



Department for  
Communities and  
Local Government

Ms S Grange  
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70 Great Bridgewater Street  
Manchester  
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Our Ref: APP/P2935/A/13/2194915

31 July 2014

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)  
APPEAL BY ENERGIEKONTOR UK LTD:  
LAND OFF FENROTHER LANE, TO THE NORTH OF FENROTHER,  
NORTHUMBERLAND  
APPLICATION REF: 12/02500/RENEIA**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Phillip J G Ware BSc(Hons) DipTP MRTPI, who held a public local inquiry between 28 August and 4 September 2013 into your client's appeal against a decision of Northumberland County Council (the Council) to refuse planning permission for the installation of 5 wind turbines, ancillary equipment and associated infrastructure, in accordance with application ref 12/02500/RENEIA, dated 7 August 2012.
2. On 11 October 2013, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to the Town and Country Planning Act 1990, because the appeal involves a renewable energy development.

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

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

**Procedural matters**

4. In reaching this position, the Secretary of State has taken into account the Environmental Statement (ES) which was submitted under the Town and Country

Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (IR4). The Secretary of State notes the main parties' views on the adequacy of the environmental information at IR29. He considers that the ES complies with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the proposals.

### **Policy considerations**

5. In deciding the appeal the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
6. In this case the development plan consists of the saved policies of the 2005 Northumberland Structure Plan (SP) and the 2003 Castle Morpeth District Local Plan (LP). The Secretary of State considers that the policies identified in IR20-21 are the most relevant policies to this appeal.
7. Other material considerations which the Secretary of State has taken into account are the National Planning Policy Framework (the Framework); the planning practice guidance published in March 2014; the National Policy Statements (NPS) for Energy (EN-1) and Renewable Energy (EN-3); and Ministerial Written Statements on renewable energy published in June 2013 by the Secretary of State for Energy and Climate Change and by the Secretary of State for Communities and Local Government.
8. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA), the Secretary of State has paid special regard to the desirability of preserving those listed structures potentially affected by the scheme and their settings.
9. The Secretary of State notes that a Northumberland Core Strategy is being prepared but has yet to be submitted for examination. As this document is still in draft form and is subject to change he attaches little weight to it in the determination of this appeal.

### **Main Issues**

#### *Whether the site is within the Green Belt*

10. For the reasons at IR191-202 the Secretary of State agrees with the Inspector that the appeal site lies within the adopted Green Belt (IR203).

#### *Inappropriateness, openness and the purposes of designating the Green Belt*

11. The proposal is inappropriate development in the Green Belt. Framework policy is that such development is, by definition, harmful. It is also self-evident that the proposed turbines and ancillary works, constructed on undeveloped land, would harm the openness of the Green Belt. This would be contrary to Framework policy, which is that openness is one of the essential characteristics of Green Belts (IR205). As the Inspector points out, although the Morpeth Green Belt extension was particularly designated due to concerns about housing pressure, land can only be included in the Green Belt if it serves overall Green Belt purposes. The proposal would be an encroachment into the countryside in an area which separates Morpeth and its satellite settlements (IR206). The

Secretary of State agrees with the Inspector that the harm due to inappropriateness and the other harm to the Green Belt weighs heavily against the proposal (IR207).

*The effect on the wider and local landscape*

12. For the reasons at IR208-228, the Secretary of State agrees with the Inspector that, overall, in landscape terms the proposal would not harm the character and appearance of the area – both in terms of local impacts and the more distant effect from designated areas including the Northumberland National Park. It would not conflict with LP policy RE2 or national policy (IR229).

*Visual amenity*

13. For the reasons at IR236-238, the Secretary of State agrees with the Inspector that those properties in Fenrother with a clear view of the development would come to be regarded as an unattractive and thus unsatisfactory (albeit not uninhabitable) place in which to live (IR237). He also agrees that, when moving about Fenrother generally, the development would be such a noticeable feature that the overall character of the settlement and the amenity of its residents would be significantly harmed (IR238).
14. Turning to Fieldhead, for the reasons at IR239 the Secretary of State agrees with the Inspector that although the effect on the individual properties would be significant, as would the effect on the settlement as a whole, the distance and intervening vegetation means that the overall effect is less severe than at Fenrother. He agrees that the harmful effect on Fieldhead, though not such as should alone cause the appeal to be dismissed, is a consideration to be weighed in the balance (IR239).
15. As regards the property known as Moor Edge, for the reasons at IR241-245, the Secretary of State agrees with the Inspector that, although the appellant has attempted to address the issues, there remains significant concern that the particularly sensitive resident at Moor Edge would be adversely affected by the development. He agrees that this also weighs against the proposal (IR245).
16. Overall, for the reasons summarised at IR247 the Secretary of State agrees with the Inspector that the proposal would harm the visual amenity of the residents of nearby properties and conflict with LP policy RE2 and national policy aimed at providing a good standard of amenity for all existing and future occupiers of land and buildings (IR248).

*Renewable energy policy*

17. Taking into account national policy and the Inspector's summary at IR249-251, the Secretary of State attaches significant weight in favour of the appeal to the renewable energy and associated environmental benefits of the proposal. However, as accepted by the appellant, the renewable energy benefits do not automatically override environmental protection and the concerns of the community (IR252).
18. The Secretary of State agrees that, in terms of Green Belt policy, there is no doubt that the wider environmental benefits associated with the increased production of energy from renewable sources is a material consideration which may result in very special circumstances in relation to inappropriate development

in the Green Belt. But he also agrees that does not mean that the benefits of renewable energy proposals should, as a matter of principle, lead to very special circumstances. The need for renewable energy does not automatically override other planning concerns but is a significant factor weighing in favour of the proposal (IR253).

19. The Secretary of State notes that national policy supports the identification of suitable areas for renewable energy development and that LP Policy RE3 identifies a wind power area of search within which the appeal site is partly located (IR254). However, for the reasons at IR255-258 he agrees with the Inspector that although LP policy RE3 remains part of the development plan, it is substantially dated in a number of respects and is out of step with elements of the national policy approach. Consequently he also agrees that the location of part of the appeal site within the LP policy RE3 area of search is a matter to which little weight can be attached (IR259).

#### *Other matters*

20. For the reasons given the Secretary of State agrees with the Inspector's conclusions on noise (IR260-265), highway safety (IR266), heritage assets (IR267-273), employment (IR274), biodiversity (IR275-276) and public rights of way (277). Like the Inspector he gives some, but less than significant weight in favour of the proposal to the employment and footpath network benefits. He agrees with the Inspector that the other issues are neutral in the balance.

#### **Conditions**

21. The Secretary of State has considered the Inspector's comments at IR278-293 on the proposed planning conditions and the edited conditions in the Annex to the IR. The Secretary of State is satisfied that these conditions are reasonable and necessary and would meet the tests at paragraph 206 of the National Planning Policy Framework. However, he does not consider that the conditions would overcome his reasons for dismissing the appeal.

#### **Planning balance and overall conclusions**

22. The Secretary of State agrees with the Inspector's overall balancing exercise at IR294-303. He considers that the appeal site is located within the Green Belt as set out in the SP. The proposal is inappropriate development in terms of Green Belt policy and would harm the openness of the area. It would also conflict with one of the general purposes of designating Green Belt, namely preventing encroachment into the countryside. In this particular case the Green Belt serves to protect the countryside around Morpeth from encroachment towards its satellite settlements. The effect on openness and the effect of encroachment are further Green Belt harms in addition to the definitional harm of inappropriateness (IR295).
23. National policy is clear. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight should be given to any harm to the Green Belt and very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations (IR296).

24. To this substantial harm must be added the effect on the visual amenity of the residents of nearby properties. The proposal would harm residents' living conditions, especially in Fenrother, and would conflict with LP policy RE2 and national policy which aims to provide a good standard of amenity for all existing and future occupiers of land and buildings (IR297). Having regard to paragraph 98 of the Framework, the Secretary of State considers that the harm to living conditions is not and cannot be made acceptable.
25. Balanced against these negative factors is the substantial weight that the Secretary of State attaches to the renewable energy and related environmental benefits. However, as the Inspector points out at IR298 these benefits do not automatically override harm to the Green Belt or other planning concerns. In addition to the benefit accruing from renewable energy development, the generation of jobs during the construction and decommissioning phases, together with the provision of a more useful local footpath network are benefits which need to be weighed in the balance. However neither of these is accorded significant weight (IR300).
26. Overall, the benefits of the proposal do not clearly outweigh the harm to the Green Belt and the harm to residents' visual amenity. Very special circumstances to justify the inappropriate development do not therefore exist (IR302).

### **Formal decision**

27. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the installation of 5 wind turbines, ancillary equipment and associated infrastructure, in accordance with application ref 12/02500/RENEIA, dated 7 August 2012.
28. This letter serves as the Secretary of State's statement under Regulation 21(2) of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999.

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

29. 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.
30. A copy of this letter has been sent to Northumberland County Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

**Julian Pitt**

Authorised by Secretary of State to sign in that behalf

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

**by Phillip J G Ware BSc(Hons) DipTP MRTPI**

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

**Date: 11 June 2014**

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TOWN AND COUNTRY PLANNING ACT 1990

NORTHUMBERLAND COUNTY COUNCIL

APPEAL BY ENERGIEKONTOR UK LTD

Inquiry held between 28 August and 4 September 2013

Land off Fenrother Lane, to the north of Fenrother, Northumberland

File Ref: APP/P2935/A/13/2194915

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**File Ref: APP/P2935/A/13/2194915****Land off Fenrother Lane, to the north of Fenrother, Northumberland**

- 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 Energiekontor UK Ltd against the decision of Northumberland County Council.
- The application Ref 12/02500/RENEIA, dated 7 August 2012, was refused by notice dated 16 January 2013.
- The development proposed is the installation of 5 wind turbines, ancillary equipment and associated infrastructure.

**Summary of Recommendation: The appeal be dismissed.**

<b>CONTENTS</b>	<b>Page</b>
<b>Procedural matters</b>	<b>2</b>
<b>The site and surroundings</b>	<b>3</b>
<b>The proposal and the Council's decision</b>	<b>4</b>
<b>Planning policy</b>	<b>4</b>
<b>The Statement of Common Ground</b>	<b>6</b>
<b>The main issues agreed between the Council and the appellant</b>	<b>9</b>
<b>The case for the Appellant</b>	<b>10</b>
<b>The case for the Council</b>	<b>22</b>
<b>The case for Fight Fenrother Wind Farm</b>	<b>25</b>
<b>The case for others at the Inquiry and written representations</b>	<b>35</b>
<b>Inspector's conclusions</b>	<b>36</b>
Background and agreed matters	<b>36</b>
Main considerations	<b>37</b>
Whether the site is in the Green Belt	<b>37</b>
Inappropriateness, openness and the purposes of designating the Green Belt	<b>39</b>
The effect on the wider and local landscape	<b>40</b>
Visual amenity	<b>43</b>
Renewable energy policy	<b>46</b>
Other matters – noise; highway safety; heritage assets; employment; biodiversity; public rights of way	<b>48</b>
Planning conditions	<b>50</b>
Planning balance and conclusion	<b>52</b>
Recommendation	<b>53</b>
<b>Appearances</b>	<b>54</b>
<b>Documents</b>	<b>55</b>
<b>Annex A – Recommended conditions</b>	<b>63</b>

## Procedural matters

1. A Pre Inquiry Meeting (PIM) was held on 17 July 2013 to discuss arrangements for the Inquiry<sup>1</sup>.
2. The Inquiry sat for eight days, commencing on 28 August 2013. An evening session was held on 29 August 2013 to assist local residents. Accompanied visits were undertaken to the site and the surrounding local area on 4 September 2013. I undertook a further, unaccompanied, visit to more distant locations on 20 November 2013. These locations had been agreed by all parties.
3. During the accompanied visit, Fight Fenrother Wind Farm (FFWF) – a Rule 6 Party - had arranged for a blimp to be flown from a site in Fenrother. This was not the appeal site, and the other parties had not agreed the principle of the use of a blimp, the method of measuring its height or its location. However it was useful in locating Fenrother from the viewpoints which I took in on that day.
4. The proposal is 'EIA development' for the purposes of the Regulations<sup>2</sup>. A request for a Pre Application response and Scoping Opinion was submitted by the appellant to the Council on 22 August 2011. The Council initiated consultation with the relevant statutory bodies following receipt of the request and issued its Scoping Opinion on 7 December 2011. The Environmental Statement (ES) which accompanied the planning application was prepared in the **light of the Council's Scoping Opinion**.
5. A number of additional documents and correspondence were exchanged between the appellant and the Council after submission of the planning application. In particular two documents were produced relatively close to the start of the Inquiry, which contained a certain amount of new material. These **were the 'Update to Residential Assessment – Visual Effects' (July 2013)<sup>3</sup> and the 'Consolidated Environmental Noise Impact Assessment' (July 2013)<sup>4</sup>**. Acceptance of these documents, which were widely publicised, did not prejudice the interests of the other parties, particularly as they were to an extent a consolidation of material which had been previously submitted. The Inquiry dealt with both documents.
6. A Planning Obligation<sup>5</sup> (3 September 2013) dealing with the maintenance of a specific area of landscaping was submitted by the appellant, as was discussed at the Inquiry. This is dealt with below.
7. After the Inquiry, the appeal was recovered for decision by the Secretary of State on 11 October 2013. The reason for recovery was that the appeal involves a renewable energy development.
8. In October 2013, after the Inquiry closed, the Council approved a report **entitled 'Core Strategy Preferred Options for Housing, Employment and the**

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<sup>1</sup> PIM notes on file

<sup>2</sup> Town and Country Planning (Environmental Impact Assessment) Regulations 2011

<sup>3</sup> APP 6

<sup>4</sup> APP 7

<sup>5</sup> Doc 9



Green Belt'. Green Belt policy was a major issue for all parties at the Inquiry, and this report was therefore clearly of relevance. Written submissions were invited from and made by the three main parties<sup>6</sup>, and these are dealt with in the reporting of the cases of the parties and in my considerations.

9. In January 2014 the three main parties were consulted regarding the published findings of the Renewable UK 'Phase one of study into a form of Amplitude Modulation known as Other Amplitude Modulation OAM)<sup>7</sup>'. Written submissions were invited from and made by the three main parties<sup>8</sup>.
10. On 6 March 2014 Planning Practice Guidance was published, and the three main parties were consulted (March 2014) as to its relevance to the appeal. The Council stated that it was relevant to the case of the authority as it **supported the Council's** position and the National Planning Policy Framework (the Framework). **The appellant's comments are incorporated in the summary** of their case below. FFWF had no comments to make on the Guidance.

### **The site and surroundings**

11. The appeal site is located to the north of the village of Fenrother and to the south of the village of Fieldhead (both around 0.8 km away). The area is bounded to the east and west by the A1 and the A697 respectively. The area of rolling farmland that includes the appeal site lies between the coastal plain to the east and the Cheviots to the west. The villages of Longhorsley and Tritlington both lie approximately 2.5km from the appeal site, to the northwest and the east respectively<sup>9</sup>.
12. The appeal site is open arable fields, the boundaries of which are largely defined by tree lined hedgerows. A public footpath descends to the southwest from the A1, stopping short of the proposed turbines. A permissive footpath at Fieldhead (around 800 metres north of the site, connects with public rights of way to provide a link between the villages of Fenrother and Longhorsley<sup>10</sup>.
13. There is a high pressure gas pipeline running through the appeal site. The pipeline is located approximately 120m to the west of proposed Turbine 3<sup>11</sup>.
14. The surrounding area is rolling lowland countryside, with a limited number of small settlements. The appeal site is located within 11km of the Northumberland National Park and within 13km of the Northumberland Coast Area of Outstanding Natural Beauty.
15. There are no heritage assets in the immediate locality of the site. Others, at a greater distance, are assessed below<sup>12</sup>.

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<sup>6</sup> APP 9; LPA 6; FFWF 5

<sup>7</sup> Doc 11

<sup>8</sup> APP 10; LPA 7; FFWF 7

<sup>9</sup> Site location plan at SOCG appendix 1

<sup>10</sup> Rights of way at SOCG appendix 2

<sup>11</sup> Plan, and buffer zone, at SOCG Appendix 3

<sup>12</sup> Heritage assets in the wider area shown on CD 10.2 Fig 11.1

## The proposal and the Council's decision

16. The detail of the development is set out in the ES<sup>13</sup>, but in summary the proposal is five wind turbines of up to 126.5m in height to blade tip, each with a generating capacity of up to 3MW. The location of the proposed wind turbines is shown on the Site Layout Plans<sup>14</sup>.
17. The proposal allows for a micro-siting tolerance of up to 25 metres from the turbine locations as shown on the submitted plan, subject to certain specified restrictions concerning residential properties and the National Grid High Pressure Gas Pipeline. The appellant wishes this to be addressed by a condition, but micro-siting is not accepted by the Council.
18. The connection works from the proposed development to the local distribution network are not part of the appeal scheme.
19. The planning application was refused on 8 January 2013. In summary the reasons for refusal were<sup>15</sup>:
  - The impact on visual amenity and on the local landscape (Policy RE2 of the Castle Morpeth District Local Plan) (LP).
  - The impact on the openness and visual amenity of the Green Belt extension (Saved policy S5 of the Northumberland County and National Park Joint Structure Plan) (SP).
  - The cumulative impact on the character of the landscape, visual amenity, and the purposes of designation of the Northumberland National Park (LP policy RE2).
  - The visual amenity of residents of properties including Moor Edge, Beechcroft, La Libellule, Stonebrook Cottage, and Lyneburn House (Saved LP policy RE2).
  - Insufficient information to enable a proper assessment of the noise and archaeological impact (Saved LP policy RE2).
  - Potential adverse effect on the safe operation of Newcastle International Airport and MoD radar.

## Planning policy

20. Following the revocation of the North East of England Plan (April 2013) the relevant policies in the development plan are SP policy S5, and LP policies RE2 and RE3. **The only development plan policies cited in the Council's reasons for refusal** were SP policies S5, dealing with the Green Belt Extension, and LP policy RE2:
  - SP Policy S5 deals with the broad identification of a northward extension of the Northumberland and North Tyneside Green Belt, intended to safeguard the character and setting of Morpeth. The detailed boundaries of the

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<sup>13</sup> CD 10.2 Chapter 3 Volume 1

<sup>14</sup> CD 10.2 Fig 1.2 – 1.4

<sup>15</sup> Full reasons on file and at CD 10.9 paragraph 2.7

Green Belt extension were not set out in the SP. The parties agreed that the appeal site and its surroundings were within this general SP area. However this agreed position changed at the Inquiry and the appellant made submissions that the site was not within an adopted Green Belt. (This is addressed below.)

- Saved Local Plan Policy RE2 encourages renewable energy generating development of all kinds, including wind power, subject to a series of Development Management criteria.
21. Saved LP policy RE3 is also relevant as it expresses a presumption in favour of wind energy generating development in certain 'wind power areas of search' identified on the Proposals Map<sup>16</sup>, providing that all the criteria in LP policy RE2 are satisfied. The appeal site is located partly within one of the identified areas of search.
22. The Framework is an important material consideration. In particular the parties drew attention to:
- The encouragement of the development of renewable energy<sup>17</sup>.
  - The key role of planning in securing radical reductions in greenhouse gas emissions, minimising vulnerability and providing resilience to the impacts of climate change, and supporting the delivery of renewable and low carbon energy and associated infrastructure<sup>18</sup>.
  - The need for planning applications for renewable and low carbon energy development to be approved where the impacts are or can be made acceptable<sup>19</sup>.
  - The importance of the protection of Green Belts. Where Green Belts are established, planning permission should only be granted for inappropriate development within them in very special circumstances<sup>20</sup>.
  - The fact that elements of many renewable energy projects will comprise inappropriate development for which very special circumstances will need to be demonstrated. The wider environmental benefits associated with increased energy production from renewable sources may contribute to very special circumstances<sup>21</sup>.
  - The recognition of the intrinsic character and beauty of the countryside, and the need for development to seek to enhance the natural and local environment by protecting and enhancing valued landscapes<sup>22</sup>.

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<sup>16</sup> CD 10.9 Appendix 4

<sup>17</sup> Paragraph 17

<sup>18</sup> Paragraph 93

<sup>19</sup> Paragraph 98

<sup>20</sup> Paragraphs 79 - 90

<sup>21</sup> Paragraph 91

<sup>22</sup> Paragraph 109

23. The parties also agreed that the Ministerial Statements of 6 June 2013 and the Practice Guidance (draft as at 29 July 2013) are material considerations<sup>23</sup>.
24. It is common ground between the Council and the appellant that relevant elements of EU and UK Energy Policy are material considerations. In particular, the parties agreed that the Overarching National Policy Statement for Energy EN-1 (EN-1) and the National Policy Statement for Renewable Energy Infrastructure EN-3 (EN-3) are material considerations<sup>24</sup>. EN-1 sets out high level objectives, policy and a framework for the delivery of major energy infrastructure. It states that it is necessary to bring forward new renewable electricity generating projects as soon as possible, and that the need for such projects is urgent. EN-3 describes onshore wind as the most established large-scale source of renewable energy in the UK, and states that onshore windfarms will continue to play an important role in meeting renewable energy targets.
25. The Core Strategy Options documents<sup>25</sup> are material considerations, although the weight which can be accorded to them must be limited by the early stage the CS has reached. In particular, policies regarding the Green Belt extension (based on SP policy S5) and renewable energy (draft) are relevant. Since the Inquiry, the Council has published the Core Strategy Housing, Employment and Green Belt Preferred Options report<sup>26</sup> but it is at a very early stage of consultation.

### **The Statement of Common Ground**

26. A number of matters have been noted above as being agreed between the Council and the appellant, largely based on the Statement of Common Ground (SOCG)<sup>27</sup>. In addition, the SOCG includes a number of other areas of agreement.
27. At the time of the production of the SOCG it was agreed that the site was within the Green Belt extension as set out in SP policy S5. This is under review as part of the emerging Core Strategy – which will set detailed boundaries. (As noted above, the **appellant's position changed** in submissions at the Inquiry).
28. However, in the event that the site is with the Green Belt, the proposed development would be inappropriate development and the appellant and the Council agree that:
- Very special circumstances (whereby any potential harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations) will need to be demonstrated.
  - The wider environmental benefits associated with increased energy production from renewable sources may contribute to very special circumstances.

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<sup>23</sup> CD 3.3 and CD 3.4

<sup>24</sup> CD 7.3 and CD 7.4

<sup>25</sup> CD 2.1 and CD 2.2

<sup>26</sup> Doc 9

<sup>27</sup> Doc 7

29. The SOCG confirms that the two parties agree that the environmental information is adequate and complies with the requirements of Schedule 4 of the 2011 Regulations. (The Council expressed some concern over details of the noise assessment, but this has been largely resolved.)
30. In relation to landscape and visual impact assessment, the two parties agree that the methodology employed by the appellant follows best practice<sup>28</sup>. The Zone of Theoretical Visibility and a study area of 25km was accepted as appropriate to cover all potentially significant landscape and visual impacts<sup>29</sup>. In addition, a study area of 1.5km for the assessment of effects on residential amenity was agreed. The viewpoints were agreed and considered to be reasonably representative.
31. Allowing for the usual limitations of visualisations, the two parties agreed that those in the ES offer a fair and reasonable basis for making judgements as to the potential visual effects of the proposed development. The wireframes and photomontages were agreed to have been produced broadly in accordance with the Scottish Natural Heritage guidance.
32. The two parties agreed that the baseline character of the study area is set out in three documents<sup>30</sup>. **The Council is also of the view that "Landscape Appraisal for Onshore Wind Development – Final Report" (2003)<sup>31</sup> is relevant to the baseline character of the study area.**
33. The appeal site is located in a series of national, regional, and local landscape character areas: National Character Area 12 – Mid Northumberland; Regional Character Area 9 – Rolling Lowland Farmland; Local Landscape Character Areas 38 and 38b – Lowland Rolling Farmland and Longhorsley.
34. The two parties agreed that the development works would give rise to direct effects on the physical fabric of the landscape, but that this would not be significant in the longer term.
35. There is disagreement as to the extent of Major and Moderate landscape effects. The appellant considers that major magnitude landscape effects would be generally limited to within 500m of the proposed turbines, extending to 1km from the turbines to the southwest and northeast. The appellant considers that moderate magnitude landscape effects would extend to an area around 1.5km from the proposed wind turbines, extending to 2km to the southwest. The Council considers the areas would be somewhat wider<sup>32</sup>.
36. In terms of designated landscapes, the SOCG noted that both parties agree that the proposal will have no significant effects taken in isolation on the special qualities of the Northumberland National Park, the Northumberland

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<sup>28</sup> Landscape Institute and Institute of Environmental Management and Assessment (2002) "Guidelines for Landscape and Visual Impact Assessment 2nd Edition"; the Countryside Agency and Scottish Natural Heritage (2002) "Landscape Character Assessment, Guidance for England and Scotland"; and University of Newcastle for Scottish Natural Heritage (2002) "Visual Assessment of Windfarms: Best Practice".

<sup>29</sup> APP2

<sup>30</sup> Character of England Landscape, Wildlife and Cultural Features Map (2005); Northumberland Landscape Character Assessment (August 2010); Northumberland Key Land Use Impact Study, Part C: Landscape Sensitivity to Key Land Uses (August 2010). CD 8.18

<sup>31</sup> CD 4.3

<sup>32</sup> Doc 7 Paragraphs 8.10, 8.11

Coast Area of Outstanding Natural Beauty or Areas of High Landscape Value<sup>33</sup>. However the Council considers that the proposal would give rise to significant cumulative effects on views from the Northumberland National Park, specifically from the Simonside Hills, when taken in combination with the Wingates windfarm. The appellant disagrees with this assessment.

37. In relation to cumulative landscape and visual effects, the appellant considers that the submitted photomontages and wireframes follow best practice. The Council has expressed concern regarding the omission of operational windfarms/turbines, contrary to the Scottish Natural Heritage guidance which advises that photomontages should clearly distinguish between each individual project and its status within the planning system. However the two parties have agreed the relevant wind energy schemes for consideration of the cumulative landscape and visual effects of the proposed development.

Windfarm	Distance, direction	Status	Number of Turbines	Size of Turbines (nacelle/ blade tip)
Rayburn	6.5km, W	Pre-Planning	5	80/127m
Sisters	7km, NE	Consented	4	85/126m
Peel Energy	7km, NE	Consented	9	80/126.5m
Wingates Infinis	8.5km, NW	Operational	6	69/110m
Lynemouth	9km, SE	Operational	13	78/121m
Tranwell Airfield	11km, south	Planning	4	115m
Bewick Drift	12km, SE	Consented (T3 operational)	3	85/126m

38. The Council additionally considers that the following schemes should be included within the 25km study area for cumulative landscape and visual **assessment**. However the appellant's position is that these additional schemes will not have significant cumulative effects.

Windfarm	Distance, direction	Status	Number of Turbines	Size of Turbines (nacelle/tip)
Old Felton	10km N	Planning	1	44m/60.7m
MSD Cramlington	15km, SE	Operational	2	79/125m
Blyth Harbour	16km, SE	Consented (T4 and T7 operational)	5	T7 - 100/163m T4 - 80/130.8m Others - 78/128m
Blyth Offshore	18km, SE	Operational	2	62/95m

<sup>33</sup> CD 10.2 Figure 7.2

Ray	21km, SW	Consented	16	80/125m
Kirkheaton	23km, SW	Operational	3	48/64m
Green Rigg	26km, SW	Operational	18	60/100m

39. A plan showing the location of all the above schemes has been agreed<sup>34</sup>.
40. In assessing the amenity consequences of the proposal, the distances from the site to settlements have been agreed by the Council and the appellant. As well as settlements, there are a number of other dwellings and farms in the vicinity<sup>35</sup>. The two parties agreed that the appropriate test is whether the visual element of residential amenity would be affected to such a degree that the property concerned would come to be regarded as an unattractive and thus unsatisfactory (but not uninhabitable) place in which to live<sup>36</sup>.

### **The main issues agreed between the Council and the appellant**

41. Following the PIM, it was agreed between the Council and the appellant that the main issues were:
- The effect on the openness and visual amenity of the proposed Green Belt extension. (At that stage, the question of whether the site was within adopted Green Belt was not an issue.)
  - The effect, including the cumulative effect, on the local and wider landscape (including the National Park and the AONB).
  - The effect on the visual amenity of the residents of nearby properties.
  - Renewable energy policy and its implications.
42. Noise issues were also identified at that time as a main issue between the Council and the appellant, but this has since been resolved between these parties. The Council and the appellant agree that the methodology set out in ETSU-R-97 **"The Assessment and Rating of Noise from Wind Turbines"**<sup>37</sup> is the appropriate guidance for the assessment and rating of operational noise. The **appellant's assessment has been carried out** in accordance with that methodology, except where specifically stated in the Consolidated Environmental Noise Impact Assessment<sup>38</sup>. The locations selected for background noise monitoring as set out in the ES are agreed by the Council and the appellant to be representative<sup>39</sup>. The Council no longer raises an objection to the proposal on noise grounds, subject to conditions. (This includes noise from construction works and decommissioning.)
43. The proposal is within the line of sight of the Primary Surveillance Radar at Newcastle International Airport (NIA) (22km) and the Air Defence Radar at Brizlee Wood (21.1km). Objections were lodged by the Airport and the

<sup>34</sup> CD 7 Cumulative sites

<sup>35</sup> Doc 7

<sup>36</sup> CD 6.1 (Including the so-called 'Lavender test')

<sup>37</sup> CD 9.1

<sup>38</sup> APP 7

<sup>39</sup> N.B. FFWF has detailed reservations about some of the locations

Ministry of Defence (MOD)<sup>40</sup>. A Mitigation Agreement has been entered into between NIA and the appellant to ensure that the development will benefit from the **airport's Radar Blanking Strategy**, and the NIA objection has been withdrawn subject to a planning condition. Similarly the MOD objection has been withdrawn subject to the imposition of planning conditions. **The Council's** reason for refusal related to aviation has therefore been withdrawn subject to conditions.

44. **The appellant's archaeological assessment, including a** study of aerial photographs, a geophysical survey of the footprint of the proposed development and a programme of trial trenching, has revealed no archaeological remains (of significance or otherwise) at the appeal site. **Subject to a condition dealing with investigation and monitoring the Council's** reason for refusal related to archaeology was withdrawn.

### **The case for the appellant**<sup>41</sup>

45. This is a strange case, **with the Council's** position at the Inquiry dissolving and the case for FFWF put largely on a clarificatory basis. It appears from the cross-examination by those parties that they appear to rest their cases on the question of Green Belt. There is no other Development Management case for the appellant to meet.

#### *The Green Belt*

46. **The appellant's case does not depend on the view which is taken of the Green** Belt extension in relation to SP policy S5. Planning permission should be granted whether the appeal site currently lies in adopted Green Belt or not. However, it is important to address this matter because it is a central issue and the decision will be differently shaped depending on how this preliminary policy question is answered<sup>42</sup>. Given the lack of precedents, whether in terms of case law or appeal decisions, the precautionary approach may well be to assess the proposed development on both alternative bases.
47. There are certain background considerations:
- Green Belts are established through development plans and as the former Planning Policy Guidance 2 (PPG2) indicated, the general extent of Green Belts was fixed through the approval of structure plans<sup>43</sup>.
  - PPG 2 indicated that up to date approved boundaries are essential to provide certainty<sup>44</sup>.
  - **A standard Green Belt policy might say "The area shown on the Key Diagram is designated as Green Belt"**. It would make it clear that the Green Belt had been defined, even if some boundaries remained to be finalised at the local plan level.

<sup>40</sup> 4 September 2012 and 26 September 2012 (respectively)

<sup>41</sup> Based on the Opening and Closing submissions, the evidence at the Inquiry, and the responses to the consultations on the Green Belt, Other Amplitude Modulation, and Planning Practice Guidance.

<sup>42</sup> As set out in the Closing Submission APP 8

<sup>43</sup> Paragraph 2.3

<sup>44</sup> Paragraph 2.4



- But SP policy S5 is not written in this way. It is written in the future tense: **an extension to the Green Belt "...will extend from the existing boundary northwards to lie.....Precise boundaries, including those around settlements, should be defined in Local Plans having particular regard to the maintenance of the role of Morpeth as defined in Policy S7 and the sequential approach in Policy S11"**. The policy clearly distinguishes between what was adopted Green Belt and something which would happen in the future. Despite the fact that the policy dates back to November 2005, it has never been perfected.
- The decision whether to continue with the proposed extension to the Green Belt at all, or amend any boundary, will be made through the Core Strategy process. Exceptional circumstances would have to exist, but in theory the proposed extension to the Green Belt might be shelved.
- The Satnam Millenium case (introduced by FFWF)<sup>45</sup> does not deal directly with the point. The question in that case was whether extending the Green Belt amounted to an alteration to the general extent of the approved Green Belt which needed to be justified by exceptional circumstances. In the current case, the question is whether the site is in the Green Belt at all.
- Green Belt was not raised by the Council in its response to the pre-application enquiry.

#### *The October 2013 Green Belt consultation*

48. Following a process of assessment described in the Report and Options Document<sup>46</sup>, the Council has concluded that the Green Belt boundary should be drawn back from that proposed under SP policy S5. Whether the site was included in the broad Green Belt area under that policy, it is now outside the **Council's preferred** area<sup>47</sup>.
49. The reasons given for the change are summarised in the Report:
- The underlying objectives of the Green Belt extension will be achieved equally effectively by a more compact area.
  - A more compact area would allow sustainable development in settlements beyond the Green Belt.
50. In other words, the SP policy was flawed because it did not perform a necessary Green Belt function and would not enable sustainable development.
51. The Options document is the subject of consultation, but the outcome of this is not the key issue. What is relevant in the light of the Framework is the **Council's conclusion that the policy would frustrate the objectives of** sustainable and wider economic development. In the light of Framework

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<sup>45</sup> Appended to FFWF 6

<sup>46</sup> Doc 9 Paragraphs 7.9 - 7.10 of the Report and Paragraphs 8.32 and 8.33 of the Options Document

<sup>47</sup> Doc 9 Figure 8.2

paragraph 215 SP policy SP5 is inconsistent with national policy and cannot attract any weight.

52. In this light, it is necessary to consider the approach that should be taken. LP policy RE3 should be given great weight because it is consistent with the national policy approach towards renewable energy. The Council has stated that this policy is outdated – but, if that were accepted, then the only relevant development plan policy would be LP policy RE2, and the appeal scheme meets all the criteria therein.
53. If it is concluded that neither of the saved policies deserve any weight, then there would no longer be any relevant policy. In that case permission should only be withheld where adverse impacts significantly and demonstrably outweigh the benefits of the development.

### ***Harm to the Green Belt by reason of inappropriateness***

54. If it is concluded that the site is within a currently adopted Green Belt then it is accepted that the proposal is an inappropriate form of development. But is still important to understand the primary purpose of that designation, namely to prevent development from swamping Longhorsley. The appeal site serves no purpose in this respect nor does it safeguard the setting of Morpeth. The windfarm itself would be visually permeable and result in a modest impact on openness. The harm would be very limited.

### ***Other Green Belt harm***

55. Due to the way the Council and FFWF have put their cases, there is no other Development Management case against the proposal. The proposal would comply with LP policies RE2 and RE3, and there would be no 'other harm' to weigh in the balance.

### ***Very Special Circumstances***

56. If it is concluded that the site is within the Green Belt then the appellant accepts the need to demonstrate very special circumstances.
57. The Framework<sup>48</sup> provides that elements of many renewable energy projects will be inappropriate development in the Green Belt. Very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources. The appellant relies on:
  - The supply of a significant amount of renewable energy and a contribution to the achievement of the national target of meeting 15% of the UK's demand from renewable resources by 2020. This is an important material consideration in its own right.
  - The contribution that the scheme would make to mitigating climate change.
  - Energy security through contributing to a mix of renewable resources.

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<sup>48</sup> Paragraph 91

- Delivery of a development plan compliant sustainable form of renewable energy development on a site largely in an Area of Search identified under LP policy RE3.
  - The provision of renewable energy at lowest cost to the consumer.
  - Direct economic benefit in terms of some local new employment and including Business Rates Retention.
  - Indirect economic benefits.
  - Improvements to the local public rights of way network.
  - A net gain to biodiversity.
  - Local community benefits in the form of community projects which can be enabled through 25 years of funding support.
  - The proposed development is wholly reversible and will leave the landscape intact.
58. Council officers took the view that very special circumstances existed in the case of the Todd Hill scheme – in the same area of proposed extension to the Green Belt. In the Hook Moor appeal decision the Inspector stated that support given to renewable energy at national, regional and local level clearly outweighed harm by inappropriateness and other harm, and identified the emergence of national and local policy guidance as adding support<sup>49</sup>.
59. In this case, there exist very special circumstances which are proportionate to the harm.

#### ***The position of Fight Fenrother Wind Farm***

60. FFWF do not object to the principle of a commercial scale windfarm development on the appeal site<sup>50</sup>. As far as local residents are concerned, the appeal site is appropriate and they see no conflict between the extension of the Green Belt and windfarm development. There is no duty on the appellant to demonstrate that a different scheme on the same site would have fewer environmental effects, or to demonstrate that an alternative site should have been chosen. The test is whether the proposed development is capable of being satisfactorily accommodated with impacts which are or can be made acceptable.
61. FFWF and others make much of local opinion, and this was the main thread of the evening session of the Inquiry. However there is no local community veto. Naturally residents identify the local landscape as unique and valued, and these are sincere views. But everywhere the immediate countryside is valued at a local level.
62. The realistic position is that modern commercial wind turbines are large structures which significantly change the open countryside. To argue that such

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<sup>49</sup> CD 6.6 Paragraphs 65 and 66

<sup>50</sup> Dr Lunn

impacts are unacceptable is to say that, despite national policy, onshore wind should not play any significant role in renewable energy provision.

63. There is no requirement for third party objectors to come to a balanced decision on the basis of national and development plan policies – this is not a criticism but a recognition of their role. Their relevant planning objections must be given due weight in the decision making process, subject to evidential testing. Recent national guidance says nothing new in this regard.

***The suitability of the appeal site***

64. The suitability of the appeal site has been acknowledged in local planning policies for many years. It is substantially within an LP Area of Search, and this approach accords with best practice advocated in national policy. The concept of a Green Belt extension in the area post-dated the Area of Search approach - but at that earlier time a quasi-Green Belt policy applied throughout the countryside which was, in some respects, even more restrictive. When the SP was adopted, the Council saved the Area of Search designation and there was no suggestion that this was incompatible with the proposal to extend the Green Belt. The SP Panel saw no conflict in this respect.
65. The LP Inspector clearly took landscape considerations into account. The Council sought to save LP policies RE2 and RE3 as recently as 2007, and has never suggested that the approach was unfit for modern windfarm planning purposes.
66. The work undertaken for the emerging Local Plan supports the long standing Area of Search designation. The Key Land Use Impacts Study<sup>51</sup> indicates that the area around the appeal site is only moderately sensitive in landscape terms to small or large scale wind energy development. The Core Strategy Preferred Options<sup>52</sup> proposes a similarly permissive approach.
67. The proposed development is in compliance with those parts of the development plan which are consistent with the Framework read as a whole. The appellant is proposing an appropriately sized and well designed windfarm in the location which the Council's policy suggests.
68. In his Ministerial Statement on 6 June 2013, the Secretary of State reaffirmed that **"..appropriately sited onshore wind, as one of the most cost effective and proven renewable energy technologies, has an important part to play in a responsible and balanced UK energy policy"**.

***Main issues***

69. It is agreed between the appellant and the Council that the remaining material planning issues are as follows:
- The effect of the proposal, including the cumulative effect, on the local and wider landscape (including the Northumberland National Park and the Northumberland Coast Area of Outstanding Natural Beauty).

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<sup>51</sup> CD 8.15

<sup>52</sup> CD 2.1

- The effect of the proposed development on the openness and visual amenity of the proposed Green Belt extension.
- The effect of the proposed development on the visual amenity of local residents.
- Renewable energy policy and its implications.

#### ***Planning policy framework***

70. The relevant development plan policies are SP policy S5 and LP policy RE2. The proposed development complies with the development plan policies, which are themselves consistent with the Framework. In accordance with paragraph 14 of the Framework planning permission should be granted without delay.

#### ***The National Planning Policy Framework***

71. The Framework sets out clear support for renewable energy proposals. This is in the core principles and elsewhere<sup>53</sup>. It is a responsibility on all communities to contribute to renewable and low carbon energy, and the need for renewable generation projects does not have to be demonstrated by an applicant<sup>54</sup>.
72. In order to meet vital policy objectives, the threshold of acceptable change has to be set at a level which provides adequate protection for the local environment and communities but which allows renewable energy to be provided:
- The appeal should be allowed if the impacts of the proposed development are (or can be made) acceptable. This does not mean that the scheme has to display perfection, it means that the scheme should be satisfactory<sup>55</sup>.
  - The policy imperative can be translated to mean 'as many schemes as possible and as fast as possible, providing that in each case the impacts of a given scheme are acceptable'. The language and sentiment comes directly from EN-1.
  - **'Acceptable' can be interpreted to mean that planning permission should follow unless interests of acknowledged importance would be unacceptably harmed.**
  - **Unacceptable harm is clearly not the same thing as a 'significant effect' for the purposes of the Environmental Impact Assessment Regulations 2011.** It must indicate something of much greater overall gravity.

#### ***Ministerial statements and Planning Guidance***

73. Ministerial Statements<sup>56</sup> did not constitute a change in national policy and demonstrate continued support for the further deployment of onshore wind.

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<sup>53</sup> Paragraphs 17 and 93

<sup>54</sup> Paragraphs 96 and 98

<sup>55</sup> Paragraph 98

<sup>56</sup> DECC and CLG CD 3.3

74. The four bullet points identified within the Ministerial Statements as being matters that need to be carefully considered have been carried through with the addition of two more: the need case; cumulative matters; topography; heritage assets; national designations and amenity. Nothing in the guidance recalibrates the threshold of acceptable change and it does not say that any greater weight should be given to local concerns. In this appeal:
- Whilst the need case does not automatically override environmental protection and the concerns of the community, it is an important material consideration.
  - The appellant has taken full account of cumulative matters and local topographic considerations as part of the LVIA.
  - The appellant has properly assessed the potential effects on heritage assets and has satisfied both English Heritage and the Council.
  - Full account has been taken of national designations (National Park, AONB, Heritage Coast) as well as the Area of High Landscape Value (AHLV).
  - Residential amenity has been assessed in line with the benchmark case of Burnthouse Farm<sup>57</sup>.

### ***Energy policy context***

75. Energy policy is clear. There is no reasonable room for dispute regarding the seriousness of climate change, of the need to cut carbon dioxide emissions and of national policy regarding renewable energy.
76. The proposed development would consist of 5 wind turbines, each with a generating capacity of up to 3 MW. In total the proposed development would have a generating capacity of up to 15 MW. Even FFWF<sup>58</sup> confirmed that the capacity factor for the proposal would be the same as the mean capacity factor for all operational UK windfarms over the last five years.
77. The Renewable Energy Roadmap<sup>59</sup> notes that the pipeline for new plant across the country is healthy but also adopts a cautionary tone because there is no certainty that all the projects in the pipeline will be consented or commissioned or that they will progress quickly enough to contribute when needed<sup>60</sup>. This is why EN-1<sup>61</sup> states that there is an urgent need for new large scale renewable energy projects to ensure that the 2020 target and wider decarbonisation ambitions are met. In summary:
- The Roadmap sets out the commitment to increase the amount of renewable energy to make the nation more energy secure, to protect customers from fluctuations in the price of fossil fuels, to help drive investment in new jobs and businesses in the renewable energy sector as well as keeping the country on track to meet carbon reduction objectives.

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<sup>57</sup> CD 6.3

<sup>58</sup> Dr. Constable

<sup>59</sup> CD 7.5 Paragraphs 2.20 and 2.21

<sup>60</sup> This is repeated in the Renewable Energy Roadmap Update CD 7.6

<sup>61</sup> CD 7.3

- The Roadmap notes that the goal is to ensure that 15% of energy demand is met from renewable sources by 2020 in the most cost effective way across all areas of the UK.
  - The Roadmap looks beyond 2020 and states that there is scope for the penetration of renewable energy to reach 30 - 45% by 2030.
78. The Roadmap Update confirms that the Roadmap produced illustrative central ranges for deployment but did not represent technology specific targets nor the level of national ambition. The 13GW on-shore wind is not a form of cap. EN-1 specifically states that it is not the intention to impose a target or cap for any given technology type.
79. Reflecting all this, the Framework<sup>62</sup> states that planning plays a key role in helping to shape places to secure radical reductions in greenhouse gas emissions, minimising vulnerability, providing resilience to the impacts of climate change and supporting the delivery of renewable energy.
80. The national pipeline to 2020 in terms of renewable technologies overall and onshore wind specifically may be healthy, but that health depends to a large extent on proposals already in the planning system coming onstream on time. Onshore wind is the most cost effective way of generating renewable energy and there are no technical impediments to rapid deployment. It is clear that the benefits of the proposal must carry significant weight in the decision making process. **Mr. Short's approach** - trying to match local electricity consumption in Northumberland with electricity generation – was misguided.

#### ***Landscape character and visual amenity***

81. One Council witness (Mr Glenn) stated that there was a high level of agreement on methodology and that there was no objection based on landscape character and visual effects. He stated that there was no sustainable objection based upon any effects on the National Park, the AONB, the Heritage Coast or the AHLV. He also stated that the impact on residential amenity was only at the threshold of materiality. His position was that the assessment of impacts on individual properties would be left to FFWF - although in fact FFWF did not give any evidence on this and only criticised alleged errors in the **appellant's assessment**.
82. The other Council witness (Mr Nugent) stated in his written evidence that he relied on the expertise of Mr. Glenn in respect of landscape and visual matters. But he appeared to distance himself from **Mr Glen's** oral evidence. However he had written the committee report and had never undertaken a robust landscape assessment of the proposal – as he had left this to others.
83. In addition, the Council sought external landscape advice from an officer at Durham County Council. This was not a formal consultation and was never disclosed to the appellant – who obtained it direct from the County Council. In this way it became clear that Mr. Nugent had attempted to represent the cumulative assessment as his own work without acknowledging the Durham **officer's input and had sanitised** this report of all qualitative assessments which appeared to support the proposed development.

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<sup>62</sup> Paragraphs 93, 97 and 98

*Sensitivity and capacity studies and development pattern*

84. The existing pattern of windfarm development is in part a result of locational policy and in part a result of opportunities arising from development within and near restored coalfields. There are two published studies<sup>63</sup>. The cumulative objection – that there may be coalescence – is not reflected by local policy or guidance and the officer report agreed with the findings of the ES that cumulative effects would be limited.
85. The site lies within area 38b (Longhorsley) of the Northumberland Landscape Character Area (LCA), and other surrounding areas were also considered<sup>64</sup>. The windfarm would be located within undulating farmland surrounded by rising ground to the north, south and west. The proposed development would result in the removal of a short length of species-poor hawthorn hedgerow, which would be replaced with species-rich hedgerows. The effect on landscape character would be mainly limited to the area in the immediate vicinity of the windfarm. There are no other existing/approved windfarms within the same LCA.
86. **There has been a misunderstanding of the term 'windfarm landscape' as used** in a technical sense. As is evident from the Scottish Natural Heritage (SNH) guidance, it does not mean a landscape in which a windfarm can be seen. It means the zone in which the windfarm would become the dominant landscape characteristic. The appellant has mapped the limited geographical extent of these zones, and this accords with virtually all other recent windfarm decisions. Beyond 1 km the windfarm would appear as a feature in the view, rather than leading to effects on key landscape characteristics.

*Visual effects*

87. The turbines would be widely visible within the undulating landscape between the A1 and the A697, and up to 2.5 km from the appeal site. Visibility would start to fragment beyond this distance, particularly to the north and south.

*Settlements*

88. The surrounding area includes a number of villages, often having a dispersed linear arrangement along roads. From each settlement, views of the turbines would be restricted to a few locations and houses on the edges near to the site, with the exception of Fenrother, where a number of properties would have views.

*Public Rights of Way*

89. There are few public rights of way within 2.5 km of the turbines and none of these are long distance routes or bridleways. Significant visual effects will be experienced along lengths of these rights of way where clear views are obtainable. The proposal includes the extension of the life of the current

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<sup>63</sup> The Benson Report (2003) (CD 4.3) and the Northumberland Key Land Use Impact Study, Part C: Landscape Sensitivity to Key Land Uses (2010) (CD 8.15). (The former is virtually superseded by the latter.)

<sup>64</sup> Wingates Ridge (37a); Coastal Coalfields (39a); Coquet Valley (35a); Font and Wansbeck Valleys (35b); and Longframlington (38a)



permissive footpath and proposes a new permissive footpath link. These are important local benefits.

### *The visual component of residential amenity*

90. No individual has the right to a particular view but there comes a point when, by virtue of the proximity, size and scale of a given development, a residential property would be rendered so unattractive a place to live that planning permission should be refused. Changing the outlook from a property – even a fundamental change – is not sufficient to warrant rejecting a proposal. This is an objective test based on the facts of any particular case.
91. Other appeal decisions provide a useful benchmark. In particular the Enifer Downs and Carland Cross cases deal with the public interest test with reference to whether the effect on the main views from a house or garden rendering a property an unattractive place in which to live, and thereby justify the refusal of planning permission<sup>65</sup>. This would be a rare situation.
92. The visual component of residential amenity should be assessed taking into account factors such as distance from the turbines, orientation, the size and layout of the dwelling, internal circulation, division between primary and secondary rooms, garden and other amenity space, the arc of view occupied by the windfarm, views through the turbines and the availability of screening.
93. Each affected property will remain an attractive place in which to live – albeit with a view of a windfarm. The only evidence heard on this issue was that of the appellant, which was virtually untested – the Updated Residential Amenity Survey is relied upon. Specifically in relation to Moor Edge, the appellant does not consider that a planting scheme would be necessary but, if considered appropriate, a deciduous planting scheme would be the subject of a condition, with aftercare by way of the Planning Obligation. This could include a considerable number of semi-mature trees to provide substantial mitigation from the outset.

### *Designated landscapes*

94. The proposed development would have no physical effects on the Northumberland National Park. The Wingates windfarm is now a feature in views from the National Park in closer proximity than the proposed development. The effect on the Northumberland Coast AONB and the Northumberland Heritage Coast was not part of a reason for refusal and there would be no significant effect on the National Park, AONB or Heritage Coast in terms of landscape or visual amenity. The effect on AHLVs would be of minor significance.

### *Cumulative effects*

95. So far as **the Council's landscape witness** was concerned, the only objection was a cumulative case based on views for users travelling north and south on the A1 and A697<sup>66</sup>. However, on a north-south axis, there is clear separation

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<sup>65</sup> Enifer Downs, Earls Hall Farm, Carland Cross and Burnt House Farm (CDs 6.1; 6.40; 6.2; 6.3)

<sup>66</sup> Mr Glenn

in both landscape character and visual terms between all of the baseline clusters, and between those clusters and Fenrother.

96. Although there are a large number of schemes within the cumulative study area, in practice views within the area, particularly where the coastal plain flattens out towards the sea, are often restricted by local features such as trees and hedgerows. There are limited views of multiple windfarms. The pattern of development means that the clusters are well spaced, as suggested in the SNH Guidance. The proposed development would not result in any risk of coalescence (physical or perceived) in either landscape or visual terms.

### ***Reversibility***

97. In accordance with of EN-3<sup>67</sup>, consideration has to be given to the fact the proposed development would be reversible and that no permanent harm would be caused to landscape character or visual amenity. The Council failed to apply this clear and recent national guidance, and both Council witnesses agreed that this factor weighs in favour of the proposal.

### ***Other material considerations - noise***

98. The noise assessment has been carried out in accordance with ETSU-R-97<sup>68</sup> and demonstrates that noise levels will fall within the relevant limits of acceptability for all locations, at all wind speeds and directions, at all times. Appropriate planning conditions, identical in form to those which have been employed previously, and which have been tested in the High Court are proposed.
99. The appellant did not call any expert noise evidence, but submitted a written statement<sup>69</sup> which set out national guidance in ETSU-R-97 and concluded that the predicted levels of wind turbine noise under the worst downwind propagation conditions would meet night-time and lower daytime noise limits under all locations in all conditions. This allows for the fact that there may be **a degree of 'blade swish' in the noise** from any windfarm.

### ***Other Amplitude Modulation (OAM)***

100. OAM has been discussed at length in a number of Inquiries. An OAM condition would be unnecessary, imprecise, unenforceable and unreasonable and therefore outside Planning Practice Guidance. There is no published guidance or methodology for the assessment of, or correction of, this potential noise source.
101. National policy remains that renewable energy proposals should be located and designed in such a way as to minimise increases in ambient noise levels through the use of ETSU-R-97. This takes account of the characteristics of noise from turbines, and does not recommend any additional correction for OAM. This is reinforced in EN-3.

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<sup>67</sup> Paragraph 2.7.17

<sup>68</sup> IoA Bulletin March/April 2009 and IOA Best Practice Guidance

<sup>69</sup> APP5

***Other material considerations - aviation***

102. Local aviation issues were initially raised in relation to civil and military airfields. These issues have since been resolved with Newcastle International Airport and the Ministry of Defence – subject to agreed conditions.

***Other material considerations - sensitivity of a resident at Moor Edge***

103. Dr. Lunn suggests that one resident of Moor Edge may be particularly sensitive to the effects of the development. Beyond noting that one of the diagnostic criteria for autistic spectrum disorder is hyper or hypo-reactivity to sensory input or unusual interest in sensory aspects of the environment, and a reference to his G.P., his carer and parents, no further reports on the likely effects of the turbines have been commissioned. There is no evidence to suggest that adverse effects are certain. The planting scheme which is proposed and secured by conditions and the Planning Obligation would address **the resident's** welfare and would be appropriate to the local landscape setting.

***Appellant's summary***

104. The cases for the Council and FFWF have fallen back on Green Belt issues. The status of the proposed extension of the Green Belt is something which has to be determined as a preliminary issue. However, the result should be the same whichever decision making route is followed. If the appeal site is within the currently adopted Green Belt then very special circumstances exist which would clearly outweigh any definitional harm to the Green Belt and any other harm. If the site is not within adopted Green Belt then the proposal accords with policies which are consistent with the Framework and planning permission should therefore be granted without delay.
105. It is accepted that the proposal would change the local landscape and the composition of a number of local views, including the view from a number of settlements and individual properties and from a number of public rights of way. However, change in itself is not unacceptable. None of the likely significant environmental effects would be unacceptable in the public interest - which the planning system is there to preserve.
106. Renewable energy developments should be granted planning permission provided that any resulting impacts are or can be made acceptable. All contributions, big or small, are to be welcomed and positively supported. The proposal complies with the relevant and up-to-date development plan policies, is compliant with the Framework and Planning Practice Guidance. Environmental, economic and social impacts of the scheme would be acceptable or could be made acceptable with the imposition of conditions.

## The case for the Council<sup>70</sup>

### *Background*

107. The starting point is the relevant policies of the development plan, in this case SP policy S5 and LP policies RE2 and RE3. The development is contrary to SP policy S5 and LP policy RE2. LP policy RE3 is breached in that it requires satisfaction of LP policy RE2. **It is the Council's case that policy RE3 should only carry very limited weight, as is explained below.**

### *The Green Belt*

108. **The appellant's evidence and their** opening submission is that the site should be treated as being within the Green Belt, and that the proposal is inappropriate development for Green Belt policy purposes. That position has not been retracted, but was queried in submissions, and the Council agrees that this is a matter which must be resolved for the purposes of this appeal.
109. The interpretation of policy is a matter of law<sup>71</sup>, but in this case there are no legal authorities or appeal decisions dealing with the status of a Green Belt extension. The Green Belt extension was approved by the SP in 2005<sup>72</sup> although the **use of the word 'will' in the text of the policy** has been queried. The question is does the policy actually designate the Green Belt extension or simply set out a future intention to do so?
110. **The word 'will' can** indicate a present imperative<sup>73</sup> and the SP expressed its Green Belt policy in those terms. The role of the SP **was to 'fix'** the general extent of the Green Belt and the Key Diagram may (where it is unambiguous) have a role in determining the general extent of the designated area. So, where it is clear that a particular location is within the Green Belt as shown on the Key Diagram, relevant Green Belt policies apply.
111. SP policy S5 is unambiguous – the reference to the **area "north of Longhorsley", read with the** Key Diagram, clearly shows the site to be well within the general extent of the Green Belt. The evidence from all parties is that the appeal scheme is inappropriate development in the Green Belt, which is harmful by definition. The proposal would therefore only be acceptable if the harm by reason of inappropriateness and any other harm is clearly outweighed by other material considerations.
112. The issue is therefore one of planning balance but other considerations must clearly outweigh the harm - a fine balance in favour will not suffice. Moreover, the need for renewables does not automatically override environmental protection or the planning concerns of local communities<sup>74</sup>.

<sup>70</sup> Based on the Closing submission, the evidence at the Inquiry, and the responses to the consultations on the Green Belt, Other Amplitude Modulation and Planning Practice Guidance.

<sup>71</sup> Tesco Stores v. Dundee [2012] UKSC 13

<sup>72</sup> CD 41

<sup>73</sup> **Satnam Millennium Ltd v. Warrington BC** [2007] EWHC 2648 (Admin), Paragraphs 10 and 14

Appended to CD FFWF 6

<sup>74</sup> CD 3.4

113. There is also clear harm to the purposes of designating the Green Belt. The purpose of the Green Belt extension was to "...protect the countryside around **Morpeth from encroachment ... prevent the sprawl and coalescence of the town and smaller neighbouring settlements ... the northern boundary of the Green Belt will therefore be extended to encircle Morpeth ...**"<sup>75</sup>. The SP Panel recommended moving the extension north of Longhorsley, encompassing the appeal site, because of the recognition that Longhorsley would otherwise be vulnerable to housing pressure. However that does not mean that the Green Belt extension around the appeal site was only intended to restrict housing development. Land can only be included in the Green Belt if it actually serves Green Belt purposes, and there was a clear role in separating Morpeth and the settlements to the north<sup>76</sup>.
114. The proposal is therefore inappropriate development in the Green Belt, would harm its openness and be an encroachment into the countryside in an area which serves to separate Morpeth and its satellite settlements.

### *The October 2013 Green Belt consultation*

115. The Council has published the Core Strategy Preferred Options for Housing, Employment and Green Belt – Consultation Document (October 2013). Of relevance to the appeal is the consideration of the proposed detailed Green Belt boundary to the north of Morpeth, based on the identification in the SP.
116. **The Council's position at the Inquiry was clear** – the appeal site is around 2.5km inside the adopted Green Belt boundary set out in SP policy S5, and there is no ambiguity in terms of the location of the site within the broad extent of the adopted Green Belt.
117. The weight to be given to the Green Belt was set out in the Council's Committee Report, in the decision on the planning application and in the evidence to the Inquiry.
118. The Consultation Document, which may lead to a change in the boundary of the Green Belt at some time in the future, should be accorded limited, if any, weight at this stage.

### *Other harm*

119. LP policy RE2 prohibits renewables development that will have a long-term adverse impact on established settlements. Fenrother is a hamlet that will be overwhelmed by the presence of the turbines<sup>77</sup>. Whether this impact alone would be sufficient to defeat the application is a matter of judgment, but Fenrother will be a significantly less pleasant place to live and that is directly contrary to the Framework's aim of seeking to improve the places where people live. This must weigh against the proposal.
120. Unusually LP policy RE2 does not deal with the residential visual amenity of individual householders. Any suggestion that 800 metres marks some kind of

<sup>75</sup> CD 1.1

<sup>76</sup> CD 2.4 Page B12

<sup>77</sup> For example at CD 10.2 Vol.3, VP1, Fig.7.7.01

cut-off is not sustainable<sup>78</sup>. Each case will be fact sensitive. However, even if **the 'Lavender Test'** (stemming from the Enifer Downs decision) is not breached, there will clearly be a number of dwellings which will be significantly less pleasant places in which to live, and that is a harm which must be weighed in the planning balance.

121. In terms of cumulative visual impact, the site lies within an area identified in the Northumberland Key Land Use Impact Study, Part C: Landscape Sensitivity to Key Land Uses as having moderate sensitivity to small windfarms, but the document points out that it has not considered cumulative impacts<sup>79</sup>. This issue has to be approached on a case by case basis. It is accepted that the Council produced conflicting evidence on this matter. One Council witness (Mr Glen) conceded an absence of unacceptable cumulative visual harm, whereas another (Mr Nugent) expressed the view that unacceptable cumulative visual impacts would occur in views from higher land to the west, from the vicinity of Widdrington and from parts of the A1 and A697.

#### ***Other Amplitude Modulation (OAM)***

122. The Council does not raise an objection to the proposal on noise grounds, subject to conditions. The position on OAM is that this effect cannot be predicted: it can occur with one make of turbine at one site but not another, a single turbine or a windfarm or in hilly or flat terrain. There is as yet no predictive methodology to determine if a turbine or windfarm is likely to produce OAM. The Council considers that the use of a condition related to OAM would be premature.

#### ***The benefits of renewables***

123. The benefits of renewable energy developments are clearly recognised. National policy is to maximise the delivery of renewables in locations that are acceptable in planning terms<sup>80</sup>, and the need will exist for the foreseeable future as there are no quantitative policy ceilings. Developers are not obliged to demonstrate need. However, national policy<sup>81</sup> is that very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources. It is important to stress that the policy states 'may', not 'will'. There is no legal or policy authority to support a proposition that the benefits of renewables must, as a matter of principle, amount to very special circumstances. Something more than the generic benefits of renewable development are required if very special circumstances are to be established.

#### ***LP policy RE3***

124. LP policy RE3 is a saved policy which forms part of the development plan, and must be addressed. The policy expresses a presumption in favour of wind energy generating development in certain 'wind power areas of search' identified on the Proposals Map, provided that all criteria in saved Policy RE2

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<sup>78</sup> For example CD 6.26 Paragraphs 53 and 80

<sup>79</sup> CD 2.5 Paragraph 3.50

<sup>80</sup> Framework Paragraph 97

<sup>81</sup> Framework Paragraph 91

are satisfied. The appeal site is located partly within one of the identified areas of search<sup>82</sup>.

125. However little or no weight can now be attached to this policy as, although it **was saved at the Council's request in 2007, the reason** for that request is not clear and the world has moved on.

126. The weight to be ascribed to a saved policy relates to its degree of consistency with the Framework<sup>83</sup>. While national policy approves the concept of areas of search, it is clear that this should be an evidence led exercise and that policies must make clear what criteria have led to the identification and what size of development is contemplated. LP policy RE3 does not satisfy these requirements. It was not led by a landscape sensitivity/capacity study and whilst the Local Plan Inspector broadly addressed landscape and visual impact issues he was not assisted by any significant evidence.

127. Planning Practice Guidance for Renewable and Low Carbon Energy (July 2013)<sup>84</sup> notes that the impacts of some technologies may have changed since local capacity assessments were drawn up. Although based on little evidence. LP policy RE3 is akin to such an assessment, but:

- The policy goes back to around 1994 - turbines have substantially increased in size since then.
- The numbers of turbines in the locality either built or approved has massively increased.
- Policy over time has developed an increased emphasis on local views and impacts upon settlements and individual properties, e.g. the development of the 'Lavender Test'.
- It is not clear that, in seeking to save policy RE3, either the Council or the Secretary of State engaged with the consequences for the Green Belt extension.

128. In short, the world has moved on since RE3 was drafted.

### **The case for Fight Fenrother Wind Farm<sup>85</sup>**

#### *The Green Belt*

129. Until the opening day of the Inquiry, it had been common ground that the appeal site was within the Green Belt<sup>86</sup>. **Then, in the appellant's opening, the question was asked as to whether the site was within the Green Belt or was it within a future Green Belt extension.**

130. There are two answers to that:

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<sup>82</sup> Appendix 4

<sup>83</sup> Paragraph 215

<sup>84</sup> CD 3.4

<sup>85</sup> Based on the Closing submissions, the evidence at the Inquiry, and the responses to the consultations on the Green Belt, Other Amplitude Modulation and Planning Practice Guidance.

<sup>86</sup> Doc 7 Paragraph 6.3

- The statutory role of structure plans was to formulate policy and general proposals in respect of the development of an area. Saved structure plans are part of the development plan, and the general extent of Green Belts was approved and fixed through the approval of structure plans.
  - The question is not the tense of SP policy S5, but its mood. As a matter of grammar, its mood is imperative. The main point of construction is that the key clause is plainly not conditional.
131. The statutory function of structure plans is clearly set out. A structure plan comprises a written statement which will be illustrated by diagrams, which are part of the plan. The general extent of Green Belts is fixed through the approval of structure plans, although in some cases detailed boundaries were not defined. These boundaries are essential to provide certainty as to where Green Belt policies do and do not apply.
132. The *Satnam Millenium* case<sup>87</sup> is of direct relevance. In that case, the Claimant sought to quash the proposals map of a Unitary Development Plan insofar as it showed a particular area of land as being within the Green Belt. The Claimant contended that this altered the general extent of the Green Belt, which had been approved in the relevant Structure Plan, but had not been justified on the basis of exceptional circumstances. **The Council's position was that since detailed Green Belt boundaries had not been previously defined, there had been no alteration to them and there was therefore no need to show exceptional circumstances.**
133. The judgment stated that the approval of structure plans is intended to fix the general extent of Green Belts, as set out in paragraph 2.3 of the then-extant Planning Policy Guidance 2. The general extent may be 'fixed' with greater or lesser precision depending on the particular text and the key diagram in the structure plan in question<sup>88</sup>.
134. **In this case the Government's consultation** on the likely effects of the revocation of the Regional Strategy proposed to retain SP policy S5 because "...removing this policy before the Council has adopted a Local Plan which defines Green Belt boundaries could put Green Belt land at risk from unwanted development"<sup>89</sup>.
135. On 18 March 2013 the Secretary of State addressed Parliament on the revocation of the RS for the North East, **and stated that "Policy S5 of the ...SP... will remain in place because it enables the extension of the Green Belt around Castle Morpeth and so plays an important role in preserving the cultural and environmental heritage of the local area. This reflects the Government's commitment to safeguarding Green Belt protection."**<sup>90</sup>
136. The policy includes the wording that an "... extension to the Green Belt will extend from the existing boundary northwards ...precise boundaries, including

<sup>87</sup> Appended to FFWF 6

<sup>88</sup> Fuller discussion of judgement in FFWF 6

<sup>89</sup> Strategic Environmental Assessment of the revocation of the North East of England Regional Strategy, November 2012

<sup>90</sup> Hansard 18 Mar 2013 : Column 35WS



those around settlements, should be defined in Local Plans....". The appellant **now contends that "will extend"** in the policy connotes the future tense, i.e. that the Green Belt has not yet been extended. But the grammatical mood of 'will' in this case is imperative, rather than conditional. That is to say that it is not contingent on another event, and came into force as soon as the policy was adopted.

137. That approach is consistent with the function of structure plans, as the aim was to fix general Green Belt boundaries, not to consider fixing them in the future. This form of words was not uncommon in structure plan Green Belt policies. The policy which was held to have established the broad boundaries of the Green Belt, **began "...there will be two areas of Green Belt in the County broadly depicted on the Key Diagram"**. The appellant could identify no authority for the proposition that SP policy on Green Belt is not 'perfected' until it is finalised in a Local Plan.
138. **The appellant's witnesses** were correct to treat the appeal site as being within the Green Belt. Policy S5 has plainly fixed the general extent of the Green Belt north of Morpeth, and the appeal site falls squarely within the extension. In any event, even if it were concluded that the policy has not established the Green Belt north of Morpeth, then very significant weight indeed must be given **to the site's future designation**.

#### *The October 2013 Green Belt consultation*

139. Until the adoption of the Core Strategy the appeal site has Green Belt protection. The Morpeth Outer Green Belt Boundary Report 2013 states that **"...the Council believes that the extension around Morpeth is not new Green Belt, it was established through regional policy, culminating in the saved SP policy S5"**<sup>91</sup>. The report clarifies the SP policy S5 boundary as being that presented by the Council at the Inquiry.
140. It appears that the Council's position is that any significant alteration to Green Belt, given that it is not new, can only be made in exceptional circumstances. Reducing the Green Belt to the north of Morpeth by around 70-80% would be significant and exceptional circumstances will need to be demonstrated. This was accepted by the appellant in closing<sup>92</sup>.
141. The weight attributed to the new consultation document should be minimal, if it were to be given any weight at all. The appeal decision must be made on current land use designations. The outcome of further consultation cannot be second guessed and it is not within the scope of this appeal to examine the preferred option document that is undergoing public consultation.

#### *Definitional harm to the Green Belt*

142. The Framework defines the five purposes of the Green Belt and restates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Subject to the

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<sup>91</sup> Doc 9 Paragraph 23

<sup>92</sup> APP 8 Paragraph 1.5

question of the SP Green Belt boundary, it is common ground that the proposal is inappropriate development.

143. In relation to very special circumstances, case law demonstrates the following<sup>93</sup>:

- The circumstances must be not merely special in the sense of unusual or exceptional, but very special.
- It does not follow that, merely because the decision taker considers that the benefits clearly outweigh the harm to the Green Belt, those benefits are reasonably to be described as very special.
- The requirement for not merely special but very special circumstances must not be watered down.

144. Renewable energy benefits are capable of constituting very special circumstances. However, the appellant is required to do more than merely cite the generic benefits of renewable energy. That is particularly so when, as shown by unchallenged calculations<sup>94</sup>, the scale of renewable energy benefits to be delivered would be no more than modest.

145. The weight to be given to a Green Belt designation is not contingent on how many of the 5 possible purposes for designation are fulfilled, as the appellant sought to do.

#### ***The assessment of any other harm***

146. **The appellant's approach is misguided.** The question of whether there will be any other harm is not determined by whether there is development plan policy compliance. Consideration has to be given to any other harm, not just harms which cross a development plan threshold of unacceptability. For example, the appellant acknowledges that the impact on Fenrother and Fieldhead will be of a major magnitude and major significance. The development would loom over the properties in the two settlements. It will be notably oppressive and overwhelming to the residents of Moor Edge, including one who, by the nature of his medical conditions, is a receptor of increased sensitivity.

#### ***Landscape effects***

147. The appeal site falls within an area of search within LP policy RE3, so in terms of landscape impacts, the development plan supports the grant of permission if the development meets the requirements of policy RE2, i.e.:

- No unacceptable impact on sites and locations which are especially sensitive, including those designated as conservation areas, areas of high landscape value and the coastal zone.
- Proposals should be sited in sympathy with local features and respect the grain and form of the land and be located so as to minimise visual intrusion.

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<sup>93</sup> Appendix to FFWF 6

<sup>94</sup> FFWF 3

- The cumulative effect of multiple installations.
148. **FFWF's position** on LP policy RE3 is:
- Planning should be based on up-to-date information about the environment and the characteristics of the area.
  - The identification of areas of search was not based on capacity, and pre-dated the pattern of development that is now emerging on the ground<sup>95</sup>.
  - The policy was not based on any landscape sensitivity study.
  - The policy was prepared in the mid-1990s when average turbines were significantly smaller than those proposed in the appeal scheme.
149. The LP policy RE3 designation is two decades old, and has become qualitatively and quantitatively outdated. Albeit part of the statutory development plan, it should be given very limited weight.
150. **The appellant's** baseline character assessment classifies the appeal site as being **within a "shallow valley"**. **The point is repeated to imply that rising** ground would limit the effects on the landscape<sup>96</sup>. This was an error pointed out by FFWF and accepted as being not technically accurate by the appellant. However it is more than a technicality as the identification of a valley form was an important premise of the assessments. **The appellant's persistent reference** to valley formations is evidence of a failure to engage properly with the particular features of the landscape character.
151. Questions of significance and adverse effects are matters of planning judgment following the site visit.
152. In terms of cumulative impact, the appellant accepts that the turbines would be visible as far north as Alnwick, from the National Park, and as far south as Newcastle. It is common ground that the Scottish Natural Heritage guidance<sup>97</sup> sets out the proper approach to cumulative impact assessment, i.e. that it should take account of:
- Combined visibility in combination (windfarms simultaneously within the arc of vision).
  - Combined visibility in succession (where the observer has to turn to see various windfarms).
  - Sequential effects (where the observer has to move to another viewpoint to see different effects).
153. The ES asserts that in practice views would often be restricted by local features, and that views of multiple windfarms do not actually exist in practice. However although screening is relevant it does not determine the broader landscape impacts. Multiple views of windfarms do exist - for example from

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<sup>95</sup> CD10.21

<sup>96</sup> CD 10.2 Paragraph 7.103 and elsewhere

<sup>97</sup> CD 8.10

Moor Edge cottage, where there would be combined visibility of 29 consented turbines, as was accepted by the appellant<sup>98</sup>. What is at issue is the acceptability of such views.

154. **The Council officer's report**<sup>99</sup> accepts that the proposal would result in the zones of visual prominence of windfarms on the coastal plain coalescing with that of Fenrother, which would in turn coalesce with that of Wingates creating a broad zone where turbines would be prominent in the landscape. The area over which the cumulative effects would be greatest coincides with the north-eastern part of the proposed Green Belt extension<sup>100</sup>. There would be a visual coalescence between areas of windfarm development.

### ***Very special circumstances***

155. The benefits of renewable energy projects are capable of constituting very special circumstances, but whether they do so depends on each case. **FFWT's** position is:
- The burden of proof is on the appellant to prove that very special circumstances apply and these must be not merely special in the sense of unusual or exceptional, but very special.
  - The appellant does not identify any particular or unusual benefits associated with the appeal scheme, merely stating that wind energy developments offer intrinsic environmental benefits. It was accepted that this applies to windfarms generally. That plainly does not satisfy the very special circumstances test. This is especially the case as emissions savings arising from the proposal are at best small in scale<sup>101</sup> - this evidence was not challenged by the appellant.
  - The appellant relies on LP policy RE3, but it was accepted that if the policy was found to be out of date, it could not constitute a very special circumstance<sup>102</sup>. In any case, policy RE3 only supports windfarms subject to LP policy RE2, which does not permit unacceptable visual impacts or long term adverse impacts on settlements.

### ***Conclusions on Green Belt***

156. National policy is that substantial weight should be given to any harm to the Green Belt. However the appellant wrongly qualifies this by stating that there would be no significant harm<sup>103</sup> - that is the wrong approach.
157. The benefits of the scheme, even if they clearly outweighed harm to the Green Belt, would not be enough to make them very special circumstances<sup>104</sup>. The full extent of definitional and other harm to the Green Belt must be given substantial weight. On the other side of the scales, the appellant must identify circumstances which are not only beneficial, but special and not only special,

<sup>98</sup> Mr Goodrum in xx

<sup>99</sup> CD 10.3 Paragraph 7.38

<sup>100</sup> CD 10.21

<sup>101</sup> FFWF 3 Paragraph 52

<sup>102</sup> Mr Dixon in xx

<sup>103</sup> APP 4 Paragraph 26

<sup>104</sup> Chelmsford BC v First Secretary of State [2003] EWHC 2978 (Admin)

but very special, which would clearly outweigh the harm. The appellant has failed to do this.

*The visual amenity of local residents*

158. The ES notes that views from private property are not a material consideration unless the proposed change is sufficiently unpleasant or intrusive to cause unacceptable harm to residential amenity. **The 'Lavender test'**<sup>105</sup> is not mechanistic and has no particular status. In the light of Framework policy, impacts which fall short of being overbearing or oppressive are still material<sup>106</sup> and must be brought into the planning balance<sup>107</sup>. This approach was accepted by the appellant.
159. The original scheme was the product of desktop work and, it was asserted, was amended in relation to a range of factors, including input from the local community. However there is no evidence of a response to local community concerns<sup>108</sup>, and many aspects have never changed. There is no evidence that visualisations were carried out in respect of alternative schemes. At no time were members of FFWF or other residents approached to arrange a visit to affected properties. A more responsive approach to design taking account of local community concerns would be less likely to bring about significant impacts on visual receptors and on the amenity of local residents.
160. The scheme was broadly fixed by the beginning of 2009 before the community was consulted, before the Green Belt constraints and the impact on sensitive receptors were considered. It is unsurprising that there have last minute changes to the proposed screening and to the **appellant's** position in relation to Green Belt.
161. The appellant identified a minimum separation distance of 800m as a "key constraint" of the Scheme **and as one of the preliminary "buffers"** to design<sup>109</sup>. But this objective has not been met<sup>110</sup>. **The appellant's response was that the** distances were derived from postcode data and rounded to 25m, but even so several properties are under 800m from the nearest turbine. (e.g. Stonebrook cottage is only 765m away, but this was rounded up to 800m.) The factor which the appellant consistently referred to as a key constraint has not been achieved. In any event, 800m is not a magic number beyond which overbearing impacts cannot occur<sup>111</sup>.
162. The appellant accepted that the effect on Fenrother would be of major magnitude and significance, very important in the decision making process, unavoidable throughout the settlement, and dominant. However the appellant considered the impact acceptable, whilst agreeing that it was a fine judgement call<sup>112</sup>.

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<sup>105</sup> CD 6.1

<sup>106</sup> CD 6.32

<sup>107</sup> Ref. APP/H0520/A/11/2146394, para 55

<sup>108</sup> Mr Goodrum in xx

<sup>109</sup> CD 10.2 Paragraph 4.23

<sup>110</sup> FFWF 2 Table 1

<sup>111</sup> CD 6.26 Paragraph 53

<sup>112</sup> Mr Goodrum in xx

163. In views raised from road level, such as that from Lyneburn House<sup>113</sup>, the turbines would be even more prominent and the development would loom over Fenrother to an unacceptable degree. It would damage the character of the settlement and the amenity of its residents.
164. The fact that the appellant failed to engage with residents led to a range of errors **in describing residents' houses and the effect of the proposal thereon**. The ES was, at best, incomplete. These errors were partly corrected in the **"Update to Residential Assessment – Visual Effects"**, but errors remain in relation to some properties in Fenrother and Fieldhead<sup>114</sup>.
165. It is common ground that a proper assessment of the impact on residential receptors involves considering distances to the nearest turbine, as well as internal and external property layouts, location of key amenity spaces, location of windows and gardens. The assessment of these factors has been corrected by the appellant since the ES, including the acceptance that this is not a valley landscape and that the site is within the Green Belt (which had not been considered in the initial stage of scheme design<sup>115</sup>).
166. **Despite these changes, the one constant factor is the appellant's** overall conclusion about the acceptability of the scheme. Rather than demonstrating the quality of the initial work, this shows fixed conclusions which fail to adapt to changing inputs.

*The effect on residents at Moor Edge*

167. The effect on residents at Moor Edge has the capacity to be a critical issue. The house was designed to maximise its unrivalled aspect with windows in all main living rooms facing directly toward the site. The property already has 29 wind turbines consented or built within its visual field.
168. One of the residents of Moor Edge suffers from autistic spectrum disorder and his GP has confirmed<sup>116</sup> that he **may be "adversely affected should moving objects be placed within site of his home environment"**. Given the unusual sensitivity of this resident as a receptor and the unusually prominent impacts to Moor Edge as a property, detailed analysis is required.
169. The appellant has been aware of this position since **FFWF's consultation** response to its planning application. **The appellant's first response was to rely** on the recently planted conifer hedge<sup>117</sup> but this was accepted as going to take 7 – 9 years to mature. A more recent amendment is to plant a block of deciduous trees<sup>118</sup>, but again this unfinished proposal is accepted to only provide full screening after 8-9 years. That means that for the first third of the life of the development the turbines would not be fully screened.
170. In any event, screening by vegetation and trees is not a complete answer to the question of residential amenity. As the Beech Tree farm appeal decision<sup>119</sup>

<sup>113</sup> APP 4 Appendix 4

<sup>114</sup> FFWF 2 Rebuttal Paragraphs 15-31

<sup>115</sup> Mr Goodrum in xx

<sup>116</sup> FFWF 2 Appendix 9

<sup>117</sup> CD 10.2 and APP 3

<sup>118</sup> APP3 Paragraph 4.4.31 and APP 3 Rebuttal Paragraph 6.1.2

<sup>119</sup> CD 6.33

noted, occupiers of local dwellings would be aware of the presence of the turbines and they would carry that awareness with them at all times. Hence they would sense their presence even though the structures might be hidden by vegetation, landform or buildings.

171. On accessing Moor Edge by road or on foot and – for the first 9 years or so – on looking up between the growing trees at the spinning blades looming over their house, the occupiers of Moor Edge would be aware of the presence of the turbines.
172. The ES concedes<sup>120</sup> **that “...there are no real meaningful on-site opportunities for incorporating mitigation measures for the main elements of the proposed scheme”**. FFWF agrees with this assessment.
173. The **appellant’s original** position on cumulative impact was that as there was no property within 1 km of the proposed windfarm there would be no cumulative impact on residential property<sup>121</sup>. However that is an unduly **restrictive approach and the appellant’s case at the Inquiry was that there** would be a cumulative impact from Moor Edge, but that it would not be significant<sup>122</sup>. Moor Edge would become an unattractive place in which to live.

#### ***Conclusion on residential amenity***

174. **In assessing the scheme’s impacts on local residents, the focus must be on** how those residents experience daily life. The consideration of visual effects is inextricably bound with the impact of the proposal upon the local community, which goes beyond individual impacts on a particular home or garden<sup>123</sup>.
175. The effects at a number of properties would be very substantial and the turbines would loom over the settlements at Fenrother and Fieldhead. As the appellant accepts, from Fenrother the dominating effect of the turbines would be unavoidable. From Moor Edge the presence of the turbines will be overwhelming, and the mitigation proposals range from the optimistic to the hopeless. A variety of properties will be rendered unattractive places to live as a result of the proposal. Even in the case of those adversely affected properties which are not so rendered, the level of harm caused is material and should form part of the planning balance.

#### ***Noise***

176. FFWF has not had the resources to call expert noise evidence but has submitted evidence by Mr Michael Peacock<sup>124</sup>. Several of the objections contained in that proof remain and are material:
- The **appellant’s failure to engage** properly with local residents in selecting noise monitoring locations, or to provide timely noise data on request<sup>125</sup>. This is contrary to the Institute of Acoustics ETSU Good Practice Guide<sup>126</sup>.

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<sup>120</sup> CD 10.2 Paragraph 7.47

<sup>121</sup> CD 10.2 Paragraph 7.273

<sup>122</sup> APP 3 Rebuttal Paragraph 2.2.4

<sup>123</sup> CD 6.30

<sup>124</sup> FFWF 4

<sup>125</sup> FFWF 4 Paragraphs 14-34

<sup>126</sup> CD 9.3 para 2.2.8

- The **appellant's failure to select representative background monitoring locations**<sup>127</sup>, which should have been sufficient to allow the background noise levels at each noise-sensitive receptor within the study area to be characterised.

177. FFWF is concerned that the failure to respect community requests to measure at different properties has unduly narrowed the scope of the evidence collected and that renders the subsequent assessment insufficiently robust.

#### ***Other Amplitude Modulation (OAM)***

178. The suggested condition in the Renewable UK study is flawed and cannot be relied upon to protect neighbours. The study was commissioned and funded by the trade body of windfarm developers and is not independent. It has not been endorsed by any government body and should carry no weight.

#### ***Renewable energy policy and implications***

179. It is common ground that appellants should not have to demonstrate a need for renewable or low carbon energy and it is recognised that even small scale projects provide a valuable contribution to cutting greenhouse gas emissions<sup>128</sup>.

180. However, it is not the case that this benefit must, regardless of its scale, override any harms. The value of site specific benefits must be weighed against site specific harms on a case by case basis. As the Secretary of State noted in a recent statement: **"The need for renewable energy does not automatically override environmental protections and the planning concerns of local communities"**<sup>129</sup>. That is even more important in the context of an application which comprises inappropriate development in the Green Belt. Unspecific references to the benefits of renewable energy are not enough. The Inspector must assess the **scheme's net benefit**.

181. The appeal **scheme's predicted output** would contribute:

- **0.01% of the UK's annual electricity consumption**<sup>130</sup>.
- **0.03% of the UK's target for electricity in the National Renewable Energy Action Plan**<sup>131</sup>.
- **2.3% of the total electricity sold in Northumberland**<sup>132</sup>.

182. Assuming a reduced load factor over time to account for the likely decline in **the turbines' condition**, the development could produce over its 12.5 year lifetime only 0.14% of the annual electricity consumption in the UK<sup>133</sup>. The position on net emissions savings is unclear<sup>134</sup> but, even adopting assumptions

<sup>127</sup> FFWF 4 Paragraphs 39 - 84

<sup>128</sup> Framework Paragraph 89

<sup>129</sup> 6 June 2013

<sup>130</sup> FFWF 3 Table 3

<sup>131</sup> FFWF 3 Table 4

<sup>132</sup> FFWF 3 Table 5

<sup>133</sup> FFWF 3 Paragraph 37

<sup>134</sup> FFWF 3 Paragraphs 39 - 40



favourable to the appellant, the development would prevent the emission of **around 0.002% of the UK's total annual CO<sub>2</sub> emissions** and 2.3% of the emissions produced by energy consumed within Northumberland<sup>135</sup>.

183. Even on optimistic assumptions, the generation capacity and emissions savings associated with the proposal are modest in scale. That does not mean they are undesirable or unimportant, but it is relevant to the question of whether there are very special circumstances to justify development in the Green Belt. References to national policy and the broad benefits of renewable energy are not very special circumstances, particularly when the net benefit to be derived is so small.

### ***Conclusion***

184. Although the proposal would deliver modest benefits in terms of renewable energy, it is inappropriate development in the Green Belt. It has not been justified by any very special circumstances. The local landscape is of high-moderate sensitivity and is not suitable for further windfarm development. The landscape impacts will be both individual and cumulative, and they would be severe.
185. The scheme would loom over the properties of Fenrother and Fieldhead. It will be notably oppressive to the residents of Moor Edge. The appellant has failed to design a scheme that responds to the dynamics of this location. The appellant fixed on a goal, and is seeking to deliver the scheme at the expense of the amenity of local residents and the openness and integrity of the Green Belt.

### **The case for others appearing at the Inquiry and written representations**

186. Mr J W Short<sup>136</sup> stated that windfarm proposals should not be considered in isolation as they are one element of a large generating network and the constraints created by other generating capacity must be taken into account. There would be little carbon emission or environmental benefit. Calm days, when wind generation is not possible, occur when high pressure is centred over the British Isles. The government has predicted that energy consumption will decrease and that solar power and shale gas will remove the need for additional generating capacity. In any event, government policy is that renewable energy projects should be spread throughout the regions, and there is therefore no justification for further development in the northeast.
187. An evening session of the Inquiry was held, which was attended by a large number of local residents and many of whom spoke (list below). Of those who spoke, the overwhelming majority opposed the development for a range of reasons – most prominent of which were the effect on the landscape, residential amenity, and traffic issues during the construction phase.
188. There are a significant number of written representations (on file) which raise the same issues and are similarly overwhelmingly opposed to the proposal.

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<sup>135</sup> FFWF 3 Paragraphs 47 and 51

<sup>136</sup> Docs S1 and S2

## Inspector's conclusions

[Numbers in square brackets denote source paragraphs]

### *Background and agreed matters*

189. The Council and the appellant reached agreement on a number of matters before the Inquiry, as set out in the Statement of Common Ground (SOCG) [26 - 40]. Fight Fenrother Windfarm (FFWF) did not oppose the appeal in relation to some of the matters covered in the SOCG. The most important matters are as follows:

- The parties differ as to whether the site is within the Green Belt. The **appellant's** evidence stated that it was within the designated area, but the **appellant's** closing submissions suggested that the Northumberland County and National Park Joint Structure Plan (SP) (2005) only indicated an intention to define a Green Belt in the future. The evidence and closing submissions from the Council and FFWF considered the site to be in adopted Green Belt.
- In the event that the proposed development is considered to be in the Green Belt, it is accepted by all parties that the proposal is inappropriate development and that very special circumstances would need to be demonstrated.
- It is agreed that the wider environmental benefits associated with increased energy production from renewable sources may contribute to such very special circumstances.
- The landscape and visual impact assessment methodology, the baseline character of the area, and the location of viewpoints is agreed.
- It is agreed that the construction works would not be significant in the longer term.
- It is agreed that the proposal would have no significant effects - taken in isolation - on the special qualities of designated landscapes in the wider area. (One Council witness considered that the proposal would give rise to significant cumulative effects on views from the Northumberland National Park.)
- All parties agreed that the appropriate test is whether the visual element of residential amenity would be affected to such a degree that the property concerned would come to be regarded as an unattractive and thus unsatisfactory (but not uninhabitable) place in which to live.
- The Council did not raise an objection on noise grounds, subject to conditions.
- The objections by Newcastle International Airport and the Ministry of Defence have been withdrawn and **the Council's reason for refusal** related to aviation matters was not pursued - subject to conditions.
- **The Council's reason for refusal related to archaeology was withdrawn** - subject to conditions.

### *Main considerations*

190. Based on policy, the evidence and the areas of agreement, the main considerations are:
- Whether the appeal site is within the adopted Green Belt.
  - If so, whether the proposal is inappropriate development and whether it would harm the openness of the Green Belt and conflict with the purposes of its designation.
  - The effect, including the cumulative effect, on the wider and local landscape.
  - The effect on the visual amenity of the residents of nearby properties.
  - The implications of renewable energy policy.
  - Other matters – noise, highway safety, heritage assets, employment, biodiversity, public rights of way.

### *Whether the site is within the adopted Green Belt*

191. The SP is part of the development plan. SP policy S5 deals with an extension to an existing Green Belt, and states that this extension “..will extend from the existing boundary northwards.....Precise boundaries, including those around settlements, should be defined in Local Plans having particular regard to the maintenance of the role of Morpeth....”. **The general extent of the area affected by the policy was shown on the SP Key Diagram.**
192. The precise boundaries of the Green Belt extension have never been defined in a development plan document, as the Castle Morpeth District Local Plan (LP) predated the SP by two years. However it is clear from the SP Key Diagram that the appeal site is well within the hatched area referred to in SP policy S5, and there is a reference in the text to the area north of Longhorsley, beyond the appeal site, which adds further certainty. None of this was disputed by the parties [47, 111, 129 onwards].
193. However a dispute emerged at the Inquiry (for the first time) between the appellant and the Council (and FFWF) as to whether the SP had the effect of actually designating a Green Belt extension (with detailed boundaries to be defined later), or only expressed the intention that a Green Belt extension would be designated in a subsequent Local Plan. In other words the issue is whether, at this time, the appeal site is within an adopted Green Belt.
194. All parties agreed that whether the site is in the Green Belt is a central issue which needs to be decided at an initial stage [46, 108, 129]. Not only will this have consequences for the shaping of this report, but more importantly the policy position would be very different depending on the outcome.
195. The wording of SP policy S5 is open to different interpretations. **The appellant’s approach is that the phrase “..will extend..” connotes the future tense, i.e. that the Green Belt has not yet been extended.** However the word ‘will’ can also indicate a present imperative, and the designation would not be contingent on some other event. The Green Belt extension would therefore

have come into effect as soon as the SP was adopted. Given these two possible meanings, examination of the SP policy wording does not take the matter further.

196. Of greater relevance is the approach of the professional witnesses at the Inquiry. The evidence submitted before the Inquiry, and as given at the Inquiry by all witnesses, was that the site was within the Green Belt as shown **on the appellant's Summary Drawing (Fig i)**. There was no evidence to suggest that the site was other than within an adopted Green Belt. However in submissions the **appellant's approach was that the SP had not designated an extension to the Green Belt** [46 - 51].
197. FFWF referred to the Satnam Millenium case as being comparable<sup>137</sup>. However this is of limited relevance as it dealt with a suggested extension to an adopted Green Belt. In this case the issue is whether the site is in the Green Belt at all. However the judgement did confirm that the approval of structure plans was intended to fix the general extent of Green Belts – as was set out at that time in the former Planning Policy Guidance 2. The general extent might be fixed with greater or less precision depending on the particular policy and key diagram [47, 132 - 133].
198. All parties agreed that, leaving aside the Satnam Millenium case, there is no legal precedent or appeal decision dealing with this point. From the evidence and submissions at the Inquiry, it appears that the argument put forward by the appellant is a novel approach, and that this Green Belt extension has been accepted as adopted policy hitherto.
199. To a limited extent the position has been slightly complicated by the publication by the Council (for consultation) of the Core Strategy Preferred Options for Housing, Employment and Green Belt – Consultation Document (October 2013). This shows a detailed Green Belt boundary drawn back from that shown on the SP Key Diagram.
200. The appellant emphasised that, whether the site was included in the broad Green Belt area under SP policy S5, it would be outside the area now shown as **the Council's preferred option** [48, 117 – 118, 139 - 141]. In addition, the appellant drew attention to the content of the report which indicates that the current SP boundary would frustrate the objectives of sustainable and wider economic development, with consequences in relation to paragraph 215 of the Framework.
201. The Preferred Options document is for consultation purposes and little weight can be attributed to it. The outcome of the consultation is unknown, as is the **Council's response to the consultation**. It is also clear that if the Council resolved to substantially reduce the Green Belt to the north of Morpeth by a significant extent in comparison with the SP diagram, exceptional circumstances would need to be demonstrated and examined. **If the Council's** view were to remain that the extent of the Green Belt in the SP does not meet current national policy, this would be an argument for reducing the extent of the area – but it is insufficient to conclude that the adopted policy is contrary to national policy.

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<sup>137</sup> Appended to FFWF 6

202. It has long been the approach that the general extent of Green Belts was fixed through the approval of structure plans. The Satnam Millenium case noted this, although it has been clearly established as a principle for many years. This is not a situation where a site might be argued to be on the margins of the area, as the SP Key Diagram is unambiguous in identifying the location of the site as being within the area. The fact that detailed boundaries were to be defined at a subsequent stage, and that they have not been so defined, is unexceptional, but cannot realistically be used as an argument to suggest that the Green Belt extension has not come into effect.
203. There is no evidence that any of **the appellant's submissions have been raised** or accepted in previous cases, and all professional witnesses at the Inquiry accepted that the site is within the Green Belt. Despite the arguments about the not-uncommon wording of the policy it is clear that the site lies within the adopted Green Belt.

*Inappropriateness, openness and the purposes of designating the Green Belt*

204. Despite the above, **if it is considered that the appellant's submissions are** correct, and that the appeal site is not within the adopted Green Belt, then this section is not relevant. Under those circumstances the remainder of the report deals with material considerations to be weighed in the planning balance. This position will be assessed at the end of the report.
205. Assuming that the site is within the adopted Green Belt it is accepted by all parties that the proposal is inappropriate development [54, 111, 114, 142]. Framework policy is that such development is, by definition, harmful. It is also self-evident that the proposed turbines and ancillary works, constructed on undeveloped land, would harm the openness of the Green Belt, as accepted to a limited extent by the appellant. This would be contrary to Framework policy which is that openness is one of the essential characteristics of Green Belts.
206. One of the purposes of designating a Green Belt is to assist in safeguarding the countryside from encroachment. In this particular case the purpose of the SP Green Belt extension was to protect the countryside around Morpeth from encroachment and prevent the coalescence of the town and smaller neighbouring settlements [47, 49 – 50, 134 - 135]. The appellant has suggested that the appeal site serves no purpose in this respect [49 - 51]. However although it is clear that the Green Belt extension was particularly designated due to concerns about housing pressure, land can only be included in the Green Belt if it serves overall Green Belt purposes. The proposal would be an encroachment into the countryside in an area which separates Morpeth and its satellite settlements.
207. Overall the proposal is inappropriate development in the Green Belt and would harm the openness of the designated area, as well as being in conflict with one of the purposes of designation. It is agreed by the parties that (assuming the site is in the Green Belt) very special circumstances (whereby any potential harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations) will need to be demonstrated [56, 114, 143 – 144, 155]. This matter has been dealt with briefly in this report, due to the large measure of agreement between the parties, but this does not imply any reduction in the importance of this issue, which weighs heavily against the proposal.

### *The effect on the wider and local landscape*

208. There are considerable areas of agreement between the Council and the appellant as to the effect of the proposal on the wider and local landscape [30 - 33]. FFWF was not a party to the SOCG and did not produce any technical landscape evidence, but did have concerns about some aspects of the **appellant's assessment** and its conclusions [150, 153].
209. The development plan policy background is that, to the extent that LP policy RE3 has not been overtaken by events, the site is within a windpower area of search (shown on **appellant's Summary Drawing Fig 1**), subject to satisfying the criteria in LP policy RE2. This latter policy provides that proposals should be sited in sympathy with local features and be located so as to minimise visual intrusion, and that the cumulative effect of multiple installations should be considered [57, 124 - 128, 147 - 149].
210. Set against this background, the Council and the appellant agreed the basic assessment methodology, the Zone of Theoretical Visibility and the landscape and visual study area [30]. Viewpoints were agreed and all three parties agreed that they were representative and comprehensive [30]. All these viewpoints were visited. The Council and the appellant also agreed that the visualisations were fair [31].
211. However the parties did not agree the extent of major and moderate landscape effects. In the light of the detailed analysis presented by the appellant, I consider the majority of the major magnitude landscape effects would be limited to within 500m of the proposed turbines, extending up to 1km to the southwest and northeast; with moderate effects up to 1.5km and 2km to the southwest [35]. However, of greater significance is the potential effect as viewed from the agreed vantage points, in the light of existing, planned and consented sites, using the photomontages/wireframes and the submitted plans.
212. The baseline character of the area is set out in a number of largely agreed documents [33]. Essentially, as succinctly described in the name of the locality in various documents, the area is an undulating agricultural landscape, with limited tree cover (although there are some small woodlands and plantations). The rolling topography allows some long distance views towards the uplands to the west and towards the coastal plain to the east. The landscape is significantly affected by the presence of the two major roads (the A1 and the A697) which run to the east and west. These exert a strong visual influence on the landscape, as well as having a significant noise impact.
213. The proposal would be located within this rolling farmland surrounded by rising ground to the north, south and west. The settlement pattern around the site is sparse, consisting mainly of scattered farmsteads and dwellings, and small clustered hamlets, especially Fenrother and Fieldhead. **The appellant's** reference to the site as being in a shallow valley is inaccurate [150].
214. The area around Longhorsely is identified in the Northumberland Landscape Character Area as having moderate sensitivity to small windfarms. This is an area where the landscape has some ability to accept small windfarms without significant detriment to its key characteristics, and where there is scope for sensitively sited development to be accommodated. At the very local level,

the relative diversity of landform and land cover, and the visibility from the A roads, suggests greater sensitivity – but the majority of landscape and visual **criteria support the 'moderate' classification, and there is no persuasive evidence to the contrary.**

215. Starting with protected landscapes at some distance from Fenrother, the Council and the appellant agreed that the proposal would have no significant effects (taken in isolation) on the special qualities of the Northumberland National Park (at its closest point some 13 kms away to the northwest at Forestburn Gate), the Northumberland Coast Area of Outstanding Natural Beauty (at its closest around 15 kms away at Amble) and the Heritage Coast.
216. The distance to the appeal site means that the development, even on clear days (such as that when the more distant sites were visited), means that the visibility of the development in isolation and consequently its effect would be very limited. In poorer weather, the proposed turbines would frequently be lost from view.
217. **The Council's position is that the development** would give rise to significant cumulative effects on views from the Northumberland National Park. From the top of Dove Crag in the Simonside Hills (ES viewpoint 17), the effect of the proposal could be seen in conjunction with the Wingates scheme and a range of operational and consented sites closer to the coast in the far distance (including Lynemouth). However the coastal windfarms are well spaced and at **a considerable distance and this, regardless of the viewer's disposition towards** the appearance of such development, means that there would not be any significant physical or perceived coalescence. The Wingates scheme is closer, but would not visually coalesce with the appeal scheme.
218. The view from the Northumberland Coast near Warkworth (ES viewpoint 3 and others) is at a similar distance but, it was clear from the site visit that the effect of the development would be limited as a result of the distance and orientation. The development, either in isolation or in conjunction with the installations along the coastal plain, would have very little effect.
219. Moving closer to the appeal site, views of the proposed turbines would be obtained from a large number of locations. In particular from the two main roads between which the site is located, and from the higher land to the west. The local area in the vicinity of the site is not protected by any formal landscape designation, although there are Areas of High Landscape Value beyond Fieldhead to the north, beyond Fenrother to the south, and around Tritlington to the east.
220. The Council expressed concern at the cumulative effect on views for users travelling along the A1 and A697 [121]. A number of agreed locations along both roads were visited during and after the Inquiry. Travelling along these north-south axes, there is clear separation in both landscape and visual terms between all of the baseline windfarm clusters and the proposed development. That is not to say that the scheme would not be visible or that other clusters could not be seen. This is especially the case viewed from the A1, where there are views of a large number of schemes along the coastal plain. The location near Tritlington School (ES viewpoint 4) illustrates this point. However the views of multiple windfarms are limited by local vegetation and landform.

221. From some locations along the roads, and elsewhere at similar distances from the site, there would be a limited element of visual discordance as a result of **the turbines'** apparently overlapping blades and/or the variations in the apparent height of the structures. However the effects of perspective and of the difference in ground level would reduce rapidly with distance away from the site and the overall landscape character of the area would not be materially affected.
222. From an elevated position on Longhorsley Moor (ES viewpoint 5), beyond the A697 the turbines would be clearly visible, although parts of the lower levels would be screened from some particular viewpoints. In this view the development would be seen partially against the backdrop of some consented and existing coastal sites – especially Blue Sky Forest and Widdrington Sisters.
223. Overall, there are a number of local viewpoints where the proposal and other windfarms from Wingates to the coastal plain would be visible. There would be an element of this visibility in combination (windfarms visible within one arc of vision) from locations such as Longhorsley Moor, in succession (where the observer has to turn to see the various windfarms) from the A1, and sequentially (where the observer has to move to another viewpoint). However, from all the agreed viewpoints, the proposed windfarm would be visually separated by angle and/or distance from the clusters towards the coast and from Wingates and there would therefore be no material visual coalescence.
224. In the immediate vicinity of the site, both from the footpath which runs up to the site and from nearby roads and settlements, views of the turbines would have a significant impact. This is illustrated by viewpoints from Fenrother (ES viewpoint 1) where the five turbines would be clearly visible, although part of the lower parts of some would be slightly over the ridge, and from Fieldhead (ES viewpoint 2) where, depending on the precise location of the viewer and the extent of the leaf cover, some turbines would be partly concealed by intervening vegetation.
225. However, leaving aside the effect on residential amenity (considered below), visibility in the landscape does not equate to harm such that the development should be refused. There are no other windfarms within this local landscape area and, although the turbines would be locally significant in landscape terms the overriding character of the lowland rolling farmland would not be materially harmed.
226. Overall, the effects of the proposal in isolation are not such as would justify refusal on landscape grounds. Cumulative effects are an important issue and in this respect there was a discussion at the Inquiry as to the term '**windfarm landscape**'. All parties agreed that the Scottish Natural Heritage guidance was the most useful reference in this respect [86, 96]. It is clear that the term does not mean a landscape in which a windfarm(s) can be seen, but a zone in which the windfarm would become the dominant landscape characteristic. As viewed from the Simonside Hills, from the A1 and the A697, and from other vantage points, the landscape would not become dominated by windfarms, although they could be seen in various views. This is supported by the **appellant's mapping of the geographical extent of the zones**, which was not significantly challenged by the other parties [35].



227. It has to also be noted that, as accepted by the Council in closing, the evidence for the authority was conflicting in relation to the extent of any landscape and cumulative landscape effects [121]. Although the effects of the proposal have been considered in the light of all the written and verbal evidence, this matter does not strengthen the landscape case for the authority.
228. The construction works themselves would inevitably have an effect on the immediate landscape. However these would be limited in duration, and would not add significantly to the factors weighing against the proposal. In addition, as was accepted by the Council, the development would be potentially reversible and no permanent harm would be caused to landscape character (or visual amenity).
229. Overall, in landscape terms, the proposal would not harm the character and appearance of the area – both in terms of local impacts and the more distant effect from designated areas including the National Park. It would not conflict with LP policy RE2 or national policy.

### *Visual amenity*

230. The development plan context in relation to the effect on residents' living conditions is provided by LP policy RE2. This deals with renewables development that will have a long-term adverse impact on established settlements. The policy does not deal with the residential visual amenity of individual householders, although all parties agreed that this is a material consideration, and it is one of the core planning principles in the Framework.
231. The area around the appeal site includes a number of villages, in particular Fenrother and Fieldhead, which are generally laid out in a generally linear fashion along roads. From each settlement and individual property the views of the proposed turbines would vary depending on the orientation of individual properties and the intervening landscape and vegetation. In numerical terms, it was agreed that there are more properties in Fenrother which would have views of the turbines than in other settlements. As well as settlements, there are a number of other dwellings, such as Moor Edge (to which further reference will be made below) and farms in the vicinity [11, 12].
232. All parties agreed that the appropriate test is whether the visual element of residential amenity would be affected to such a degree that the property concerned would come to be regarded as an unattractive and thus unsatisfactory (but not uninhabitable) place in which to live. This approach is widely accepted as the appropriate test – although not founded in policy or legislation – and the approach has been adopted in this report.
233. As a background to the assessment of the effects of the proposal on residents' living conditions, the distances from the site to the settlements have been agreed by the Council and the appellant, although FFWF raised concerns about some of the detailed measurements.
234. In the ES the appellant identified a minimum separation distance of 800 metres as a key constraint of the proposal. There was some dispute as to whether the distances, based on postcode data and rounded to 25 metres, accurately reflect the distances to some of the nearest properties. To the extent that some properties, for example Stonebrook Cottage, appear to be

below 800 metres away, the scheme does not meet this separation distance. However this figure does not have any particular significance, although separation distances around that distance clearly merit examination. Whether a particular property is within or beyond 800 metres, it is accepted by all parties that some dwellings would be close to the site.

235. **The appellant's document entitled "Update to Residential Assessment – Visual Effects" is a useful start** point in relation to the effect on various properties - although it has to be treated with some caution as it appears that some errors may remain in relation to the layout of properties in Fenrother and Fieldhead.
236. In the case of Fenrother, a significant percentage of the properties in the settlement would have clear views of the turbines either from within the property or its garden. Three properties would be most affected. Lyneburn House is on the south side of the road but set in an elevated position and with a clear northwards view. A direct view of the turbines would be obtained from kitchen and reception room windows and the upstairs bedroom windows. There would also be a clear view of the turbines from the gardens around the property. La Libellule features a north facing gable end wall from which the proposed turbines would be visible (ground floor reception room windows and a first floor window). The turbines would also be prominently visible from the garden of the house. Middle Fenrother Farm Cottages would have views across the road to the turbines, along with views from their front gardens. In addition, there would be clear views from Stonebrook Cottage and Beechcroft.
237. The development would be a very prominent feature when viewed from many individual properties and their gardens. A combination of the limited distance to the turbines and their height, and the limited amelioration provided by the landform and vegetation, would mean that those properties in Fenrother with a clear view of the development would come to be regarded as an unattractive and thus unsatisfactory (albeit not uninhabitable) place in which to live.
238. When moving about Fenrother generally the development would be such a noticeable feature that the overall character of the settlement and the amenity of its residents would be significantly harmed. Local residents could not fail to be aware of the presence of the turbines and they would carry that awareness with them at all times as they moved about the settlement and the wider area. They would sense their presence even though the structures might be hidden by vegetation, landform or buildings for some periods as they moved. The appellant, whilst considering the development acceptable, recognised that the effect on Fenrother would be of major magnitude and significance, and that the turbines would be unavoidable and dominant throughout the settlement.
239. Turning to Fieldhead the situation is different, with all the properties located on the far (north) side of the road, and with the settlement having a slightly greater degree of screening from the site due to landform and intervening vegetation. However views of the turbines would be obtained especially from Bamburgh House, especially from the upper floor windows, Belsay Cottage from ground and first floor levels, and Holystone Cottage from the ground floor windows. Overall, although the effect on the individual properties would be significant, as would the effect on the settlement as a whole, the distance and intervening vegetation means that the overall effect is less severe than at

Fenrother. However the harmful effect on Fieldhead, though not such as should alone cause the appeal to be dismissed, is a consideration to be weighed in the balance.

240. There are also a number of individual properties around the A1 to the east, from which views of the turbines, albeit at a distance, would be obtained. In particular views of the development would be obtained from the gardens and west facing façade of Earsdon Moor Farm. However, for the reasons set out in relation to Fieldhead, those properties would not come to be regarded as an unattractive and thus unsatisfactory place in which to live.
241. Turning finally to the property known as Moor Edge, it is clear that the dwelling, which is around the same distance from the nearest turbine as properties in Fenrother, has been designed to take advantage of the view to the east, with all main windows facing towards the site. This view would be significantly changed by the proposed windfarm. There are already a considerable number of windfarms in the further distance, with the proposal being in the same arc of view but closer at hand.
242. The elevation of the property, around 30 metres above the foot of the nearest turbine, gives particularly wide views over the appeal site, it also means that the turbines would not loom over the house in the same manner as they would over Fenrother. In addition, whilst there would be three turbines in close proximity to Fenrother, the positioning of the turbines would mean there would be only one at a comparable distance to Moor Edge. Although the outlook from this property, around which the property has obviously been designed, would be significantly changed, it would not become an unattractive place in which to live.
243. However there is another consideration at Moor Edge, namely the particular sensitivity of one of the residents, who suffers from autistic spectrum disorder. The unchallenged medical evidence was that he may be adversely affected if moving objects were placed within sight of his home environment [168]. Although the turbines themselves would be slender structures at some distance away, the occupiers of the property could not fail to be constantly aware of the tall moving structures. The human element cannot be ignored in planning decisions, and the appellant did not suggest that this matter was not material. At the very least, if the development were to go ahead, direct views from Moor Edge should be screened.
244. Initially the appellants relied on the recent planting along the garden edge to screen the views from the property. However this planting, which does not appear to be progressing particularly well, was accepted to be likely to take around 8 years before significant screening was achieved. Given that the proposal is for a 25 year period, the particular resident would have to deal with the consequences for a significant proportion of the life of the scheme.
245. A more recent amendment to the proposal would be to plant a belt of deciduous trees, but the length of time that this would take to mature, even if semi-mature trees were used, remains uncertain, as does the effect on the landscape. The submitted Planning Obligation provides for the maintenance and management of the planting from the first export date until the windfarm

was removed. Overall, although the appellant has attempted to address this issue, there remains significant concern that the particularly sensitive resident of Moor Edge would be adversely affected by the development. This weighs against the proposal.

246. The ES states that there are no real meaningful on-site opportunities for incorporating mitigation measures for the main elements of the proposed scheme. Given the size of the proposed turbines, this is obviously correct.
247. Simply being able to see a turbine or turbines from a particular window or part of the garden is not a sufficient planning reason to find the visual impact unacceptable (even though a particular occupier might find it to be so). However given the number, size and proximity of the proposed turbines to Fenrother they would be an unpleasantly overwhelming and unavoidable presence in main views from some houses and gardens, and the identified properties would come to be widely regarded as an unattractive and thus unsatisfactory (but not necessarily uninhabitable) place in which to live. This visual effect is inextricably bound with the impact on the local community at Fenrother, and goes beyond individual impacts on a particular home or garden. Consideration must be given to the detrimental effect on those moving around the settlement in the course of daily life. To this harm must be added the effect on properties at Fieldhead and elsewhere, and the effect on a particular receptor at Moor Edge.
248. Overall the proposal would harm the visual amenity of the residents of nearby properties and conflict with LP policy RE2 and national policy aimed at providing a good standard of amenity for all existing and future occupiers of land and buildings.

### ***Renewable energy policy***

249. Developers do not have to demonstrate a need for renewable energy, and even small projects provide a valuable contribution to cutting greenhouse gas emissions, mitigating climate change and improving energy security. There are no maximum or minimum sizes of projects which benefit from this policy support. National policy and Ministerial Statements [22 - 24] in relation to energy reaffirm the importance of appropriately sited onshore wind developments and the key role of planning, subject to a range of matters being carefully considered – including topography and amenity. These matters are not contested by the parties.
250. In this case it is common ground that the proposal would contribute to the national objective of promoting renewable energy technologies – although the relative extent of the contribution and the weight which can properly be attached to it was not agreed by all parties [75 – 80, 123, 179 - 183].
251. The proposed development would have a total generating capacity of up to 15 MW. Whilst this is welcomed in policy terms, **FFWF's evidence illustrated the** relatively limited contribution to the national and regional picture [181]. However, whatever the precise figures and their relative importance, there is nothing to suggest that the weight accorded to this matter should be reduced.

252. The appellant accepted that the renewable energy issue, largely undisputed in this case, does not automatically override environmental protection and the concerns of the community, but it is an important material consideration. That approach is wholly in line with national policy.
253. In terms of Green Belt policy, there is no doubt that the wider environmental benefits associated with the increased production of energy from renewable sources is a material consideration which may result in very special circumstances in relation to inappropriate development in the Green Belt. But that does not mean that the benefits of renewable energy proposals should, as a matter of principle, lead to very special circumstances. The need for renewable energy does not automatically override other planning concerns but is a significant factor weighing in favour of the proposal.
254. One other matter needs to be considered in relation to energy policy. National policy supports the identification of suitable areas for renewable energy development. LP policy RE3 identifies a wind power area of search within which the appeal site is partly located.
255. This LP area of search predates the SP Green Belt extension by some two years and, at the time of the adoption of the SP, the Council saved the area of search designation. There is no evidence that this was seen as incompatible with the extension of the Green Belt at that time. The broad approach continues in the work on the emerging Core Strategy.
256. LP policy RE3 is a saved policy which forms part of the development plan, and must be addressed. However the weight which should be ascribed to saved policies relates to their degree of consistency with the Framework. Although national policy supports the concept of areas of search, it is clear that this approach should be based on evidence, that it should be clear what elements have gone into consideration of the designation, and that it should be clear what size of development is envisaged.
257. As was explored at the Inquiry, LP policy RE3 does not accord with this approach [126 - 127]. The evidence is that the policy was not based on any landscape sensitivity or capacity study, **and the Council's evidence was that** the LP did not have a significant evidence base in relation to this policy [126].
258. The impact of wind energy development generally and in this area in particular has changed significantly since LP policy RE3 was conceived. Since the initial formulation of the approach, stated to be around 1994, the size of turbines has increased very considerably, as has their potential landscape impact, and the number of turbines in the wider area has multiplied. In addition, there has been an increasing recognition of the effect of turbines on settlements and individual properties.
259. Overall, although LP policy RE3 remains part of the development plan, it is substantially dated in a number of respects and is out of step with elements of the national policy approach. The location of part of the appeal site within the LP policy RE3 area of search is therefore a matter to which little weight can be attached.

***Other matters - noise***

260. The noise assessment in the ES (with corrected technical appendices) was included in the Consolidated Environmental Noise Impact Assessment which set out the predicted noise within the limits in ETSU-R-97, as referred to in EN-3. Baseline noise levels were measured at a number of locations which the appellant and the Council considered to be representative, and predictions of noise levels were carried out based on the proposed site layout and anticipated sound power levels. The conclusion was that the operational noise at the nearest residential locations would be below the night-time noise limits under all wind speed conditions by a minimum margin of 4dB. The daytime assessment shows a minimum margin of 1dB.
261. The concerns of the Council which led to a reason for refusal was based on a perceived lack of information at the time the Council took the decision. However in the light of the additional material the Council no longer raises any objection subject to conditions.
262. The only contrary evidence on noise was in the written submission on behalf of FFWF. The group did not challenge the technical data, but were concerned that the raw statistics had not been made available. When this was provided the group did not have the funds to have the data analysed. However the group considered that the noise assessment had not been undertaken in a consultative manner, was based on potentially inaccurate wind speed measurements, and that the noise monitoring locations were incorrect and not as agreed with the Council [176].
263. The issue of the correct noise monitoring locations appears to largely stem from a misunderstanding of the function of the grid coordinates provided by the appellant – these were to identify the property, not the precise location of the measuring equipment. Detailed criticisms of the siting of the noise monitoring equipment have been comprehensively addressed by the appellant – these largely related to potential shielding effects and to other sources of noise.
264. Other Amplitude Modulation (OAM) is perceived as a whooshing noise or thump which may be apparent some distance from the turbine. OAM is said to be a potential source of complaint but it appears that further research is necessary. There is no policy at the local or national level which recognises this issue, and no evidence has been presented to justify this as a cause for concern or to support a condition.
265. Overall, there is nothing to suggest that, subject to conditions, the noise limits agreed with the Council could not be achieved. On that basis, the proposal would not cause harm to the living conditions of local residents. This matter is neutral in the overall balance.

***Other matters – highway safety***

266. The main traffic movements would occur during the construction period (estimated by the appellant to be at peak flow during months 3 to 5). The greatest peak would be 28 HGVs per day. The anticipated delivery route would be by way of the A1, on which the estimated local traffic increase as a result of the development would be insignificant (estimated by the appellant as 1.8%).

Local mitigation measures during the construction process are proposed, and there is no evidence of unacceptable effects on highway safety. These mitigation measures could be the subject of a condition. This matter is neutral in the overall balance.

***Other matters – heritage assets***

267. The potential effect on heritage assets was considered within a 5km radius of the proposed turbines, and there is no suggestion that this was an inadequate search area [29]. The effect of the proposal on heritage assets was not a matter pursued at the Inquiry.
268. Within that radius there is one Conservation Area (Longhorsley) and 50 Listed Buildings (shown on a plan in the ES). There are no scheduled monuments, registered parks and gardens or registered battlefields within the study area.
269. The ES assessment, which has not been challenged, was that there would be a negligible effect on the heritage assets, aside from two Listed Buildings where the proposal could have a minor impact on their setting (Causey Park House and a barn with gingang south of Paxton Dene farmhouse). The locations of the heritage assets have been visited and, aside from these two Listed Buildings, it is clear that due to a combination of distance, intervening landform and vegetation, there would be no effect on or harm to the Listed Buildings or their settings, or to the setting, character or appearance of the Conservation Area. English Heritage has not objected to the proposal, and there is no reason to disagree with those assessments in the ES.
270. From Causey Park House the proposed turbines would be visible in the middle distance from the southern side of the house. From the barn south of Paxton Dene Farmhouse the turbines would be visible in the middle distance to the south east. In both cases the area in which they would be seen makes a neutral contribution to the Listed Building. Given the distance and the intervening landforms and vegetation, the alteration to the baseline setting would be discernable but not material. The setting of these Listed Buildings would not be harmed.
271. The effect of the construction works on heritage assets was also assessed in the ES. The conclusion, which is uncontested, is that the effect would be comparable in nature to the operational effect, although obviously of shorter duration.
272. A desk based archaeological assessment and geophysical survey were undertaken as part of the ES. These conclude that the site has moderate potential for archaeological remains of local importance that might be affected by the proposal. A programme of archaeological investigation is proposed to be undertaken, and this would be secured by a condition. This addressed the archaeological issue, which was not pursued by the Council.
273. Great care needs to be taken to ensure heritage assets are conserved in a manner appropriate to their significance, including the impact on views important to their setting. In this case there would be no effect on such important views, and there would be no effect on heritage assets. This matter is neutral in the planning balance.

### ***Other matters – employment***

274. The proposal would bring employment benefits during the construction and subsequent decommissioning phases – providing up to 22 local jobs – with a significantly greater number further afield. Set against this, there could be some loss of tourism during the construction phase. Overall, the creation of temporary local jobs, along with indirect economic benefits and any other community benefit, weighs in favour of the proposal, albeit to a limited extent. This is a consideration which could arise with many renewable energy projects, and although weighing in favour of the proposal, it adds little to potential very special circumstances.

### ***Other matters – biodiversity***

275. A Phase 1 habitat survey of the wider site area was conducted in 2008 and updated in 2012, with a phase 2 survey of an area of grassland within the site in 2008. The majority of the site is large arable fields and some semi-improved poor grazed pasture.
276. The risk of protected species being present was also assessed. The evidence, as set out in the ES and not substantially challenged, is that the level of badger use of the site is low. The risk to birds and bats can be significant in some locations, for example close to important habitats. However, given the distances to suitable trees and buildings the evidence is that the risk is low. The same limited extent of risk was assessed for birds. On that basis, there are no biodiversity objections to the proposal, and this matter is neutral in the balance.

### ***Other matters – public rights of way***

277. The scheme proposes to extend the life of the current permissive footpath, and provide a new link during the life of the windfarm. This would be ensured by a condition and would provide a more useful local footpath network. This would be a limited benefit arising from the development.

## **Conditions**

278. In the event that planning permission is granted, I have considered conditions, as suggested by the parties and largely agreed at the Inquiry (except where stated), against the relevant national advice particularly in Planning Practice Guidance. These conditions are set out in the Annex to this report.
279. In the interests of clarity, the plan numbers should be specified (Condition 2).
280. In order to protect the long term appearance of the area, conditions are necessary to limit the duration of the permission and provide for a decommissioning and restoration scheme (Conditions 3 and 4). Should a turbine cease to export electricity a condition should require the submission of a scheme for remedial works or removal of the structure (Condition 5). There is a difference between the parties in this matter, as the Council and FFWF wish to see the reference to repairs omitted. However given the extent of the **Council's control in such circumstances the retention of that exception is reasonable.**



281. In order to protect the appearance of the area, in the interests of highway safety and to avoid pollution, a construction Traffic Management Plan and a Construction Method Statement are required. (Conditions 6 and 7).
282. Restrictions on construction and delivery hours are necessary in order to protect local residents' living conditions. **However such control should not be** unduly restrictive, given the benefits of completing the development as quickly as possible. The Council and FFWF do not agree with the exceptions specified in the condition, but these are necessary to allow for unforeseen emergencies (Conditions 8 and 9).
283. Improvements to the site access would need to be completed before any of the turbines are erected, in the interests of highway safety (Condition 10). For the same reason, improvements to the junction of Fenrother Lane and the A1 would need to be completed before the delivery of any abnormal loads (Conditions 11 and 12).
284. In the interests of the character and appearance of the area the details of the turbines, including their height and the direction of blade rotation need to be controlled (Condition 13 and 14). Similarly the details of the electricity substation need to be submitted for approval, and all cabling should be required to be underground (Conditions 15 and 16).
285. Ecological interests should be protected by a Habitat Enhancement Plan and arrangements are needed to ensure that protected species would not be harmed during the construction of the scheme (Condition 17).
286. Should any complaint be made regarding shadow flicker or television interference, a protocol is necessary setting out the assessment mechanism, in the interests of residential amenity. This would also provide for a baseline survey of television reception (Condition 18).
287. In the interests of protecting aviation safety, the Ministry of Defence and the Civil Aviation Authority need to be forewarned of the expected height and date of development and notification of the highest structure once construction is complete (Condition 20). In addition a radar mitigation scheme and lighting needs to be submitted for approval (Conditions 21, 22 and 23). The Council and FFWF suggested a minor change to Condition 21, but it was requested in this form by Newcastle International Airport and is reasonable and justified.
288. In order to protect any features of archaeological importance it is necessary to ensure that suitable investigations are made around Turbine 5 before the site is disturbed. Appropriate recording measures would be taken dependant on the results of the evaluation (Condition 25).
289. **Micrositing of the development's main components, within 25m of the grid** positions, should be controlled (Condition 26). This condition was the subject of objection by the Council and FFWF, but it would not materially affect the **scheme's visual impact**, and would allow flexibility which could assist in protecting any wildlife or archaeological features and would allow for site specific conditions. There would be provision to avoid micrositing closer to the high pressure gas pipeline or to named properties. A further condition (Condition 27) would ensure that notice was given to the National Grid in the interests of safety.

290. It is necessary to prevent flooding by ensuring the satisfactory storage and disposal of surface water from the site. A condition would ensure the provision of the necessary mitigation measures (Condition 28).
291. For reasons related to the effect of the proposal on residents of Moor Edge, a condition is necessary to require the submission, approval and implementation of a planting scheme (Condition 29). The Planning Obligation would address maintenance.
292. In order to retain and enhance footpath provision in the area, a condition is necessary to require the implementation of a scheme (Condition 30).
293. Noise limits are needed to protect local residents against undue disturbance. The limits are agreed between the appellant and the Council aside from the **Council's concern over the values in Table 1, where the authority seeks a lower level.** However the evidence to support this lower figure is not persuasive and **the appellant's** comprehensive evidence is based on the warranted **manufacturer's figures for their candidate turbine.** Condition 31 provides for compliance monitoring by suitably qualified consultants. It is reasonable to conclude that these limits would provide protection for any existing dwelling and the condition would set a procedure to ensure that complaints are properly investigated.

#### *Planning balance and conclusion*

294. For the reasons set out above, it is considered that the appeal site is located within the Green Belt as set out in the SP. The remainder of this section is based on that conclusion. (The final paragraph deals with the position if it is concluded that the site is not within the Green Belt.)
295. The proposal is inappropriate development in terms of Green Belt policy and would harm the openness of the area. It would also conflict with one of the general purposes of designating Green Belt, namely preventing encroachment into the countryside. In this particular case the Green Belt serves to protect the countryside around Morpeth from encroachment towards its satellite settlements. The effect on openness and the effect of encroachment are further Green Belt harms in addition to the definitional harm of inappropriateness.
296. National policy is clear. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight should be given to any harm to the Green Belt and very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
297. To this substantial harm must be added the effect on the visual amenity of the residents of nearby properties, as set out above. The proposal would harm residents' living conditions, especially in Fenrother, and would conflict with LP policy RE2 and national policy which aims to provide a good standard of amenity for all existing and future occupiers of land and buildings.
298. Balanced against these negative factors is the undoubted benefit accruing from a renewable energy development. It is clear that the wider environmental benefits associated with energy production from renewable sources may result

in very special circumstances in relation to inappropriate development in the Green Belt. However, although this is a significant matter, it does not automatically override harm to the Green Belt or other planning concerns.

299. In this respect it should be noted that, although national policy supports the identification of suitable areas for renewable energy development in the development plan, LP policy RE3 (and the associated area of search) is substantially dated. It was formulated at a time when turbines were much smaller and was based on a very limited assessment of the area. These considerations lead to the conclusion that little weight can be attached to this policy.
300. In addition to the benefit accruing from renewable energy development, the generation of jobs during the construction and decommissioning phases, together with the provision of a more useful local footpath network are benefits which need to be weighed in the balance. However neither of these is accorded significant weight.
301. A number of other factors are essentially neutral in the planning balance. These include the effect on the character and appearance of the area, on highway safety, on heritage assets and on biodiversity.
302. Overall, these other considerations do not clearly outweigh the harm to the Green Belt **and the harm to residents' visual amenity. Very special** circumstances to justify the inappropriate development do not therefore exist.
303. Finally, if it is concluded that the site is not within the adopted Green Belt, the harm to the Green Belt by reason of inappropriateness, the harmful effect on openness and the purposes of designation fall away. The planning balance would then be closer to equilibrium. However it is considered that the effect on the amenity of residents would still outweigh the generic benefit of a renewable energy development, even in conjunction with the other limited benefits summarised above.

### ***Recommendation***

304. I recommend that the appeal be dismissed.

*P. J. G. Ware*

Inspector

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Mr David Manley QC, instructed by the principal solicitor to the Council

He called	
Mr Mike Glen	Director, Glen Kemp Ltd
BA(Hons) DipLA MLI	
Mr Joe Nugent	Senior planning officer, Strategic and Urban
BA(Hons) MSc MTRPI	Development Management team
MCMI	

### FOR THE APPELLANT:

Mr David Hardy (Eversheds) LL.B(Hons) BCL(Hons)(Oxon)

He called	
Mr Colin Goodrum	Senior partner, LDA Design
BSc(Hons) DipLA CMLI	
Mr Peter Dixon	Director, Sui Generis Planning
MA LLM FRICS CEnv	

### FOR FIGHT FENROTHER WIND FARM:

Mr Zac Simons of Counsel, instructed by Dr James Lunn

He called	
Dr James Lunn	Chairman, Fight Fenrother Wind Farm
B.Med.Sci(Hons) BM	
BS(Hons) DRCOG NMRCGP	
Dr John Constable	Director, Renewable Energy Foundation (not
PhD	representing the Foundation at the Inquiry)

### INTERESTED PERSONS:

Mr J William Short	Northumberland & Newcastle Society and Kirkwhelpington Renewable Energy Forum (KREF)
Those speaking at evening session 29 August 2013	Councillor P Kelly (County Councillor) Councillor P Ford (Parish Councillor) Councillor D Dixon (Parish Councillor) Councillor Sanbrook (Ward Councillor) Mr D Aitkenhead, resident of Fenrother Mr J Corrigan, resident of Fieldhead Mr A Etchells, resident of Longhorsley Mr D Henderson, resident of Fenrother Dr A Henfrey, resident of Whittingham Mr P Hogg, resident of Causey Park Mr T Jobbing Purser, resident of Longhorsley Mr S Lloyd, resident of Molesden Dr Lunn, resident of Fenrother Mr M Peacock, resident of Fieldhead

Mr L Sher, resident of Molesden  
 Mr R Simance, resident of Elsdon  
 Mr J Thompson, local resident  
 Mr T Turnbull, resident of Causey Park  
 Mrs H Turnbull, resident of Causey Park  
 Mr Tursley, local resident  
 Mr Wallace, local resident  
 Ms W Swan, resident of East Fenrother

## INQUIRY DOCUMENTS

Document	1	List of persons present at the Inquiry
Document	2	<b>Council's letter of notification of the Inquiry</b>
Document	3	Letter (handed in 30 August 2013) from Mr & Mrs Shotton (Mooredge House)
Document	4	Email trail (ending 29 August 2013) between National Grid and the appellant
Document	5	Letter (28 August 2013) from Osprey Consulting Services
Document	6	Committee report (6 April 2010) regarding Benridge Moor
Document	7	Statement of Common Ground (and related plans) between the appellant and the Council
Document	8	Email (3 September 2013) from Mr T Hague, Beechcroft
Document	9	Northumberland Local Plan – Core Strategy Housing, Employment and Green Belt Preferred Options (Green Belt section) (21 <b>October 2013</b> ) (The 'Green Belt report')
Document	10	Planning Obligation (3 September 2013)
Document	11	Phase one of study into a form of Amplitude Modulation known as Other Amplitude Modulation (Renewable UK)

## APPELLANT DOCUMENTS

APP 1	Plan of topography and watercourses
APP 2	Plan of Landscape Character Assessment Area
APP 3	<b>Mr Goodrum's Proof, Appendices and Rebuttal</b>
APP 4	<b>Mr Dixon's Proof, Appendices and Rebuttal</b>
APP 5	<b>Dr McKenzie's Statement and Appendices (not called in evidence)</b>
APP 6	Update to Residential Assessment – Visual Effects (July 2013)
APP 7	Consolidated Noise Impact Assessment (July 2013)
APP 8	Closing submissions for the appellant
APP 9	Letter from the appellant (28 November 2013) regarding Green Belt report
APP10	Letter from the appellant (24 January 2014) regarding the Renewable UK report

## COUNCIL DOCUMENTS

LPA 1	<b>Inspector's report into Policy RE3</b>
LPA 2	Technical noise note (28 August 2013)
LPA 3	<b>Mr Glens's Proof and Annex</b>

LPA 4	<b>Mr Nugent's Proof and Appendix</b>
LPA 5	Closing submissions for the Council
LPA 6	Letter from the Council (29 November 2013) regarding Green Belt report
LPA 7	Letter from the Council (21 January 2014) regarding the Renewable UK report

## FIGHT FENROTHER WIND FARM DOCUMENTS

FFWF 1	Statement regarding flying of a blimp during the site visit
FFWF 2	<b>Dr Lunn's Proof, Appendices and Rebuttal</b>
FFWF 3	<b>Dr Constable's Proof</b>
FFWF 4	<b>Mr Peacock's Statement (not called in evidence)</b>
FFWF 5	Letter from FFWF (November 2013) regarding Green Belt report
FFWF 6	Closing submissions for FFWF
FFWF 7	Undated letter from FFWF (24 January 2014) regarding the Renewable UK report

## MR SHORT'S DOCUMENTS

S 1	<b>Mr Short's proof</b>
S 2	Copy of presentation to the Inquiry
S 5	Scottish appeal decision (28 August 2013) at Ayton

## CORE DOCUMENTS

<b>1 Adopted Development Plan Policies</b>		
	1.1	Saved Policy S5 (Green Belt Extension) of the Northumberland County and National Park Joint Structure Plan (2005)
	1.2	Saved Policies of The Castle Morpeth District Local Plan (2003)
<b>2 Emerging Development Plan Policies and Evidence Base Documents</b>		
	2.1	Core Strategy Preferred Options – Consultation Document (February 2013)
	2.2	Core Strategy Issues and Options – Consultation Document (May 2012)
	2.3	Prepared for Northumberland County Council by Land Use Consultants "Northumberland Key Land Use Impact Study, Part A: Landscape Sensitivity at Settlement Edges" (September 2010)
	2.4	Prepared for Northumberland County Council by Land Use Consultants "Northumberland Key Land Use Impact Study, Part B: Proposed Extension of the Green Belt Around Morpeth" (September 2010)
	2.5	Prepared for Northumberland County Council by Land Use Consultants "Northumberland Key Land Use Impact Study, Part C: Landscape Sensitivity to Key Land Uses" (September 2010)
	2.6	Prepared for Northumberland County Council by Land Use Consultants "Northumberland Key Land Use Impact Study, Part D: Landscapes Potentially Requiring Additional Protection" (September 2010)
	2.7	Entec, "Renewable, Low Carbon and Energy Efficiency Study" (2011)

	2.8	Prepared for Northumberland & Newcastle Society by Michelle Bolger <b>"Review of Landscape and Visual Evidence for Northumberland County Council's Draft Core Strategy"</b> (August 2012)
<b>3 National Planning Policy, Companion Guides and Ministerial Statements</b>		
	3.1	DCLG: National Planning Policy Framework (March 2012)
	3.2	DCLG: Companion Guide to PPS 22: Renewable Energy (2004)
	3.3	Written Ministerial Statements relating to Local Planning and Onshore Wind issued by the Department of Energy and Climate Change and the Department for Communities and Local Government on 6 June 2013
	3.4	DCLG: Planning Practice Guidance for Renewable and Low Carbon Energy (July 2013)
<b>4 Regional Spatial Strategy and Evidence Base Documents</b>		
	4.1	Letter dated 6 July 2010 from the Secretary of State for Communities and Local Government to all Chief Planning Officers
	4.2	The revoked North East of England Plan: Regional Spatial Strategy to 2021 – relevant policy extracts
	4.3	<b>John F Benson et al, "Landscape Appraisal for Onshore Wind Development – Final Report"</b> (July 2003)
	4.4	North East Regional Renewable Energy Strategy (March 2005)
	4.5	North East Regional Renewable Energy Strategy: Review September 2005
<b>5 High Court Decisions</b>		
	5.1	R (Hulme) v Secretary of State for Communities and Local Government [2010] EWHC 2386 (Admin)
	5.2	Michael William Hulme v Secretary of State for Communities and Local Government and RES Developments Limited [2011] EWCA Civ 638
	5.3	R (Lee) v Secretary of State for Communities and Local Government, Maldon District Council, Npower Renewables [2011] EWHC 807 (Admin)
	5.4	(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)
	5.5	(1) South Northamptonshire Council (2) Deidre Veronica Ward v (1) Secretary of State for Communities and Local Government (2) Broadview Energy Development Limited [2013] EWHC 11 (Admin)
	5.6	Sea & Land Power & Energy Ltd v Secretary of State for Communities and Local Government [2012] EWHC 1419 (Admin)

<b>6 Various Windfarm Appeal Decisions and Section 36 Electricity Act Decisions</b>		
	6.1	Enifer Downs (APP/X2220/A/08/2071880)
	6.2	Carland Cross (APP/D0840/A/09/2103026)
	6.3	Burnthouse Farm (APP/D0515/A/10/2123739 and APP/D0515/A/10/2131194) (SoS decision and Inspector's conclusions)
	6.4	Steadings, Ray Estate and Green Rigg Fell (APP/R2928/A/07/2039188) (SoS decision and Inspector's report)
	6.5	Frodsham and Helsby (Ref: 12.04.109C) (SoS decision and Inspector's conclusions)
	6.6	Hook Moor (APP/N4720/A/10/2121279)
	6.7	Bennington (APP/J1915/A/09/2104406)
	6.8	Crook Hill (APP/P4225/A/08/2065277) (SoS decision and Inspector's report)
	6.9	Aston Grange (APP/L0635/A/07/2047477)
	6.10	Wadlow (APP/W0530/A/07/2059471) (SoS decision and Inspector's report)
	6.11	Tallentire (APP/G0908/A/10/2131842)
	6.12	West Newton (APP/G0908/A/10/2132949)
	6.13	Gayton le Marsh (APP/D2510/A/12/2176754)
	6.14	Alaska Farm (APP/B1225/A/11/2161905)
	6.15	Batsworthy Cross (APP/X1118/A/11/2162070)
	6.16	Fraisthorpe (APP/E2001/A/12/2179233)
	6.17	Denbrook (APP/Q1153/A/06/2017162)
	6.18	Swinford (APP/F2415/A/09/2096369) (SoS decision and Inspector's conclusions)
	6.19	Linton Farm (APP/W0530/A/09/2108277)
	6.20	Palmers Hollow (APP/Y2430/A/09/2108595)
	6.21	Rushley Lodge Farm (APP/R1038/A/09/2107667)
	6.22	Princes Soft Drinks (APP/W4705/A/09/2114165)
	6.23	Near Wood Farm, Shipdam (APP/F2605/A/08/2089810)
	6.24	Crabbes Farm, Parham (APP/J3530/A/12/2171681)



	6.25	Chase Farm, Baumber (APP/D2510/A/10/2121089)
	6.26	New House Farm (APP/C3430/A/11/2162189)
	6.27	Brightenber Hill (APP/C2708/A/09/2107843)
	6.28	Flixborough Grange (APP/Y2003/A/09/2105130)
	6.29	Barmoor (APP/P2935/A/08/2078347; APP/P2935/A/08/2079520; APP/P2935/A/08/2077474) (SoS decision and Inspector's report)
	6.30	Penpell Farm (APP/Q0830/A/05/1189328)
	6.31	Bavington Hill Head Farm (APP/P2935/A/10/2136112)
	6.32	Bicton (APP/H0520/A/11/2146394)
	6.33	Beech Tree Farm (APP/Q1153/A/04/1170234)
	6.34	Mynydd Y Gwrhyd (APP/Y6930/A/05/1189610)
	6.35	Spaldington Airfield (APP/E2001/A/10/2137617 & APP/E2001/A/10/2139965)
	6.36	<b>Jack's Lane &amp; Chiplow (APP/V2635/A/11/2154590 &amp; APP/V2635/A/11/2158966)</b>
	6.37	Woolley Hill (APP/H0520/A/11/2158702)
	6.38	Land off Eden Lane (APP/B2355/A/12/2178789)
	6.39	Hempnall (APP/L2630/A/08/2084443)
	6.40	Earls Hall Farm (APP/P1560/A/08/2088548)
	6.41	Beech Tree Farm (APP/K1128/A/08/2072150)
	6.42	Gatebeck (APP/M0933/A/09/2099304)
	6.43	Sutton Court Farm (APP/X2220/A/08/2071880)
	6.44	Kirkharle (APP/P2935/A/10/2136112)
	6.45	Rushley Lodge Farm (APP/R1038/A/09/2107667)
	6.46	New House Farm (APP/C3430/A/11/2162189)
	6.47	Chase Farm (APP/D2510/A/10/2121089)
<b>7 Planning, Renewable Energy and Climate Change Documents</b>		
	7.1	DTI Energy White Paper "Meeting the Energy Challenge" (2007) (Extracts: Sections 5 & 8)
	7.2	DECC: The UK Renewable Energy Strategy (2009)

	7.3	DECC: Overarching National Policy Statement for Energy EN-1 (Designated Version, 19 July 2011)
	7.4	DECC: National Policy Statement for Renewable Energy Infrastructure EN-3 (Designated Version, 19 July 2011)
	7.5	DECC: UK Renewable Energy Roadmap (July 2011)
	7.6	DECC: UK Renewable Energy Roadmap Update (December 2012)
	7.7	DECC: Annual Energy Statement (November 2012)
<b>8 Landscape and Visual (including public perception) Documents</b>		
	8.1	The Landscape Institute, Institute of Environmental Management and Assessment, "Guidelines for Landscape and Visual Impact Assessment" Second Edition (2002)
	8.2	The Landscape Institute, Institute of Environmental Management and Assessment, "Guidelines for Landscape and Visual Impact Assessment" Third Edition (2013)
	8.3	Landscape Institute, "Landscape Architecture and the Challenge of Climate Change" (October 2008)
	8.4	Landscape Institute, "Photography and Photomontage in Landscape and Visual Impact Assessment" Advice Note 01/11
	8.5	Scottish Natural Heritage "Guidelines on the Environmental Impacts of Windfarms and Small Scale Hydro Electric Schemes" (2001)
	8.6	Produced for Scottish Natural Heritage by the University of Newcastle, "Visual Assessment of Wind Farms: Best Practice" (2002)
	8.7	Scottish Natural Heritage and Countryside Agency, "Landscape Character Assessment Series: Topic Paper 9 Climate Change and Natural Forces – the Consequences for Landscape Character" (2003)
	8.8	Scottish Natural Heritage, "Visual Representation of Wind Farms – Good Practice Guidance" (2006)
	8.9	Scottish Natural Heritage "Siting and Designing Windfarms in the Landscape, Version 1" (December 2009)
	8.10	Scottish Natural Heritage, "Guidance Assessing the Cumulative Impact of Onshore Wind Energy Developments" Version 3 (March 2012)
	8.11	The Countryside Agency "Landscape Character Assessment: Guidance for England and Scotland" (2002)
	8.12	Natural England "Making Space for Renewable Energy" (2010)
	8.13	Prepared for Northumberland County Council by Land Use Consultants "Northumberland Landscape Character Assessment" (August 2010)

	8.14	North East Regional Assembly - Wind Farm and Landscape Capacity Studies: North/South Charlton – Final Report (March 2007)
	8.15	Northumberland County Council - Northumberland Landscape Character Assessment – Key Land Use Impact Study (Land Use Consultants; August 2010)
<b>9 Noise documents</b>		
	9.1	ETSU-R-97: The Assessment and Rating of Noise from Wind Turbines
	9.2	Prediction and Assessment of Wind Turbine Noise - Agreement about Relevant Factors for Noise Assessment from Wind Energy Projects  D Bowdler, AJ Bullmore, RA Davis, MD Hayes, M Jiggins, G Leventhall, AR McKenzie (Institute of Acoustics, Acoustics Bulletin, Vol 34, No 2 March/April 2009)
	9.3	A Good Practice Guide to the Application of ETSU-R-97 for the Assessment and Rating of Wind Turbine Noise, Institute of Acoustics (May 2013)
	9.4	ISO9613-2, Acoustics - Attenuation During Sound Propagation Outdoors, Part 2: General method of calculation, International Standards Organization (1996)
	9.5	Noise Policy Statement for England (NPSE) (March 2010)
	9.6	Crichton et al, "Can expectations produce symptoms from infrasound associated with wind turbines"
	9.7	Chapman et al "Spatio-temporal differences in the history of health and noise complaints about Australian wind farms"
<b>10 Planning Application and Appeal Documents</b>		
	10.1	Planning application and supporting documents (provided in the Appeal Bundle)
	10.2	Environmental Statement (provided in the Appeal Bundle)
	10.3	<b>Officer's Report to Committee</b>
	10.4	<b>Appellant's Statement of Case</b>
	10.5	<b>Council's Statement of Case</b>
	10.6	Fight Fenrother Wind Farm Statement of Case
	10.7	Newcastle International Airport Statement of Case and Letter to the Planning Inspectorate dated 15 July 2013
	10.8	Ministry of Defence Statement of Case and Letter to the Planning Inspectorate dated 5 July 2013
	10.9	Statement of Common Ground

	10.10	Fenrother Wind Farm, Morpeth, Northumberland: Archaeological Evaluation (CgMs, May 2013)
	10.11	Consolidated Environmental Noise Impact Assessment - Report HM: 2736/R1 (Hayes McKenzie, July 2013)
	10.12	Update to Residential Assessment – Visual Effects (LDA Design, July 2013)
	10.13	Fenrother – Information Report (2 October 2012)
	10.14	Northumberland National Park – Consultee Response (Objection) (17.12.2012)
	10.15	National Grid – Consultee Response (Objection) (30.11.2012)
	10.16	Planning & Environment Committee Minutes (08.01.2013)
	10.17	Environmental Statement – Cumulative Plans (Figures 7.10, 7.11, 7.12) (also see CD 10.2)
	10.18	Public Protection Consultation Responses (2012) (also see CD 10.1)
	10.19	Public Protection Consultation Response (29 July 2013)
	10.20	Public Protection Consultation Response – Acoustic Report Sheet (29 July 2013)
	10.21	DCC Landscape Memo – (10 December 2012)
	10.22	Public Protection Consultation Response (29 July 2013)
	10.23	Public Protection Consultation Response (08 August 2013)
<b>11 Other Documents</b>		
	11.1	"2011 Guidelines to Defra/DECC's GHG Conversion Factors for Company Reporting: Methodology Paper for Emission Factors" (DEFRA, 2011)
	11.2	"Recommended Practices for the Use of Sodar in Wind Energy Resource Assessment" (Draft version 5, July 2011)
	11.3	Gordon Hughes "The Performance of Wind Turbines in the United Kingdom and Denmark" (Renewable Energy Foundation, 2012)
<b>12 NCC Proof of Evidence and Associated Documents</b>		
	12.1	NCC Proof of Evidence – Planning (Joe Nugent)
	12.2	NCC Proof of Evidence – Planning – Summary (Joe Nugent)
	12.3	NCC Proof of Evidence – Landscape (Mike Glen)
	12.4	NCC Proof of Evidence – Landscape (Mike Glen) (Annex 1)

## **Annex – Recommended conditions**

1. The development hereby permitted shall be commenced before the expiration of three years from the date of this permission. Written confirmation of the commencement of development shall be provided to the Local Planning Authority no later than 14 days after the event.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: Site location plan (Fig 1.1), site layout plans (Figs 1.2, 1.3, 1.4), substation elevations (Fig 3.10), substation floor plan (Fig 3.11), temporary junction improvements (90381-SK 001)
3. This permission shall expire, and the development hereby permitted shall be removed in accordance with condition 3 below, after 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.
4. Not later than 12 months before the date of expiry 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 all of the wind turbines and associated above ground infrastructure approved under this permission and for the removal of the turbine foundation to a depth of at least 1 metre below the ground. The scheme shall also include the management and timing of any works and a traffic management plan to address likely 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 inclusive of subsoil, topsoil, seed mixes and aftercare. The approved scheme shall be fully implemented within 18 months of the expiry of this permission.
5. If any wind turbine 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 either a programme of remedial works where repairs to the relevant turbine are required or a programme for removal of the relevant turbine and associated above ground works approved under this permission and the removal of the turbine foundation to a depth of at least 1 metre below ground and details of site restoration measures inclusive of subsoil, topsoil, seed mixes and aftercare following the removal of the relevant turbine. The scheme shall thereafter be implemented in accordance with the approved details and timetable.
6. Prior to the commencement of development a Construction Traffic Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Construction Traffic Management Plan shall include proposals for the routing of all construction traffic to be via the junction of Fenrother Lane and the A1, the scheduling and timing of vehicle movements,

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, works required to enable large vehicles to manoeuvre around a corner, works required to protect dykes along the route 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 in writing by the Local Planning Authority.

7. Prior to the commencement of development a Construction Method Statement shall be submitted to and approved in writing by the Local Planning Authority. The Construction Method Statement shall be adhered to throughout the construction and post-construction restoration period. 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 Prevention Plan: to include details of measures to protect 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, including methods to prevent light pollution;
  - 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) Details of 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;
  - k) A site environmental management plan to include details of measures to be taken during the construction period to protect wildlife and their habitats;

- l) Details of 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) Details of working practices for protecting nearby residential dwellings, including measures to control noise and vibration arising from on-site activities.
8. Construction work shall only take place between the hours of 07:00 – 19:00 hours Monday to Friday inclusive and 08:00 – 13:00 hours on Saturdays with no such work on a Sunday or Public Holiday. Exceptions to this will be permitted in order that construction work can be carried out outside of these hours provided that the prior written approval of the Local Planning Authority is obtained. Wind turbine erection works delayed due to the weather and 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 any works undertaken within 24 hours.
9. The delivery of any construction materials or equipment for the construction of the development, other than turbine blades, nacelles and towers, shall be undertaken in accordance with the routing requirements of the Construction Traffic Management Plan and shall be restricted to the hours of 07:00 – 19:00 hours on Monday to Friday inclusive, 08:00 - 13:00 hours on Saturdays with no such deliveries on a Sunday or Public Holiday.
10. Prior to the commencement of development full details of the proposed access from Fenrother Lane into the site shall be submitted to and approved in writing by the Local Planning Authority. The works to construct the access must be carried out in accordance with the approved details and the access must thereafter be maintained for the lifetime of the windfarm and its decommissioning.
11. No abnormal indivisible load movements shall take place to the site until the temporary works to the junction from the A1 to Fenrother Lane shown on indicative Drawing No. 90381\_SK 001 have been implemented in accordance with a detailed design, which design shall have been submitted to and approved in writing by the Local Planning Authority in consultation with the Highways Agency. The temporary works to the junction from the A1 to Fenrother Lane must be carried out in accordance with the approved details.
12. No part of the temporary works shall be implemented at the junction from the A1 to Fenrother Lane until a detailed design for the removal of the works and the reinstatement of the junction has been submitted to and approved in writing by the Local Planning Authority in consultation with the Highways Agency. Once all abnormal indivisible load movements have taken place to the site the temporary works shall be removed and the junction reinstated in accordance with the approved design.
13. There shall be three blades on each wind turbine hereby permitted and they shall all rotate in the same direction. The overall height of the wind turbines

shall not exceed 126.5m to the tip of the blades (with each turbine having a maximum hub height of 80m) when the turbine is in the vertical position as measured from natural ground level immediately adjacent to the wind turbine base.

14. Prior to the erection of any wind turbine hereby permitted, details of the colour and finish of the towers, nacelles and blades 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 wind turbines or any external transformer units other than those required to meet statutory health and safety requirements. The development shall be carried out in accordance with the approved details.
15. Prior to the commencement of the construction of the electricity substation details of the design, any permanent or temporary external illumination, a landscape planting scheme and the external appearance, dimensions and materials (including the walls, roof and all other external materials) for the building and any associated compound or parking area and details of surface and foul water drainage from the substation 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.
16. All electrical cabling between the individual wind turbines hereby permitted and between the wind turbines and the on site electricity substation shall be installed underground.
17. Prior to the commencement of development a Habitat Enhancement Plan shall be submitted to and approved in writing by the Local Planning Authority. The Habitat Enhancement Plan shall include a programme for and the provision of the habitat creation and enhancement measures detailed in paragraphs 9.223 – 9.225 of Volume 1 and in Appendix 9.8 of Volume 2 of the Environmental Statement. The Plan shall be implemented as approved in writing by the Local Planning Authority.
18. Prior to the commencement of development a written scheme shall be submitted to and approved in writing by the Local Planning Authority setting out a protocol for the assessment of shadow flicker in the event of any complaint to the Local Planning Authority from the owner or occupier of a dwelling (defined for the purposes of this condition as a building within Use Class C3 or C4 of the Use Classes Order) which lawfully exists or had planning permission at the date of this permission. The written scheme shall include detailed mitigation measures to remove any effects of shadow flicker attributable to the development. Operation of the wind turbines shall take place in accordance with the approved scheme.
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 terrestrial television caused by the operation of the wind 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 Use Classes Order) 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 development, mitigation works shall be carried out in accordance with the scheme which has been approved in writing by the Local Planning Authority.

20. Prior to the erection of the first wind turbine hereby permitted, written confirmation shall be provided to the Local Planning Authority, the Ministry of Defence and the Civil Aviation Authority of the proposed date of completion of the development and the height above ground level and the position in latitude and longitude of each wind turbine.
21. Prior to the commencement of development or within 12 months of the date of this permission, whichever is the earliest, a scheme to mitigate the effect of the wind turbines on the Primary Surveillance Radar at Newcastle International Airport, in the form of a Radar Blanking Area, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented from the First Export Date and shall remain in place throughout the lifetime of the development.
22. The developer shall install MOD-accredited infrared warning lighting with an optimised flash pattern of 60 flashes per minute of 200ms to 500ms duration at the highest practicable point on all the turbines hereby approved. The turbines will be erected with this lighting installed and the lighting will remain operational throughout the lifetime of the development.
23. No development shall commence unless and until an Air Defence Radar Mitigation Scheme has been submitted to and approved in writing by the Local Planning Authority. The Air Defence Radar Mitigation Scheme means a detailed scheme to mitigate the adverse impacts of the development hereby approved on the Air Defence Radar at RRH Brizlee Wood and the air surveillance and control operations of the MOD associated with the use of this radar. The Scheme will set out the appropriate measures to be implemented to that end.
24. No turbines shall become operational until:
  - a) The mitigation measures which the approved Scheme requires to be implemented prior to the operation of the turbines hereby permitted have been implemented; and
  - b) Any performance criteria specified in the approved Scheme and which the approved scheme requires to have been satisfied have been satisfied; and
  - c) That implementation and satisfaction of the performance criteria have been approved by the Local Planning Authority.

The developer shall thereafter comply with all other obligations contained within the Air Defence Radar Mitigation Scheme.

25. Prior to the commencement of development a programme of archaeological work shall be implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority. The written scheme shall relate to Turbine 5 (T5) and its associated area of hard standing only. Furthermore, the 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.
26. The wind turbines hereby permitted shall be erected at the following grid coordinates:

T1 417789 593492  
T2 417592 593107  
T3 417257 592830  
T4 417770 592848  
T5 418091 592798

Notwithstanding the terms of this condition but subject to the restrictions set out below, the wind turbines and associated crane pads hereby permitted may be micro-sited within 25 metres of the above-mentioned grid co-ordinates and the consequential realignment of the access tracks shall be permitted within the red line shown on Figure 1.2 of Volume 3 of the Environmental Statement.

The following restrictions apply in relation to this condition:

- a) T3 shall not be micro-sited any closer to the high pressure gas pipeline shown on Figure 4.1 of Volume 3 of the Environmental Statement so that a minimum separation distance of 120m between T3 and the edge of the pipeline is maintained at all times throughout the lifetime of the development.
  - b) T3 and T4 shall not be micro-sited in any direction so that the turbines shall be taken closer to the property known as Beechcroft.
  - c) T4 shall not be micro-sited in any direction so that the turbine shall be taken closer to any of the properties known as Stonebrook Cottage, La Libellule, The Cottage, East Fenrother Farm Cottage (3, The Cottage), Lyneburn House, Middle Fenrother Farm and East Fenrother Farm.
27. Ten days prior written notice of the erection of Turbine 3 (T3) shall be given to National Grid in order that the high pressure gas pipeline shown on Figure 4.1 of Volume 3 of the Environmental Statement can be marked out on site and the location of Turbine 3 referenced to ensure that the minimum separation distance between the turbine and the edge of the pipeline is maintained throughout the lifetime of the development.
28. The development hereby permitted shall only be carried out in accordance with the Surface Water Drainage Network and Flood Risk Chapter of Volume 1 and

Appendix 10.2 of Volume 2 of the Environmental Statement, together with the mitigation measures detailed therein. The mitigation measures shall be fully implemented prior to the development being brought into use and subsequently in accordance with the specified timing/phasing arrangements, or within any other period as may subsequently be agreed in writing by the Local Planning Authority.

29. Prior to the commencement of development a Planting Scheme for the property known as Moor Edge shall be submitted to and approved in writing by the Local Planning Authority. The Planting Scheme, which shall be broadly in accordance with the indicative planting scheme shown on Drawing No. **3548\_006 ("Moor Edge Indicative Planting Proposals, dated 6 August 2013)**, shall be implemented as approved in writing by the Local Planning Authority.
30. Prior to the commencement of development a scheme for the provision and maintenance of the permissive footpaths, together with signage, which are shown for indicative purposes only between points A and B and points C and D **on Figure iv ("Retention and Extension of Permissive Footpaths", dated August 2013)** shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented as approved and shall thereafter be maintained during the lifetime of the development.
31. 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 or derived from Tables 1 and 2 attached to these conditions and:
  - a) Prior to the First Export Date, the windfarm 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 of the Local Planning Authority, following a reasonable complaint to it alleging noise disturbance at a dwelling, the windfarm operator shall, at its expense, employ an independent consultant approved by the Local Planning Authority to assess the level of noise immissions from the windfarm 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 at least the date, time and location that the complaint relates to. Within 14 days of receipt of the written request of the Local Planning Authority made under this paragraph (B), the windfarm operator shall provide the information relevant to the complaint logged in accordance with paragraph (H) to the Local Planning Authority in the format set out in Guidance Note 1(e).
  - c) Where there is more than one property at a location specified in Tables 1 and 2 attached to this condition, the noise limits set for that location shall apply to all dwellings at that location. Where a dwelling to which a

complaint is related is not identified by name or location in the Tables attached to these conditions, the windfarm 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 commencement of any measurements by the independent consultant to be undertaken in accordance with these conditions, the windfarm operator shall submit to the local planning authority for written approval the proposed measurement location identified in accordance with the Guidance Notes where measurements for compliance checking purposes shall be undertaken. Measurements to assess compliance with the noise limits set out in the Tables attached to these conditions or approved by the local planning authority pursuant to paragraph (C) of this condition shall be undertaken at the measurement location approved in writing by the Local Planning Authority.
- e) **Prior to the submission of the independent consultant's assessment of the rating level of noise immissions pursuant to paragraph (F) of this condition, the windfarm operator shall submit to the Local Planning Authority for written approval a proposed assessment protocol setting out the following:**
  - (i) the range of meteorological and operational conditions (the range of wind speeds, wind directions, power generation and times of day) to determine the assessment of rating level of noise immissions.
  - (ii) a reasoned assessment as to whether the noise giving rise to the complaint contains or is likely to contain a tonal component.
- f) 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 information provided in the written request of the local planning authority under paragraph (B), and such others as the independent consultant considers necessary to fully assess the noise at **the complainant's property. 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.**

- g) The windfarm operator shall provide to the Local Planning Authority the **independent consultant's assessment, including determination 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 noise immissions from the** windfarm.
- h) Where a further assessment of noise immissions from the windfarm is required pursuant to Guidance Note 4(c) of the attached Guidance Notes, the windfarm operator shall submit a copy of the further assessment within 21 days of submission of the independent **consultant's assessment pursuant to paragraph (F) above unless the** time limit for the submission of the further assessment has been extended in writing by the Local Planning Authority.
- i) The windfarm operator shall continuously log nacelle wind speed, nacelle orientation, power generation and nacelle wind direction for each turbine in accordance with this consent, 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 windfarm 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 and associated guidance notes, a "dwelling" is a building within Use Class C1 C3 or C4 of the Use Classes Order which lawfully exists or had planning permission at the date of this consent.

**Table 1 - Between 07:00 and 23:00 - Noise level dB  $L_{A90}$ , 10-minute**

Location (easting, northing grid coordinates)	Standardised wind speed at 10 metres height (m/s) within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
	$L_{A90}$ Decibel Levels											
Fieldhead House (E 417158, N 594050)	37	37	37	38	39	42	45	48	51	54	57	59
Moor Edge Cottage(E 416415, N 592707)	43	44	45	46	47	48	49	50	51	52	53	54
1 East Fenrother Cottages (E 417663, N 592076)	38	38	38	38	39	39	41	42	44	46	49	51
Earsdon Moor Farm (E418827), N 593397)	46	47	47	48	49	49	50	52	53	55	58	61
Welbeck House (E 418893, N 592708)	45	45	46	47	48	49	50	51	53	55	57	59
New Houses Farm* (E 418307, N 593829)	45	45	45	45	45	45	45	45	45	48	51	56
2 Fenrother Cottages (E 416775, N 591834)	40	41	41	42	43	44	45	47	48	50	53	55
Tindale Hill (E 418651, N 593483)	38	38	38	38	38	39	40	42	45	48	51	56

\*Financially Involved

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

Location (easting, northing grid coordinates)	Standardised wind speed at 10 metres height (m/s) within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
	L <sub>A90</sub> Decibel Levels											
Fieldhead House (E 417158, N 594050)	43	43	43	43	43	43	43	44	48	52	56	58
Moor Edge Cottage (E 416415, N 592707)	43	43	43	43	43	43	43	43	43	45	47	50
1 East Fenrother Cottages (E 417663, N 592076)	43	43	43	43	43	43	43	43	43	45	48	51
Earsdon Moor Farm (E 418827), N 593397)	43	43	43	43	43	43	43	44	48	52	55	59
Welbeck House (E 418893, N 592708)	43	43	43	43	43	43	43	44	47	51	54	57
New Houses Farm* (E 418307, N 593829)	45	45	45	45	45	45	45	45	45	46	48	50
2 Fenrother Cottages (E 416775, N 591834)	43	43	43	43	43	43	43	43	44	48	52	54
Tindale Hill (E 418651, N 593483)	43	43	43	43	43	43	43	43	43	46	48	50

\*Financially Involved

Note to Tables 1 & 2: The geographical coordinates references set out in these tables are provided for the purpose of identifying the general location of dwellings to which a given set of noise limits applies. The standardised wind speed at 10 metres height within the site refers to wind speed at 10 metres height derived from those measured at hub height, calculated in accordance with the method given in the Guidance **Notes**.

## 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 complaints about noise immissions from the windfarm. The rating level at each integer wind speed is the arithmetic sum of the windfarm noise level as determined from the best-fit curve described in Note 2 of these Guidance Notes and any tonal penalty applied in accordance with Note 3 with any necessary correction for residual background noise levels in accordance with 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).

### Note 1

- (a) Values of the L<sub>A90,10-minute</sub> noise statistic should be measured at the complainant's property (or an approved alternative representative location as detailed in Note 1(b)), 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 before and after each set of measurements, using a calibrator meeting IEC 60945:2003 "Electroacoustics – sound calibrators" Class 1 with PTB Type Approval (or the equivalent UK

adopted standard in force at the time of the measurements) and the results shall be recorded. Measurements shall be undertaken in such a manner to enable a tonal penalty to be applied in accordance with Guidance Note 3 if required.

- (b) The microphone shall 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, not more than 35 metres from it. Measurements should be made in "free field" conditions. To achieve this, the microphone shall 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 windfarm operator shall submit for the written approval of the Local Planning Authority details of the proposed alternative representative measurement location prior to the commencement of measurements and the measurements shall be undertaken at the approved alternative representative measurement location.
- (c) The  $L_{A90,10\text{-minute}}$  measurements should be synchronised with measurements of the 10-minute arithmetic mean wind speed and wind direction data and with operational data logged in accordance with Guidance Note 1(d) and rain data logged in accordance with Note 1(f).
- (d) To enable compliance with the conditions to be evaluated, the windfarm operator shall continuously log arithmetic mean nacelle wind speed (duly corrected for the presence of the rotating blades) arithmetic mean nacelle orientation, nacelle wind direction and arithmetic mean power generated during each successive 10-minute periods for each wind turbine on the site. The hub height wind speeds recorded from the nacelle anemometers or as calculated from the power output of each turbine shall be supplemented by standardised ten metre height wind speed data calculated for each 10-minute period from those measured at hub height assuming a reference roughness length of 0.05 metres and using the equation given on page 120 of ETSU-R-97. 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. Standardised 10 metre height wind speed data shall be correlated with the noise measurements determined as valid in accordance with Note 2(b), such correlation to be undertaken in the manner described in Note 2(c).
- (e) Data provided to the Local Planning Authority in accordance with paragraphs (E) (F) (G) and (H) of the noise condition shall be provided in electronic comma separated values format.
- (f) A data logging rain gauge shall be installed within 3m of any sound level meter installed in the course of the independent consultant undertaking an assessment of the level of noise immissions. The gauge shall record over successive 10-minute periods synchronised with the periods of data recorded in accordance with Note 1(d).

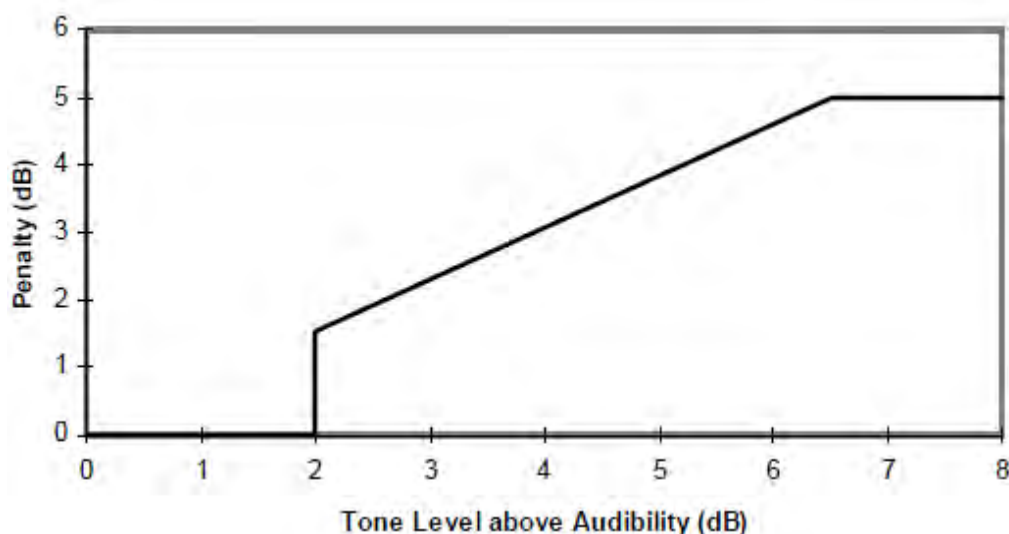
## Note 2

- (a) The noise measurements should be made so as to provide not less than 20 valid data points as defined in Note 2 paragraph (b).

- (b) Valid data points are those measured during the conditions set out in the assessment protocol approved by the Local Planning Authority under paragraph (E) of the noise condition but excluding any periods of rainfall measured in accordance with Note 1(f).
- (c) Values of the  $L_{A90,10\text{-minute}}$  noise measurements and corresponding values of the 10-minute standardised ten metre height wind speed for those data points considered valid in accordance with Note 2(b) shall be plotted on an XY chart with noise level on the Y-axis and wind speed on the X-axis. A least squares, **"best fit" curve** of an order deemed appropriate by the independent consultant (but which may not be higher than a fourth order) shall be fitted to the data points to define the windfarm noise level at each integer speed. If anything other than a 3<sup>rd</sup> order polynomial is used, a full explanation must be provided as to why the polynomial order has been used.

### Note 3

- (a) Where, in accordance with the approved assessment protocol under paragraph (E) 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 shall be calculated and applied using the following rating procedure.
- (b) For each 10-minute interval for which  $L_{A90,10\text{-minute}}$  data have been determined as valid in accordance with Note 2, a tonal assessment shall be performed on noise immissions during the first 2-minutes of each 10-minute period. The 2-minute periods should be spaced at 10-minute intervals.
- (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 average tone level above audibility shall be calculated for each integer wind speed bin. Samples for which the tones were below the audibility criterion or no tone was identified, a value of zero audibility shall be substituted.
- (e) The tonal penalty is derived from the margin above audibility of the tone according to the figure below derived from the average tone level above audibility for each integer wind speed.





## Note 4

- (a) If a tonal penalty is to be applied in accordance with Note 3 the rating level of the turbine noise at each wind speed is the arithmetic sum of the measured noise level as determined from the best fit curve described in Note 2 and the penalty for tonal noise as derived in accordance with Note 3 at each integer wind speed within the range set out in the approved assessment protocol under paragraph (E) of the noise condition.
- (b) If no tonal penalty is to be applied then the rating level of the turbine noise at each wind speed is equal to the measured noise level as determined from the best fit curve described in Note 2.
- (c) If the rating level 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. In the event that the rating level is above the limit(s) set out in the Tables attached to **the noise conditions or the noise limits for a complainant's dwelling approved in accordance with paragraph (C) of the noise condition**, the independent consultant shall undertake a further assessment of the rating level to correct for background noise so that the rating level relates to wind turbine noise immission only.
- (d) The windfarm operator shall ensure that all the wind turbines in the development are turned off for such period as the independent consultant requires to undertake the further assessment. The further assessment shall be undertaken in accordance with the following steps:
  - i. Repeating the steps in Note 2, with the windfarm 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 (E) of this condition.
  - ii. The windfarm 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, provided that  $L_3$  is at least 3 dB lower than  $L_2$ :

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

- iii. The rating level shall be re-calculated by adding the tonal penalty (if any is applied in accordance with Note 3) to the derived windfarm 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 conditions.



## Department for Communities and Local Government

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

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

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

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

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

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

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

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

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

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

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