage of materials and disposal of surplus materials;
 - c) dust management;
 - d) pollution control measures in respect of water courses and ground water; bunding of storage areas; and foul sewerage;
 - e) temporary site illumination during the construction period including proposed lighting levels together with the specification of any lighting;
 - f) details of the phasing of construction works;
 - g) details of surface treatments and the construction of all hard surfaces and tracks;
 - h) details of emergency procedures and pollution response plans;
 - i) siting and details of wheel washing facilities;
 - j) a Site Environmental Management Plan to include details of measures to be taken during the construction period to protect wildlife and habitats;

- k) 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 any materials on the highway;
- l) areas on site designated for the storage, loading, off-loading, parking and manoeuvring of heavy duty plant, equipment and vehicles;
- m) details and a timetable for post construction restoration/reinstatement of the temporary working areas and the construction compound;
- n) working practices for protecting nearby residential dwellings, including measures to control noise and vibration arising from on-site activities, shall be adopted as set out in British Standard 5228 Part 1: 2009.

Reason: To ensure a satisfactory level of environmental protection and to minimise disturbance to local residents during the construction process

Construction Hours

9. Construction and decommissioning works shall not take place outside the hours of 07:00 – 19:00 hours Monday to Friday inclusive and 07:00 – 13:00 hours on Saturday. No construction or decommissioning works shall take place on a Sunday or Public Holiday. Exceptions for work outside these hours, including turbine erection because of weather dependence, may be carried out only with the prior written approval of the local planning authority. Emergency works may be carried out at any time provided that the operator retrospectively notifies the local planning authority in writing of the emergency and works undertaken within 24 hours following the event.

Reason: In the interests of amenity to restrict noise impact and the protection of the local environment

10. The delivery of any construction materials or equipment for the construction of the development, other than turbine blades, nacelles and towers, shall not take place outside the hours of 07:00 - 19:00 hours Monday to Friday inclusive, 07:00 to 13:00 hours on Saturday with no such deliveries on a Sunday or Public Holiday unless otherwise approved in writing by the local planning authority having been given a minimum of two working days notice of the proposed delivery.

Reason: In the interests of minimising disturbance to local residents

Appearance

11. All wind turbine generators shall be of three bladed construction. The blades of all wind turbine generators shall rotate in the same direction. The overall height of the wind turbines shall not exceed 126.5m to the tip of the blades when the turbine is in the vertical position, as measured from natural ground conditions immediately adjacent to the turbine base.

Reason: In the interests of visual amenity

12. Prior to the erection of any wind turbine, details of the colour and finish of the towers, nacelles and blades (including measures to minimise the risk of ice throw) and any external transformer units shall be submitted to and approved in writing by the local planning authority. No name, sign, or logo shall be displayed on any external surfaces of the turbines or any external transformer units other than those required to meet statutory health and safety requirements. The approved colour and finish of the wind turbines and any external transformer units shall be implemented prior to the turbines becoming operational and shall not be changed without the prior written approval of the local planning authority. The development shall be carried out in accordance with the approved details.

Reason: In the interests of visual amenity

13. Prior to the commencement of construction of the electricity substation, details of the design and the external appearance, dimensions and materials for the building and any associated compound or parking area and details of surface and foul water drainage from the substation building shall be submitted to and approved in writing by the local planning authority. The development of the substation building and any associated compound or parking area shall be carried out in accordance with the approved details.

Reason: In the interest of visual amenity

14. All electrical cabling between (i) the individual turbines; (ii) the turbines and the on-site electricity substation; and (iii) the on-site electricity substation and the boundary of the application site shall be installed underground only.

Reason: In order to ensure a satisfactory appearance in the landscape

15. There shall be no permanent illumination on the site other than a passive infra-red operated external door light for the substation building door to allow safe access; temporary lighting required during the construction period or during maintenance; or emergency lighting; and aviation lighting.

Reason: In the interests of visual amenity

Micro-siting

16. Prior to the commencement of construction of the development, the turbines hereby permitted may be micro-sited from their original position no further than 30 metres in any given direction, notification of which shall be provided in writing to the local planning authority before the erection of the relevant turbine.

Reason: In order to account for variations in the ground conditions on the site.

Ecology

17. Prior to the commencement of development a specification for pre-construction checking surveys for bats, badgers and breeding birds shall be submitted to and approved in writing by the local planning authority. The survey results, and a programme of any mitigation required as a consequence, shall be submitted to and approved in writing by the local planning authority prior to any works associated with the construction of the development taking place. The programme of mitigation work shall be implemented as approved.

Reason: In the interests of nature conservation

18. Prior to the commencement of development, a Habitat Management and Enhancement Plan shall be submitted to and approved in writing by the local planning authority. The Habitat Enhancement and Management Plan shall include the details of the tree and hedgerow planting necessary to offset any unavoidable removal of existing hedgerow habitat and to enhance retained hedgerows including details of replacement planting for plants which become diseased or are destroyed or die within 5 years of the date of planting. The Habitat Enhancement Plan shall be implemented as approved.

Reason: In the interests of nature conservation and to help verify the effectiveness of current methods used in assessing the ecological impacts of wind turbine developments

Archaeology

19. No development shall commence until a programme of archaeological work in accordance with a written scheme of investigation has been submitted to and approved in writing by the local planning authority. This written scheme shall include the following components:

- (i) an archaeological evaluation to be undertaken in accordance with the agreed written scheme of investigation; and
- (ii) an archaeological recording programme the scope of which will be dependent upon the results of the evaluation and will be in accordance with the agreed written scheme of investigation.

Reason: To secure the provision of archaeological investigation and the subsequent recording of the remains

Aviation

20. No development shall commence unless and until a Radar Mitigation Scheme has been submitted to and approved in writing by the local planning authority to address the impact of the wind farm on air safety. In this condition 'Radar Mitigation Scheme' means a scheme designed to mitigate the impact of the development on the operation of the Watchman Primary Surveillance Radar at RAF Spadeadam – Deadwater Fell ('the Radar') and the air traffic control operations of the Ministry of Defence which are reliant upon the Radar. The Radar Mitigation Scheme shall set out the appropriate measures to be implemented to mitigate the impact of the development on the Radar and shall be in place for the operational life of the development provided the Radar remains in operation.

Reason: In the interests of air safety

21. No turbines shall become operational unless and until all measures required by the approved Radar Mitigation Scheme to be implemented prior to the operation of the turbines have been implemented and the local planning authority has confirmed this in writing. The development shall thereafter be operated fully in accordance with the approved Radar Mitigation Scheme.

Reason: In the interests of air safety

22. Ministry of Defence accredited 25 candela omni-directional aviation lighting or infra-red aviation lighting shall be installed on the nacelles of all turbines. The turbines shall be erected with this lighting installed and the lighting shall remain operational until such times as the wind turbines are decommissioned and removed from service.

Reason: In the interests of air safety

Geology and hydrology

23. No development shall take place until a programme of geotechnical assessment (which accords with Volume 1A of the Environmental Statement) has been submitted to and approved in writing by the local planning authority. The scheme shall be carried out in accordance with the approved details.

Reason: To determine the characteristics of the underlying geology at each proposed turbine location and to monitor groundwater conditions on the site

Television interference

24. Prior to the First Export Date a scheme providing for a baseline survey and the investigation and alleviation of any electro-magnetic interference to television caused by the operation of the turbines shall be submitted to and approved in writing by the local planning authority. The scheme shall provide for the investigation by a qualified independent television engineer of any complaint of interference with television reception at a lawfully occupied dwelling (defined for the purposes of this condition as a building within Use Class C3 and C4 of the Town and Country Planning (Use Classes) Order 1987) which lawfully exists or had planning permission at the date of this permission, where such complaint is notified to the developer by the local planning authority within 12 months of the First Export Date. Where impairment is determined by the qualified television engineer to be attributable to the wind farm, mitigation works shall be carried out in accordance with the scheme which has been submitted to and approved in writing by the local planning authority.

Reason: In the interests of amenity for nearby residents

Shadow flicker

25. Prior to the First Export Date a written scheme shall be submitted to and approved in writing by the local planning authority setting out a shadow flicker protocol for the assessment of shadow flicker in the event of any complaint from the owner or occupier of a dwelling (defined for the purposes of this condition as a building within Use Class C3 and C4 of the Town and Country Planning (Use Classes) Order 1987) which lawfully exists or had planning permission at the date of this permission. The written scheme shall include remedial measures. Operation of the turbines shall take place in accordance with the approved protocol.

Reason: In the interests of amenity for nearby residents

Contamination

26. Prior to the commencement of development, the following components of a scheme to deal with the risks associated with contamination of the site shall be submitted to and approved, in writing, by the local planning authority: -
- (1) a preliminary risk assessment which has identified: -
 - (i) all previous uses;
 - (ii) potential contaminants associated with those uses;
 - (iii) a conceptual model of the site indicating sources, pathways and receptors; and
 - (iv) potentially unacceptable risks arising from contamination at the site;
 - (2) a site investigation scheme, based on (1), to provide for a detailed assessment of the risk to all receptors that may be affected, including those off site;
 - (3) the results of the site investigation and detailed risk assessment referred to in (2) and, based on those, an options appraisal and remediation strategy giving full details of the mediation measures required and how they are to be undertaken; and

- (4) a verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identify any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

The schemes shall be implemented as approved.

Reason: To establish any contaminative uses that might impact upon human health or controlled waters as a result of the turbine construction and/or infrastructure

Maximum Installed Capacity

27. The maximum installed capacity of the wind farm hereby permitted shall not exceed 18 megawatts.

Reason: To restrict the maximum permissible ground vibration to that assessed so as to safeguard the operation of the Eskdalemuir Seismological Recording Station

Noise

28. 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 Tables 1 and 2 attached to this condition and:

- (a) Prior to the First Export Date, the wind farm operator shall submit to the local planning authority for written approval a list of 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 from the local planning authority, following a complaint to it from an occupant of a dwelling alleging noise disturbance at that dwelling, the wind farm operator shall, at its expense, employ an independent consultant approved by the local planning authority 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, as a minimum, the date, time and location that the complaint relates to. 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) within 28 days of receipt in writing of the local planning authority's request.

- (c) Where there is more than one property at a location specified in the Tables attached to this condition, the noise limits set for that location shall apply to all residential properties at that location.

Where a dwelling to which a complaint is related is not identified by name or location in the Tables attached to this condition, 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 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) Prior to the submission of the independent consultant's assessment of the rating level of noise immissions, the wind farm operator shall submit to the local planning authority for written approval a proposed assessment protocol, as developed in association with the independent consultant.

The protocol shall include the proposed measurement location identified in accordance with the Guidance Notes where measurements for compliance checking purposes shall be undertaken and also the range of meteorological and operational conditions (which shall include the range of wind speeds, wind directions, power generation and times of day) to determine the assessment of rating level of noise immissions.

The proposed range of conditions shall be those which prevailed during times when the complainant alleges there was disturbance due to noise, having regard to the written request of the local planning authority under paragraph (c), and such others as the independent consultant considers likely to result in a breach of the noise limits.

The assessment of the rating level of noise immissions shall be undertaken in accordance with the assessment protocol 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) of this condition 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 Guidance Note 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 (d) above unless the time limit for the submission of the further assessment has been extended in writing by the local planning authority.

- (g) The wind farm operator shall continuously log nacelle wind speed, nacelle orientation, power generation and nacelle wind direction for each turbine in accordance with this permission, all in accordance with Guidance Note 1(d) of the attached Guidance Notes.

The data from each wind turbine shall be retained for a period of not less than 24 months.

The wind farm operator shall provide this information in the format set out in Guidance Note 1(e) of the attached Guidance Notes 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 Town and Country (Use Classes) Order 1987 which lawfully exists or had planning permission at the date of this permission.

Table 1 – Daytime Noise Limit Criteria (07:00 hours to 23:00 hours):-

Noise limits expressed in dB $L_{A90,10\text{-minute}}$ as a function of the standardised wind speed (m/s) at 10 metres height as determined within the site averaged over 10 minute periods

Location	Standardised wind speed at 10 metres height (m/s)											
	1	2	3	4	5	6	7	8	9	10	11	12
Hallburn Farm * (341581 568608)	-	-	45.0	45.0	45.0	45.0	45.0	45.3	46.7	47.5	47.6	47.6
Hallburn Farm ** (341581 568608)	-	-	36.4	37.9	39.7	41.6	43.6	45.3	46.7	47.5	47.6	47.6
Clift Cottage (340649 566915)	-	-	41.4	43.0	44.7	46.4	48.2	50.1	52.0	54.0	56.1	58.2
Whitesyke Farm (340374 567449)	-	-	38.6	39.7	41.0	42.7	44.5	46.7	49.1	51.7	54.6	57.8
Low Hallburn Farm (340330 568389)	-	-	41.8	43.2	44.7	46.1	47.4	48.6	49.2	49.2	49.2	49.2
Lyne View (342759 567378)	-	-	37.1	38.4	39.8	41.2	42.5	43.6	44.5	45.2	45.5	45.5
Haggistone Farm (341809 566903)	-	-	37.1	38.4	39.8	41.2	42.5	43.6	44.5	45.2	45.5	45.5
H1 (340947 566448)	-	-	37.1	38.4	39.8	41.2	42.5	43.6	44.5	45.2	45.5	45.5
H2 (341248 566155)	-	-	37.1	38.4	39.8	41.2	42.5	43.6	44.5	45.2	45.5	45.5
H3 (341953 568951)	-	-	36.4	37.9	39.7	41.6	43.6	45.3	46.7	47.5	47.6	47.6

* If Financially Involved

** If Not Financially Involved

Table 2 – Night-time Noise Limit Criteria (23:00 hours to 07:00 hours):-

Noise limits expressed in dB L_{A90,10-minute} as a function of the standardised wind speed (m/s) at 10 metres height as determined within the site averaged over 10 minute periods

Location	Standardised wind speed at 10 metres height (m/s)											
	1	2	3	4	5	6	7	8	9	10	11	12
Hallburn Farm * (341581 568608)	-	-	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0
Hallburn Farm ** (341581 568608)	-	-	43.0	43.0	43.0	43.0	43.0	43.0	43.0	44.0	44.0	44.0
Clift Cottage (340649 566915)	-	-	43.0	43.0	43.0	43.0	43.0	43.0	43.0	44.4	46.7	49.1
Whitesyke Farm (340374 567449)	-	-	43.0	43.0	43.0	43.0	43.0	43.0	44.4	45.3	45.3	45.3
Low Hallburn Farm (340330 568389)	-	-	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
Lyne View (342759 567378)	-	-	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
Haggistone Farm (341809 566903)	-	-	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
H1 (340947 566448)	-	-	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
H2 (341248 566155)	-	-	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
H3 (341953 568951)	-	-	43.0	43.0	43.0	43.0	43.0	43.0	44.0	44.0	44.0	44.0

* If Financially Involved

** If Not Financially Involved

Reason: To safeguard the living conditions of residents in the locality

Guidance Notes for Noise Condition

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 any 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 Guidance Note 2 of these Guidance Notes and any tonal penalty applied in accordance with Guidance Note 3 with any necessary correction for residual background noise levels in accordance with Guidance Note 4.

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).

Guidance Note 1

- (a) Values of the L_{A90,10-minute} noise statistic should be measured at the complainant's property (or an approved alternative representative location), 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 LA_{90,10-minute} measurements should be synchronised with measurements of the 10-minute arithmetic mean wind speed and wind direction data and with operational data logged in accordance with Guidance Note 1(d) and rain data logged in accordance with Guidance Note 1(f), 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 arithmetic mean wind speed and wind direction at hub height for each turbine and arithmetic mean power generated by each turbine, all in successive 10-minute periods, unless otherwise agreed in writing with the local planning authority. The mean wind speed data for the operating turbines shall be 'standardised' to a reference height of 10 metres as described in ETSU-R-97 at page 120.

It is this standardised 10 metre height wind speed data, averaged across all operating wind turbines, which is correlated with the noise measurements determined as valid in accordance with Guidance Note 2, such correlation to be undertaken in the manner described in Guidance Note 2. 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 the noise condition shall be provided in comma separated values in electronic format.
- (f) A data logging rain gauge shall be installed within 3 metres 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 synchronised with the periods of data recorded in accordance with Note 1(d).

Guidance Note 2

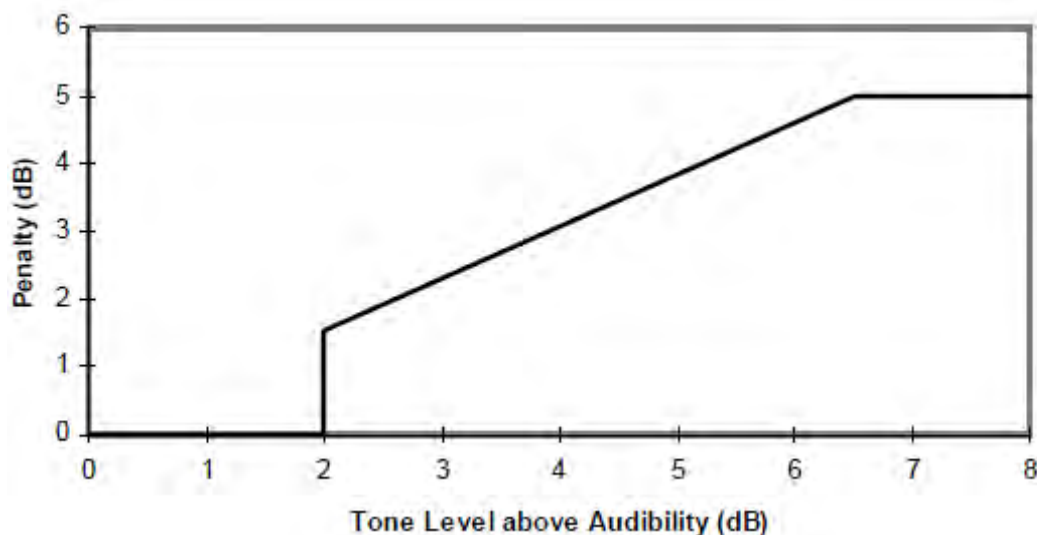
- (a) The noise measurements should be made so as to provide not less than 20 valid data points as defined in Note 2(b).
- (b) Valid data points are those measured during the conditions specified by the local planning authority set out in the assessment protocol approved under paragraph (d) of the noise condition but excluding any periods of rainfall measured in accordance with Guidance Note 1(f). 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) For those data points considered valid in accordance with Guidance Note 2(b), values of the LA_{90,10-minute} noise measurements and corresponding values of the 10-minute wind speed, as derived from the standardised ten metre height wind speed averaged across all operating wind turbines using the procedure specified in Guidance Note 1(d), shall be plotted on an XY chart with noise level on the Y-axis and the standardised mean 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.

Guidance Note 3

- (a) Where, in accordance with the approved assessment protocol under paragraph (d) of the noise condition, 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 is to be calculated and applied using the following rating procedure
- (b) For each 10-minute interval for which $LA_{90,10\text{-minute}}$ data have been determined as valid in accordance with Guidance 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, as described in Section 2.1 on pages 104-109 of ETSU-R-97, 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 line 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 at 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 Guidance Note 2.
- (f) The tonal penalty is derived from the margin above audibility of the tone according to the figure below.



Guidance Note 4

- (a) If a tonal penalty is to be applied in accordance with Guidance 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 Guidance Note 2 and the penalty for tonal noise as derived in accordance with Guidance Note 3 at each integer wind speed within the range set out in the approved assessment protocol under paragraph (d) 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 Guidance Note 2.
- (c) In the event that the rating level is above the limit(s) set out in the Tables attached to the noise condition 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 immission 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 Guidance Note 2, with the wind farm switched off, and determining the background noise (L_3) at each integer wind speed within the range set out in the approved noise assessment protocol under paragraph (d) of the noise condition.
 - ii. The wind farm noise (L_1) at this speed shall then be calculated as follows where L_2 is the measured level with turbines running but without the addition of any tonal penalty:

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

- iii. The rating level shall be re-calculated by adding the tonal penalty (if any is applied in accordance with Guidance Note 3) to the derived wind farm noise L_1 at that integer wind speed.
- iv. 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 noise condition.

Appendix B

Schedule of recommended planning conditions: Beck Burn Peat Works

Commencement

1. The development hereby permitted shall be commenced before the expiration of three years from the date of this decision. Written confirmation of the commencement of development shall be provided to the local planning authority no later than one week after the event.

Reason: To comply with s91 of the Town and Country Planning Act 1990 (as amended)

Approved drawings

2. The development hereby permitted shall be carried out in accordance with the following approved plans: -²⁰⁹
 - (a) Figure 1.1 Site Location Plan;
 - (b) Figure 1.3 Site Layout;
 - (c) Figure 3.3 Typical Turbine Elevations;
 - (d) Figure 3.4 Crane Hardstanding;
 - (e) Figure 3.6 Control Building Dimensions;
 - (f) Figure 3.8 Construction Compound; and
 - (g) Figure 3.10 Wind Monitoring Mast Dimensions.

Reason: For the avoidance of doubt and in the interests of proper planning and to ensure that the development is carried out in accordance with approved plans

Duration of planning permission

3. This permission shall endure for a period of 25 years from the date when electricity is first exported from any of the wind turbines to the electricity grid ('First Export Date'). Written notification of the First Export Date shall be given to the local planning authority no later than 14 days after the event.

Reason: In recognition of the expected lifespan of the wind farm and in the interests of safety and amenity once the plant is redundant

Site restoration

4. No development shall commence until a scheme has been submitted to and approved in writing by the local planning authority providing for the removal of some or all of the development on the expiry of the permission and for the restoration of the site in accordance with condition 5. The scheme, which shall be implemented as approved, shall:
 - (a) follow the principles set out in a draft undertaking relating to peatland restoration issued by the developer to the local planning authority in September 2012;
 - (b) have regard to the restoration requirements secured in the planning permission issued by Cumbria County Council on 30 January 2001 under reference 1/99/9020 for mineral extraction; and

²⁰⁹ received by the local planning authority on 13 December 2010

- (c) contain provisions for the review of restoration requirements in order to take account of changing approaches to restoration and the obligation from time to time of the minerals operator under the planning permission referenced in (b) above to restore the whole or part of its peat extraction area.

Reason: To ensure the development is decommissioned and the site restored at the expiry of the permission

- 5. If any wind turbine generator hereby permitted ceases to export electricity to the grid for a continuous period of 12 months a scheme shall be submitted to the local planning authority for its written approval within 3 months of the end of that 12 month period for the repair or removal of that turbine. The scheme shall include, as relevant, a programme of remedial works where repairs to the identified turbine are required. Where removal is necessary the scheme shall include a programme for removal of the turbine and associated above ground works approved under this permission, details of the depth to which the wind turbine foundations will be removed and for site restoration measures following the removal of the relevant turbine. The scheme shall thereafter be implemented in accordance with the approved details and timetable.

Reason: In the interests of visual amenity

Site access

- 6. Prior to the erection of the first turbine, the details of the proposed construction, materials and surfacing of the site access road and its junction with the public highway shall be submitted to and approved in writing by the local planning authority. These details shall include proposed boundary treatments (including gates). The development shall be carried out in accordance with the approved details and thereafter retained as such.

Reason: To ensure that an adequate and safe access is provided to the site

Construction Traffic Management Plan, Construction Method Statement and enabling works

- 7. No development shall take place, apart from the enabling works listed in Condition 8(iii) below, 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 proposals for the routing of construction traffic; scheduling and timing of movements; a condition survey of the construction traffic route before and after the construction phase; the management of junctions to, and crossings of, the public highway and other public rights of way; details of escorts for abnormal loads; temporary warning signs; temporary removal and replacement of highway infrastructure/street furniture; reinstatement of any signs, verges or other items displaced by construction traffic; and banksman/escort details. The approved Construction Traffic Management Plan, including any agreed improvements or works to accommodate construction traffic where required along the route, shall be carried out as approved.

Reason: In the interests of highway safety

- 8. (i) Prior to the commencement of development, apart from the enabling works outlined below, a Construction Method Statement shall be submitted to and approved in writing by the local planning authority. Thereafter, the construction of the development and pre-operational reinstatement shall only be carried out in accordance with the approved statement, subject to

any minor variations approved in writing by the local planning authority.
The Construction Method Statement shall include: -

- a) details of the temporary site compound including temporary structures/buildings, fencing, parking and storage provision to be used in connection with the construction of the development, and pre-operational re-instatement proposals;
 - b) details of the proposed storage of materials and disposal of surplus materials;
 - c) dust management;
 - d) pollution control including protection of the water environment, bunding of fuel storage areas, surface water drainage, sewage disposal and discharge of foul drainage;
 - e) temporary site illumination during the construction period including proposed lighting levels together with the specification of any lighting;
 - f) details of the phasing of construction works;
 - g) details of surface treatments and the construction of all hard surfaces and tracks;
 - h) details of emergency procedures and pollution response plans;
 - i) siting and details of wheel washing facilities;
 - j) a Site Environmental Management Plan to include details of measures to be taken during the construction period to protect wildlife and habitats;
 - k) 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 any materials on the highway;
 - l) areas on site designated for the storage, loading, off-loading, parking and manoeuvring of heavy duty plant, equipment and vehicles;
 - m) details and a timetable for post construction restoration/reinstatement of the temporary working areas and the construction compound; and
 - n) working practices for protecting nearby residential dwellings, including measures to control noise and vibration arising from on-site activities, shall be adopted as set out in British Standard 5228 Part 1: 2009.
- (ii) Subject to the following paragraph (iii) no work shall begin on the development apart from the enabling works, until the Construction Method Statement has been approved.
- (iii) The provisions of this condition shall not prevent the following enabling works in advance of the approval of the Construction Method Statement: -
- a) construction of the access road;
 - b) construction of the access road bell-mouth; and
 - c) construction of the temporary site storage compound.

The enabling works shall not be carried out until details of them (including any necessary measures they require) have been submitted to and approved in writing by the local planning authority. All of the enabling works shall be carried out in accordance with the approved details.

Reason: To ensure a satisfactory level of environmental protection and to minimise disturbance to local residents during the construction process

Construction Hours

9. Construction and decommissioning works shall not take place outside the hours of 07:00 – 19:00 hours Monday to Friday inclusive and 07:00 – 13:00 hours on Saturday. No construction or decommissioning works shall take place on a Sunday or Public Holiday. Exceptions for work outside these hours, including turbine erection because of weather dependence, may be carried out only with the prior written approval of the local planning authority. Emergency works may be carried out at any time provided that the operator retrospectively notifies the local planning authority in writing of the emergency and works undertaken within 24 hours following the event.

Reason: In the interests of amenity to restrict noise impact and the protection of the local environment

10. The delivery of any construction materials or equipment for the construction of the development, other than turbine blades, nacelles and towers, shall not take place outside the hours of 07:00 – 19:00 hours on Monday to Friday inclusive, 07:00 to 13:00 hours on Saturday with no such deliveries on a Sunday or Public Holiday unless otherwise approved in writing by the local planning authority having been given a minimum of two working days notice of the proposed delivery.

Reason: In the interests of minimising disturbance to local residents during the construction process

Appearance

11. All wind turbines generators shall be of three bladed construction. The blades of all wind turbine generators shall rotate in the same direction. The overall height of the wind turbines shall not exceed 126.25m to the tip of the blades when the turbine is in the vertical position, as measured from natural ground conditions immediately adjacent to the turbine base.

Reason: In the interests of visual amenity

12. Prior to the erection of any wind turbine, details of the colour and finish of the towers, nacelles and blades (including measures to minimise the risk of ice throw) and any external transformer units and for the finish and colour of the meteorological mast shall be submitted to and approved in writing by the local planning authority. No name, sign, or logo shall be displayed on any external surfaces of the turbines or any external transformer units or the meteorological mast other than those required to meet statutory health and safety requirements. The approved colour and finish of the wind turbines and any external transformer units shall be implemented prior to the turbines becoming operational and shall not be changed without the prior written approval of the local planning authority. The development shall be carried out in accordance with the approved details.

Reason: In the interests of visual amenity

13. Prior to commencement of the construction of the electricity substation, details of the design and the external appearance, dimensions and materials for the building and any associated compound or parking area and details of surface and foul water drainage from the substation building shall be submitted to and approved in writing by the local planning authority. The development of the substation building and any associated compound or parking area shall be carried out in accordance with the approved details.

Reason: In the interests of visual amenity

14. All electrical cabling between (i) the individual turbines; (ii) the turbines and the electricity substation; and (iii) the substation and the boundary of the application site shall be installed underground only.

Reason: In order to ensure a satisfactory appearance in the landscape

Communications

15. No development shall commence until a scheme has been submitted to and approved by the local planning authority providing for the mitigation of the impact of the development on Vodafone link VFE05749. The scheme shall be implemented as approved and retained as such thereafter.

Reason: In the interest of maintaining communication links crossing the site

Micro-siting

16. The turbines hereby permitted shall be erected at the following grid co-ordinates:

Turbine ID: British National Grid Reference

	X	Y
T1	334948	568844
T2	335440	569169
T3	335260	569374
T4	334771	569049
T5	334457	568530
T6	334278	568731
T7	334104	568934
T8	334593	569256
T9	333904	569166

Notwithstanding the terms of this condition, the location of the turbines, associated crane pads and access tracks may vary by up to 20 metres (including the consequential realignment of the access tracks between and to the turbines following micro-siting of the turbines). A plan showing the position of the turbines and tracks established on the site shall be submitted to the local planning authority within one month of the First Export Date.

Reason: To enable necessary minor adjustments to the position of the turbines and access tracks to allow for site-specific conditions

Ecology

17. Prior to the commencement of development a specification for pre-construction checking surveys for bats, badgers and breeding birds shall be submitted to and approved in writing by the local planning authority. The survey results and a programme of any mitigation required as a consequence shall be submitted to and approved in writing by the local planning authority prior to any works associated with the construction of the development taking place. The programme of mitigation work shall be implemented as approved.

Reason: In the interests of nature conservation

Aviation

18. Ministry of Defence accredited 25 candela omni-directional aviation lighting or infra-red aviation lighting shall be installed on the nacelles of all turbines. The turbines shall be erected with this lighting installed and the lighting shall remain operational until such times as the wind turbines are decommissioned and removed from service.

Reason: In the interests of air safety

Television interference

19. Prior to the First Export Date a scheme providing for a baseline survey and the investigation and alleviation of any electro-magnetic interference to television caused by the operation of the turbines shall be submitted to and approved in writing by the local planning authority. The scheme shall provide for the investigation by a qualified independent television engineer of any complaint of interference with television reception at a lawfully occupied dwelling (defined for the purposes of this condition as a building within Use Class C3 and C4 of the Town and Country Planning (Use Classes) Order 1987) which lawfully exists or had planning permission at the date of this permission, where such complaint is notified to the developer by the local planning authority within 12 months of the First Export Date. Where impairment is determined by the qualified television engineer to be attributable to the wind farm, mitigation works shall be carried out in accordance with the scheme which has been approved in writing by the local planning authority.

Reason: In the interests of amenity for nearby residents

Shadow flicker

20. Prior to the generation of any electricity to the grid from the development a scheme shall be submitted to and approved in writing by the local planning authority providing for the avoidance of shadow flicker effect at any property. The scheme shall be implemented as approved.

Reason: In the interests of amenity for nearby residents

Maximum installed capacity

21. The maximum installed capacity of the wind farm hereby permitted shall not exceed 18 megawatts.

Reason: To restrict the maximum permissible ground vibration to that assessed so as to safeguard the operation of the Eskdalemuir Seismological Recording Station

Noise

22. 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 Tables 1 and 2 attached to this condition and:
- (a) Prior to the First Export Date, the wind farm operator shall submit to the local planning authority for written approval a list of 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 from the local planning authority, following a complaint to it from an occupant of a dwelling alleging noise disturbance at that dwelling, the wind farm operator shall, at its expense, employ an independent consultant approved by the local planning authority 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, as a minimum, the date, time and location that the complaint relates to. 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) within 28 days of receipt in writing of the local planning authority's request.

- (c) Where there is more than one property at a location specified in the Tables attached to this condition, the noise limits set for that location shall apply to all residential properties at that location.

Where a dwelling to which a complaint is related is not identified by name or location in the Tables attached to this condition, 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 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) Prior to the submission of the independent consultant's assessment of the rating level of noise immissions, the wind farm operator shall submit to the local planning authority for written approval a proposed assessment protocol, as developed in association with the independent consultant.

The protocol shall include the proposed measurement location identified in accordance with the Guidance Notes where measurements for compliance checking purposes shall be undertaken and also the range of meteorological and operational conditions (which shall include the range of wind speeds, wind directions, power generation and times of day) to determine the assessment of rating level of noise immissions.

The proposed range of conditions shall be those which prevailed during times when the complainant alleges there was disturbance due to noise, having regard to the written request of the local planning authority under paragraph (c), and such others as the independent consultant considers likely to result in a breach of the noise limits.

The assessment of the rating level of noise immissions shall be undertaken in accordance with the assessment protocol 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) of this condition 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 Guidance Note 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 (d) above unless the time limit for the submission of the further assessment has been extended in writing by the local planning authority.
- (g) The wind farm operator shall continuously log nacelle wind speed, nacelle orientation, power generation and nacelle wind direction for each turbine and shall continuously log wind speed, wind direction and wind direction data recorded at the permanent meteorological monitoring mast (if erected) in accordance with this permission, all in accordance with Guidance Note 1(d) of the attached Guidance Notes.

The data from each wind turbine, and the data from the permanent meteorological mast (if erected), shall be retained for a period of not less than 24 months.

The wind farm operator shall provide this information in the format set out in Guidance Note 1(e) of the attached Guidance Notes 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 Town and Country (Use Classes) Order 1987 which lawfully exists or had planning permission at the date of this permission.

Table 1 – Daytime Noise Limit Criteria (07:00hrs to 23:00hrs):-

Noise limits expressed in dB $L_{A90,10\text{-minute}}$ as a function of the standardised wind speed (m/s) at 10 metres height as determined within the site averaged over 10 minute periods

Location	Standardised wind speed at 10 metres height (m/s)											
	1	2	3	4 or below	5	6	7	8	9	10	11	12
Midways	-	-	-	44.9	45.5	46.4	47.7	49.2	51.1	51.1	51.1	51.1
Property at A6071	-	-	-	45.2	46.1	46.8	47.3	47.7	47.9	48.2	48.2	48.2
Close Gap*	-	-	-	38.6	39.8	41.8	44.4	47.8	51.9	51.9	51.9	51.9
Westgillsyke Farm	-	-	-	38.6	39.8	41.8	44.4	47.8	51.9	51.9	51.9	51.9
Springfield	-	-	-	47.1	47.8	48.7	49.8	51.1	52.6	52.6	52.6	52.6

* Also spelt Closegap

Table 2 – Night-time Noise Limit Criteria (23:00hrs to 07:00hrs):-

Noise limits expressed in dB $L_{A90,10\text{-minute}}$ as a function of the standardised wind speed (m/s) at 10 metres height as determined within the site averaged over 10 minute periods

Location	Standardised wind speed at 10 metres height (m/s)											
	1	2	3	4 or below	5	6	7	8	9	10	11	12
Midways	-	-	-	43.0	43.0	43.0	43.7	45.3	45.3	45.3	45.3	45.3
Property at A6071	-	-	-	43.0	43.0	43.0	44.5	49.7	50.3	50.3	50.3	50.3
Close Gap*	-	-	-	43.0	43.0	43.0	43.0	47.9	47.9	47.9	47.9	47.9
Westgillsyke Farm	-	-	-	43.0	43.0	43.0	43.0	47.9	47.9	47.9	47.9	47.9
Springfield	-	-	-	43.0	43.0	43.0	44.2	45.8	45.8	45.8	45.8	45.8

* Also spelt Closegap

Table 3 - Coordinate locations of the properties listed in Tables 1 and 2

Property Easting Northing

House Name	British National Grid Coordinates	
	X	Y
Midways	334002	567846
19 Greenmill Road*	335844	568284
Close Gap (Closegap)	335856	569844
Westgillsyke Farm	333676	570338
Braemar**	332858	568145

* Selected to be representative of the properties in Greenmill Road, Longtown and along the A6071 nearby

** Selected to be representative of all the properties in Springfield

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: To safeguard the living conditions of residents in the locality

Guidance Notes for Noise Condition

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 any 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 Guidance Note 2 of these Guidance Notes and any tonal penalty applied in accordance with Guidance Note 3 with any necessary correction for residual background noise levels in accordance with Guidance Note 4.

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).

Guidance Note 1

- (a) Values of the $L_{A90,10\text{-minute}}$ noise statistic should be measured at the complainant's property (or an approved alternative representative location), 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 LA_{90,10-minute} measurements should be synchronised with measurements of the 10-minute arithmetic mean wind speed and wind direction data and with operational data logged in accordance with Guidance Note 1(d) and rain data logged in accordance with Guidance Note 1(f), 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 arithmetic mean wind speed and wind direction at hub height for each turbine and arithmetic mean power generated by each turbine, all in successive 10-minute periods, unless otherwise agreed in writing with the local planning authority. The mean wind speed data for the operating turbines shall be 'standardised' to a reference height of 10 metres as described in ETSU-R-97 at page 120 using a reference roughness length of 0.05 metres.

It is this standardised 10 metre height wind speed data, averaged across all operating wind turbines, which is correlated with the noise measurements determined as valid in accordance with Guidance Note 2, such correlation to be undertaken in the manner described in Guidance Note 2. 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 the noise condition shall be provided in comma separated values in electronic format.
- (f) A data logging rain gauge shall be installed within 3 metres 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 synchronised with the periods of data recorded in accordance with Note 1(d).

Guidance 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(b).
- (b) Valid data points are those measured during the conditions specified by the local planning authority set out in the assessment protocol approved under paragraph (d) of the noise condition but excluding any periods of rainfall measured in accordance with Guidance Note 1(f). 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) For those data points considered valid in accordance with Guidance Note 2(b), values of the LA_{90,10-minute} noise measurements and corresponding values of the 10-minute wind

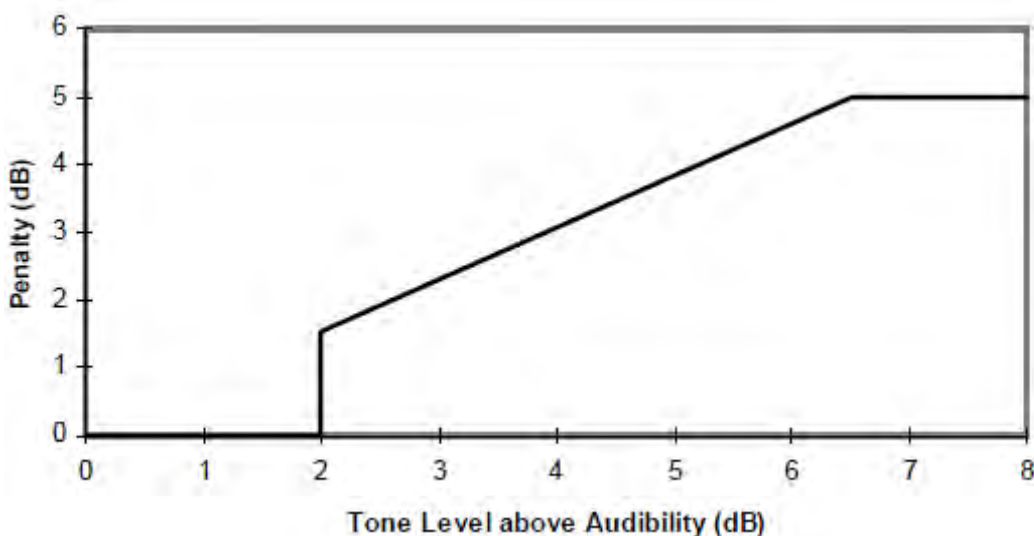
speed, as derived from the standardised ten metre height wind speed averaged across all operating wind turbines using the procedure specified in Guidance Note 1(d), shall be plotted on an XY chart with noise level on the Y-axis and the standardised mean wind speed on the X-axis. A least squares, 'best 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.

Guidance Note 3

- (a) Where, in accordance with the approved assessment protocol under paragraph (d) of the noise condition, 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 is to be calculated and applied using the following rating procedure
- (b) For each 10-minute interval for which $LA_{90,10\text{-minute}}$ data have been determined as valid in accordance with Guidance 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, as described in Section 2.1 on pages 104-109 of ETSU-R-97, 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 line 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 at 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 Guidance Note 2.
- (f) The tonal penalty is derived from the margin above audibility of the tone according to the figure below.



Guidance Note 4

- (a) If a tonal penalty is to be applied in accordance with Guidance 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 Guidance Note 2 and the penalty for tonal noise as derived in accordance with Guidance Note 3 at each integer wind speed within the range set out in the approved assessment protocol under paragraph (d) 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 Guidance Note 2.
- (c) In the event that the rating level is above the limit(s) set out in the Tables attached to the noise condition 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 immission 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 Guidance Note 2, with the wind farm switched off, and determining the background noise (L_3) at each integer wind speed within the range set out in the approved noise assessment protocol under paragraph (d) of the noise condition.
 - ii. The wind farm noise (L_1) at this speed shall then be calculated as follows where L_2 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 Guidance Note 3) to the derived wind farm noise L_1 at that integer wind speed.
- iv. 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 noise condition.

APPEARANCES

For the Local Planning Authority:

Mark Lambert	Solicitor, Carlisle City Council
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He called

Angus Hutchinson BA (Hons), MSc, MBA, MRTPI	Principal Planning Officer (Development Management)
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For REG Windpower Limited:

Paul Maile	Partner, Eversheds LLP
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He called

Peter Frampton BSc (Hons), TP MRICS, MRTPI	Director Framptons Town Planning Ltd
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For EDF Energy Renewables Limited:

Marcus Trinick QC	Partner, Eversheds LLP
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He called

David Bell BSc (Hons), Dip UD, MRTPI, MIHT	Regional Director Jones Lang Lasalle
James D G Welch CMLI	Director Optimised Environments Limited
Dr Steve M Percival BSc (Hons), PhD, MIEEM	Principal Ecology Consulting

For The Ministry of Defence (Rule 6):

William Upton (of Counsel)	Instructed by Treasury Solicitor
David Boyd BSc (Hons), MRTPI	Principal Safeguarding Officer Defence Infrastructure Organisation
Iain Michie BSc (Hons), MRTPI, MRICS	Partner Montagu Evans
Dr David Bowers	AWE plc

INTERESTED PERSONS AND ORGANISATIONS:

Julie Walsh	Owner/manager - Care Home
Eileen Naude	Local resident
Karen Johnson	Clerk to Arthuret Parish Council
(Prof.) John Parratt	Local resident
Graham Denby	Local resident
Ian Armstrong	Local resident
Maynard Hall	Local resident
Will Tillotson	Local resident
Mrs Trotter	Local resident
Mr S Hudson	Local resident
Mrs Siddle	Local resident
David Wilson	Kirkandrews on Esk Parish Council and Springfield and Gretna Green Community Council
June Kirkbride	Local resident
Bruce Coulthard	Local resident
Nicola Hudson	Local resident
Diana deGruyther	Local resident
Mr Hannah	Local resident

CORE DOCUMENTS

1. Adopted Development Plan Documents

REG	1.1	The North West of England Regional Spatial Strategy (issued September 2008) (NWERSS) (extracts only)
REG	1.1A	Tables 9.6 to 9.7c referred to in Policy EM17 North West of England Regional Spatial Strategy to 2021
REG	1.2	Cumbria and Lake District Joint Structure Plan (April 2006) (saved in part) (Structure Plan) (extracts only)
REG	1.3	The Carlisle Local Plan 2001 – 2016 (adopted in September 2008) (Local Plan)
REG	1.4	Cumbria Wind Energy Supplementary Planning Document (supporting the Local Development Frameworks of Cumbria) Parts 1 & 2. Produced by Cumbria County Council July 2007 with associated plan

2. Planning Policy Statements (PPS), Planning Policy Guidance (PPG), Companion Guides and Circulars

REG	2.1	Companion Guide to PPS 22: Renewable Energy (2004) (Extract – Technical Annex on non wind matters excluded)
REG	2.2	The National Planning Policy Framework (March 2012)
REG	2.3	Planning Inspectorate Advice: National Planning Policy Framework (March 2012)
REG	2.4	DECC: Overarching National Policy Statement for Energy EN-1 (Designated Version, 19 July 2011)
REG	2.5	DECC: National Policy Statement for Renewable Energy Infrastructure EN-3 (Designated Version, 19 July 2011)
EDF	2.6	DCLG: Government Response to the Communities and Local Government Select Committee Report: National Planning Policy Framework (March 2012)
EDF	2.7	Circular 11/95 – The Use of Conditions in Planning Permissions – July 1995

3. Legislation

REG	3.1	SI 243 Use of Energy from Renewable Sources Regulations (2011)
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4. Other Local Planning Authority Documents, Regional Renewable Energy Documents and Documents regarding Regional Spatial Strategies

REG	4.1	PINS Advice for Inspectors: Regional Strategies – Impact of Cala Homes Litigation (24 March 2011)
REG	4.2	Letter dated 6 July 2010 from the Secretary of State for Communities and Local Government to all Chief Planning Officers
REG	4.3	Localism Act, PINS Guidance for Appeal Parties, 7 December 2011

5. Court of Appeal and High Court Decisions

REG	5.1	The Queen on the Application of Cala Homes (South) Limited v Secretary of State for Communities and Local Government & Anr [2011] EWCA Civ 639 – Decision of 27 May 2011
EDF	5.2	(1) Derbyshire Dales District Council (2) Peak District National Park - v – (1) Secretary of State for Communities and Local Government (2) Carsington Wind Energy Limited [2009] EWHC 1729 (Admin)

6. Various Wind Farm Appeal Decisions and Section 36 Electricity Act Decisions

REG	6.1	Intentionally left blank (Previously APP/R2928/A/07/2039188)
REG	6.2	Chiplow Site and Jack's Lane, King's Lynn, Norfolk (APP/V2635/A/11/2154590)
REG	6.3	Glenchamber, Glenluce (PPA-170-2028)

REG	6.4	Airfield Farm, Podington (APP/K0235/A/09/2108506)
REG	6.5	Masters Pit, Puddletown Road, Dorset (APP/B1225/A/11/2161905)
REG	6.6	New House Farm, Shifnal (APP/C3430/A/11/2162189)
REG	6.7	Land to the south of Burton Road, Carr Farm, Burton Pidsea (APP/E2001/A/12/2169635)
REG	6.8	Land south west of Leob Cottage, Pennyghael (PPA-130-2026)
REG	6.9	North Forest, Halifax (APP/A4710/A/11/2166509)
REG	6.10	Combined Northumberland Inquiry – Green Rigg (APP/R2928/A/07/2039188), Ray (GDBC/001/00247C, 02 & GDBC/002/00035C-01, 02) and Steadings (GDBC/001/00278C-01, 02, 03, 04, 05; & GDBC/002/0054C) Inspector's Report and Decision Letters
EDF	6.11	Kiln Pit Hill (APP/R2928/A/08/2075105)
EDF	6.12	Sober Hill (APP/E2001/A/09/2101421) (Decision Letter and Inspector's Report)
EDF	6.13	Burnt House Farm (APP/D0515/A/10/2123739 and APP/D0515/A/10/2131194) (Decision Letter and Inspector's Report)
EDF	6.14	Carland Cross (APP/D0840/A/09/2103026)
EDF	6.15	Carsington Pastures (APP/P1045/A/07/2054080)
EDF	6.16	Swinford (APP/F2415/A/09/2096369) (Decision Letter and Inspector's Report)
EDF	6.17	Spaldington Airfield (APP/E2001/A/10/2137617)
EDF	6.18	Watford Lodge (APP/Y2810/A/11/2153242)
EDF	6.19	Kelmarsh (APP/Y2810/A/11/2154375)
EDF	6.20	Westnewton (APP/G0908/A/10/2132949)
EDF	6.21	Kirkharle (APP/P2935/A/10/2136112)
EDF	6.22	Low Spinney (APP/F2415/A/09/2109745)
EDF	6.23	Hellrigg, Parkhead Farm, Silloth (APP/G0908/A/08/2073524)
EDF	6.24	Enifer Downs (APP/X2220/A/2071880)
EDF	6.25	Sillfield, Gatebeck, Kendal (APP/M0933/A/09/2099304)
EDF	6.26	Paul's Moor (APP/X1118/A/08/2083682)
EDF	6.27	Winwick (APP/Y2810/A/11/2156527)
EDF	6.28	Lilbourne (APP/Y2810/A/11/2164759)
EDF	6.29	Chelveston (APP/K0235/A/11/2160077) and (APP/G2815/A/11/2160078)
EDF	6.30	Woolley Hill (APP/H0520/A/11/2158702)
EDF	6.31	Cleek Hall, Selby (APP/N2739/A/12/2172629)
EDF	6.32	Frodsham Canal Deposit Grounds (DPI/A0655/11/13) – Inspector's Report and Decision Letter
MoD	6.33	Minnygap (09/3/P/0340)

7. Planning, Renewable Energy and Climate Change Documents

REG	7.1	DTI Energy White Paper Meeting the Energy Challenge (2007) (Extracts)
REG	7.2	DECC: The UK Renewable Energy Strategy (2009)
REG	7.3	DECC: National Renewable Energy Action Plan for the United Kingdom (July 2010)
REG	7.4	DECC: Annual Energy Statement (July 2010)
REG	7.5	Letter to Lord Turner re 'Increasing the Target for Energy from Renewable Sources' dated 29 July 2010 and Letter to Rt Hon Chris Huhne 'The Level of Renewable Energy Ambition to 2020' dated 9 September 2010
REG	7.6	The Plan for Growth produced by HM Treasury (March 2011) (Executive Summary) and Letter to Chief Planning Officers re the Plan for Growth dated 31 March 2011)
REG	7.7	Committee on Climate Change: Renewable Energy Review (May 2011)
REG	7.8	Government Response to the Consultation on the Draft National Policy Statements for Energy Infrastructure: Extracts from October 2010 Response and Response dated June 2011
REG	7.9	Department for Communities and Local Government, Statement regarding the Presumption in Favour of Sustainable Development (15 June 2011)
REG	7.10	Statement to the House of Commons by the Secretary of State for Energy and Climate Change (18 October 2010 and 23 June 2011)
REG	7.11	Intentionally left blank (See CD 2.4)
REG	7.12	Intentionally left blank (See CD 2.5)
REG	7.13	DECC: UK Renewable Energy Roadmap (July 2011)

REG	7.14	DECC: White Paper – Planning our Electric Future – a White Paper for Secure, Affordable and Low Carbon Electricity (July 2011) (Extracts)
REG	7.15	Natural England, 2009, Assessing the Environmental Capacity for On-Shore Wind Energy Development – Consultation Draft
REG	7.16	DECC: Renewable Electricity in Scotland, Wales, Northern Ireland and the regions of England in 2010, Special Feature Renewable Electricity (September 2010)
REG	7.17	DECC: Consultation on Proposals for the level of banded support under the Renewables Obligation for the period 2013 – 2017 and the Renewables Obligation Order (20 October 2011) (Extracts)
REG	7.18	HM Treasury & Infrastructure UK: National Infrastructure Plan (29 November 2011) (Extracts)
REG	7.19	DECC: The UK Low Carbon Transition Plan, (LCTP), White Paper (July 2009) – Executive Summary
REG	7.20	The Coalition Government: Our programme for Government (Extract)
REG	7.21	European Commission: Directive on the Promotion of the Use of Energy from Renewable Sources 2009/28/EC (2009)
REG	7.22	HM Government, 2050 Pathways Analysis (July 2010) (Extracts)
REG	7.23	Renewable Targets and Scenarios for Renewable Energy, 2006 Best Foot Forward
REG	7.24	The Carbon Plan: Delivering Our Low Carbon Future: DECC (December 2011)
REG	7.25	Intentionally left blank (See CD 2.4)
REG	7.26	Intentionally left blank (See CD 2.5)
EDF	7.27	Special Feature – Renewable Energy in 2011 by DECC (June 2012)
EDF	7.28	Renewable UK and DECC: The direct and indirect economic impacts of the commercial on-shore wind sector in the UK, Bigger Economics (2012)
EDF	7.29	Natural England – Climate Change Policy – June 2008
EDF	7.30	Wind Power in the UK – A guide to the key issues surrounding onshore wind power development in the UK – Sustainable Development Commission May 2005
EDF	7.31	SQW & LUC, Cumbria Renewable Energy Capacity & Deployment Study, Final Report to Cumbria County Council, August 2012
EDF	7.32	DECC, Restats regional installed capacity data, October 2012
EDF	7.33	HM Treasury, National Infrastructure Plan (NIP), (Extracts only, cover, Exec Summary, + pages 5,9,52 & 53), 2011
EDF	7.34	English Heritage, Wind Energy & the Historic Environment
MoD	7.35	2020 Routemap for Renewable Energy in Scotland
EDF	7.36	DECC Press Notice Gov Agreement on Energy Policy 23 November 2012
EDF	7.37	Annual Energy Statement DECC Minister Statement 29 November 2012
EDF	7.38	DECC Annual Energy Statement 2012
EDF	7.39	EMR Policy Overview November 2012
EDF	7.40	Note on the Energy Bill – Beck Burn
EDF	7.41	SKM letter regards Lochinvar
EDF	7.42	Letter to Mrs Trotter from OPEN dated 12 October 2012
EDF	7.43	Site visit itinerary (Hallburn)

8. Aviation

REG	8.1	Civil Aviation Publication (CAP) 764 Civil Aviation Authority (CAA) Policy and Guidance on Wind Turbines Version 4, Change 1, January 2012
REG	8.2	CAP 774 UK Flight Information Services
REG	8.3	Military Aviation Authority Traffic Management (3000 series) Instructions
REG	8.4	Military Aviation Authority Low Flying Manual
REG	8.5	UK Military Aeronautical Information Publication (MIL AIP)
REG	8.6	UK Aeronautical Information Publications (AIP)
REG	8.7	CAA 1:250,000 and 1:500,000 VFR Charts
REG	8.8	Joint MoD/CAA Wind Farm Interim Guidelines

REG	8.9	MoD Defence Airspace and Air Traffic Management Policy Statement Reference 20090907-ATMPC dated 01 Oct 09
REG	8.10	The Effects Of Wind Turbine Farms On ATC Radar AWC/Wad/72/665/Trials 10 May 05

9. Eskdalemuir Seismic Array

REG	9.1	Bowers D (2010), The Seismometer Array at Eskdalemuir, Scotland (EKA), Briefing Note
REG	9.2	Truscott (1964). The Eskdalemuir seismological station. Geophys. J. Roy. Astr. Soc., 9, 59-68
REG	9.3	Comprehensive Nuclear-Test-Ban Treaty and its protocol and the resolution establishing the Preparatory Commission for the Comprehensive Nuclear- Test-Ban Treaty Organisation
REG	9.4	Letter from Malcolm Wicks (Secretary of State for Energy) and Don Touhig, Under-Secretary of State for Defence, to Professor Styles, dated 15 September 2005
REG	9.5	Intentionally left blank (See CD 9.2)
REG	9.6	CTBT/WGB-25/1, 12 September 2005, Working Group B, Twenty-Fifth Session, Vienna, 23 May-3 June, 29 August-9 September 2005, Report of Working Group B to the Twenty-Fifth Session of the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organisation
REG	9.7	The Styles Report (2005), as commissioned by the EWG
MoD	9.8	Statement prepared by the MoD regarding the CTBT, submitted at the Newfield Inquiry
MoD	9.9	(A)Ministry of Defence (Eskdalemuir Seismic Recording Station) Technical Site Direction 2005 with safeguarding plan – As issued by the Office of the Deputy Prime Minister (England) – Issued 28 April 2005 (B) Ministry of Defence (Eskdalemuir Seismic Recording Station) Technical Site Direction 2005 with safeguarding plan – As issued by the Scottish Executive 12 May 2005
MoD	9.10	Excerpts of Report by Karen Heywood, Principal Reporter, to the Scottish Ministers in relation to Fallago Rig wind farm, Scottish Borders, 11 August 2008
MoD	9.11	Excerpts of Report by Karen Heywood, Principal Reporter, to the Scottish Ministers in relation to Fallago Rig wind farm, Scottish Borders, 5 August 2010
MoD	9.12	Letter from Jamie Hume, Scottish Government to North British Wind Power Ltd in relation to Fallago Rig, 9 November 2010
MoD	9.13	Report to Head Planning, Scottish Borders Council, on the proposed wind farm at Greenhead to Scottish Borders Council, reference 10/01018/FUL; with Decision Notice
MoD	9.14	Report to Head Planning, Scottish Borders Council, on the proposed wind farm at Haystoun 1 to Scottish Borders Council reference 10/01108/FUL; with Decision Notice
MoD	9.15	Report to Head Planning, Scottish Borders Council, on the proposed wind farm at Haystoun 2 to Scottish Borders Council reference 10/01106/FUL; with Decision Notice
MoD	9.16	Report to Head Planning, Scottish Borders Council, on the proposed wind farm at Hyndfordwells to Scottish Borders Council, reference 11/00217/FUL; with Decision Notice
MoD	9.17	Report to Head Planning, Scottish Borders Council, on the proposed wind farm at Myreside to Scottish Borders Council, reference 11/01352/FUL; with Decision Notice
MoD	9.18	Tables 1, 2, 3 and 4 prepared by Defence Infrastructure Organisation regarding the Eskdalemuir Threshold
MoD	9.19	Letters of objection by Defence Infrastructure Organisation to Carlisle City Council, dated 13 January 2011 and 18 April 2011
MoD	9.20	Closing Submissions of the MoD in relation to the Rowantree Inquiry
EDF	9.21	Closing Submissions of RWE Npower Renewables Limited in relation to the Rowantree Inquiry
MoD	9.22	Officer's Report and Decision Notice in relation to Steward's Cottage Decision
MoD	9.23	Notes from the First Meeting of the Eskdalemuir Working Group dated February 2012

MoD	9.24	Noise Budget Tables Issued by the MoD – up to 31 January 2012
MoD	9.25	Presentation by the MoD to the Eskdalemuir Working Group dated May 2012
MoD	9.26	Notes from the Second Meeting of the Eskdalemuir Working Group dated August 2012
MoD	9.27	Technical Proposal for the Eskdalemuir Working Group – Initial Study dated November 2012
EDF	9.28	Modified MoD Tables by the Appellants dated November 2012
EDF/REG	9.29	Table 1 as modified by the Appellants dated 19 December 2012
EDF/REG	9.30	Table 2 as modified by the Appellants dated 20 December 2012
EDF	9.31	Eskdalemuir flow chart produced by David Bell – December 2012
EDF	9.32	Written Statement on Peat produced by John Ferry dated 19 December 2012
MoD	9.33	Letter from Defence Estates re planning application for 6 wind turbines at Ewe Hill (22 March 2010)

10. Planning Application Documents and Miscellaneous

REG	10.1	Planning application and supporting documents for Hallburn (provided in the Appeal Bundle)
REG	10.2	Environmental Statement for Hallburn (provided in the Appeal Bundle) and Additional Environmental Information (separately submitted and bound)
REG	10.3	Development Control Committee Report (with updated representations) dated 19 August 2011
REG	10.4	Decision Notice dated 19 August 2011
EDF	10.5	Planning Application and supporting documents for Beck Burn (provided in Appeal Bundle)
EDF	10.6	Environmental Statement for Beck Burn (provided in Appeal Bundle) dated December 2010 - Volumes 1-4 and Further Environmental Information dated March and June 2011 (provided in the Appeal Bundle)
EDF	10.7	Development Control Committee Report dated 16 December 2011
EDF	10.8	Decision Notice dated 16 December 2011
EDF	10.9	CIRIA Special Publication 32 - Construction over abandoned mine workings - 2002

11. Landscape and Visual

EDF	11.1	Landscape Character Assessment Guidance for England and Scotland – Topic Paper 6 – Techniques and Criteria for Judging Capacity and Sensitivity – Produced by The Countryside Agency and SNH
EDF	11.2	Planning Cumbria – Technical Paper 5 – Landscape Character – Taken from the Cumbria and Lake District Joint Structure Plan 2001-2016 (April 2006)
EDF	11.3	Landscape Character Assessment Guidance for England and Scotland – Topic Paper 9 – Climate Change and Natural Forces – the consequences for landscape character – Produced by The Countryside Agency and SNH
EDF	11.4	Photography and Photomontage in landscape and visual impact assessment – The Landscape Institute – Advice Note 01/11
EDF	11.5	National Character Area 6 – The Solway Basin
EDF	11.6	Guidelines for Landscape and Visual Impact Assessment 2002 - Landscape Institute
EDF	11.7	Visual Representations of Windfarms – Good Practice Guidance – March 2006 prepared for SNH
EDF	11.8	Beck Burn Wind Farm – Independent Landscape and Visual Impact Assessment for Carlisle City Council – Eden Environment Ltd February 2011
EDF	11.9	Cumbria Landscape Character Guidance and Toolkit – Parts 1 and 2 produced by Cumbria County Council dated March 2011

12. Carlisle City Council Documents

CCC (Hb)	12.1	Committee report re. 11/0118
CCC (Hb)	12.2	Minutes of Committee Meeting 19.08.11
CCC (Hb)	12.3	Correspondence with Appellant
CCC (Hb)	12.4	Correspondence with MoD
CCC (Hb)	12.5	Consultation response from Cumbria County Council
CCC (Hb)	12.6	Consultation responses from Natural England, Cumbria Wildlife Trust, RSPB
CCC (Hb)	12.7	Consultation responses from English Heritage

CCC (Hb)	12.8	Lloyd Bore correspondence and ALSE
CCC (Hb)	12.9	Carlisle Airport
CCC (Hb)	12.10	Appeal re. Braidwood, Midlem
CCC (Hb)	12.11	Cumbria Wind Energy
CCC (Hb)	12.12	MOD correspondence re Walston Braehead and Cargo Farm
CCC (Hb)	12.13	Application 10/1102 decision notice and site plans
CCC (Hb)	12.14	Appeal re. Middlemoor
CCC (Hb)	12.15	Application 10/1025 site plans and Committee report
CCC (Hb)	12.16	Sunday Times article and Hansard extract
CCC (Hb)	12.17	Appeal re. Newlands, Cumwhinton
CCC (Hb)	12.18	Photograph of site
CCC (Hb)	12.19	Cumbria Renewable Energy Company & Deployment Study August 2011
CCC (Hb)	12.20	Wind Turbines Consented and Current (inc Appeals)
CCC (Hb)	12.21	Extract from Renewables UK UKWED database
CCC (Hb)	12.22	Carlisle City Council comments on applicant's proposed conditions
CCC (Hb)	12.23	Carlisle District: Rural Masterplanning – Longtown (draft)
CCC (Hb)	12.24	Longtown Market Town Initiative Action Plan Summary
CCC (Hb)	12.25	Photographs of properties in vicinity of site
CCC (Hb)	12.26	Plan showing extent of Longtown conservation area.
CCC (Hb)	12.27	Photomontage for English Heritage (October 2011)
CCC (Bb)	12.28	Correspondence with Appellant
CCC (Bb)	12.29	Correspondence with MoD
CCC (Bb)	12.30	Consultation responses and correspondence from Cumbria County Council, Carlisle City Council and Department of Transport
CCC (Bb)	12.31	Consultation responses and correspondence from Natural England, Cumbria Wildlife Trust, Wildfowl and Wetlands Trust, RSPB and Friends of the Lake District
CCC (Bb)	12.32	Consultation responses from English Heritage
CCC (Bb)	12.33	Consultation responses from Arthuret & Kirkandrews Parish Council and Dumfries & Galloway Council
CCC (Bb)	12.34	Consultation responses from Digital Technology, Civil Aviation Authority, Carlisle Airport, National Air Traffic Services and Coal Authority
CCC (Bb)	12.35	Photos of Beck Burn site
CCC (Bb)	12.36	Statement by Edward Davey in relation to onshore wind
CCC (Bb)	12.37	Additional reports from SKM
CCC (Bb)	12.38	Cumbria County Council correspondence 14 November & 10 December 2012
CCC (Bb)	12.39	Letter from Sinclair Knight Merz 28/11/2012
CCC (Bb)	12.40	Letter from Wildfowl and Wetlands Trust WWT 08/11/2012
CCC (Hb)	12.41	Appeal re. Yelvertoft, Northamptonshire

Additional Inquiry Documents

ID1		Notes of Procedural Meeting: 2 October 2012
ID2		Opening Statement by Carlisle City Council (Hallburn Farm)
ID3		Opening Statement by Carlisle City Council (Beck Burn Peat Works)
ID4		Opening Statement on behalf of REG Windpower Limited
ID5		Opening Statement on behalf of EDF Energy Renewables Limited
ID6		Written Note for the Inspector: Decommissioning (Hallburn Farm)
ID7		Written Note for the Inspector: Aviation (Hallburn Farm)
ID8		Beck Burn Wind Farm proposal – Response to Inspector's questions Pre Inquiry regarding underground grid connection feasibility
ID9		Beck Burn – Status of Ecological Baseline Conditions
ID10		Note from Carlisle City Council re restoration bond (Hallburn Farm)
ID11		Note from REG Windpower responding to above
ID12		Confirmation of revised application description (Beck Burn Peat Works)
ID13		Draft Planning Conditions (including noise) (Hallburn Farm)
ID14		Draft Planning Conditions (Beck Burn Peat Works)
ID15		Draft Planning Conditions on Noise (Beck Burn Peat Works)
ID16		Section 106 Agreement dated 19 December 2012 relating to Hallburn Farm (Habitat management)
ID17		Letter dated 18 December 2012 from Carlisle City Council re Section 106 Agreement
ID18		Section 106 Undertaking (with manuscript amendments) dated 19 December 2012 relating to Beck Burn Peat Works (Goose refuge)

ID19		Section 106 Undertaking relating to Beck Burn Peat Works (Goose refuge) (clean typed copy)
ID20		Land Registry Title related to the above
ID21		Section 106 Undertaking dated 19 December 2012 relating to Beck Burn Peat Works (Site Restoration Scheme)
ID22		Letter dated 10 December 2012 from Cumbria County Council regarding site restoration (also at CD12.38)
ID23		Letter dated 12 December 2012 from Cumbria County Council regarding site restoration
ID24		Closing Submissions on behalf of the Ministry of Defence
ID25		Closing Submissions by Carlisle City Council (Hallburn Farm)
ID26		Closing Submissions by Carlisle City Council (Beck Burn Peat Works)
ID27		Closing Submissions on behalf of EDF Energy Renewables Limited
ID28		Closing Submissions on behalf of REG Windpower Limited
IP1		Statement and signatures of residents + research paper – Julie Walsh
IP2		Statement - Eileen Naude (Hallburn Farm)
IP3		Letter – (Prof.) John Parratt (Hallburn Farm)
IP4		Statement – Graham Denby
IP5		Statement – Maynard Hall
IP6		Statement – Will Tillotson (Hallburn Farm)
IP7		Statement – Mrs Trotter
IP8		Statement – Mrs D Siddle
IP9		Statement – David Wilson (Kirkandrews on Esk Parish Council and Springfield and Gretna Green Community Council)
IP10		Statement – Eileen Naude (Beck Burn Peat Works)
1P11		Statement and attachments – (Prof.) John Parratt (Beck Burn Peat Works)
1P12		Statement – M & AJ Kirkbride
1P13		Statement - Diana deGruyther
IP14		Photograph submitted by Mr J Hannah



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.