



Department for  
Communities and  
Local Government

Our Ref: APP/H0928/W/15/3132909

Mr Stephen Bradley  
Urban Wind Ltd  
Unit C33/34  
Red Scar Business Park  
Longridge Road  
Preston  
Lancashire  
PR2 5NN

7 November 2016

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY URBAN WIND LTD  
LAND AT LOW ABBEY FARM, CROSS END, KIRKBY THORE, CUMBRIA, CA10 1XR  
APPLICATION REF: 15/0304**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Richard Clegg BA(Hons) DMS MRTPI who made site visits on 11 November 2015 and 6 January 2016 in relation to your appeal against the failure of Eden District Council (“the Council”) to give notice within the prescribed period of a decision on an application for planning permission for the development of a single medium scale turbine measuring 30m to the hub and 45m to the blade tip, with associated infrastructure and an access track, at Low Abbey Farm, Cross End, Kirkby Thore, Cumbria, CA10 1XR, in accordance with application ref: 15/0304 dated 30 March 2015.
2. On 21 June 2016, this 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 gives rise to important issues for the application of the wind farm policy and the appeal has therefore been recovered because of the particular circumstances.

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

3. The Inspector recommended that the appeal be allowed and planning permission granted subject to conditions. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with his recommendation. He has decided to allow the appeal and grant planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

## **Policy and statutory considerations**

4. In reaching his decision, 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.
5. In this case the Development Plan consists of the saved policies of the Eden Local Plan (1996) (LP) and the Eden Core Strategy Development Plan Document (2010) (CS). The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR11-12, specifically: LP Policy NE1, CS Policy CS16; and Policy CS20. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as Written Ministerial Statement on local planning of 18 June 2015 ('the June 2015 WMS') which is referred to in IR5. Given its relevance to this case, the Secretary of State attaches substantial weight to the WMS as the most recent expression of government planning policy for onshore wind development. The Secretary of State has also had regard to the Cumbria Wind Energy Supplementary Planning Document (SPD) and the North Pennines AONB Planning Guidelines. These non-statutory planning documents are described at IR13.
6. The June 2015 WMS includes a transitional provision for where a valid planning application for wind energy development had already been submitted to a local planning authority at the date on which the statement was made and the development plan does not identify suitable sites. In such instances, local planning authorities can find the proposal acceptable if, following consultation, they are satisfied it has addressed the planning impacts identified by affected local communities and therefore has their backing. In applying the transitional provision to this appeal proposal the Secretary of State has considered the representations reported at IR22-25 and agrees with the Inspector's conclusion at IR42 that the proposal addresses the planning impacts identified by the local community.

## **Main issues**

7. The Secretary of State agrees with the Inspector that the main issues are those set out at IR27.

### *The character and appearance of the area.*

8. For the reasons given at IR28-32, the Secretary of State agrees with the Inspector's conclusions at IR33 that the appeal proposal would have a negligible effect on the overall character of the intermediate landscape, that it would cause only minor localised harm to the landscape of the area around Low Abbey Farm, and that it would not have a harmful effect on the setting of the AONB. He further agrees that, while it would be an imposing feature from nearby viewpoints, there would be a less cluttered appearance on the low ridge above the farmstead than if the two smaller turbines for which there is an extant planning permission were to be implemented. The Secretary of State therefore also agrees with the Inspector at IR33 that it is important that the planning obligation to secure this objective is executed (see paragraph 12 below), while also agreeing that there would be conflict with Policy CS18 of the CS in that the new development would not protect the rural landscape.

*The effect of the proposed development on protected species.*

9. The Secretary of State agrees with the Inspector that, for the reasons given at IR34 and 35, the proposed development would not have a detrimental effect on the local populations of badger, merlin and barn owl, and in this respect it would not conflict with Policy CS16 of the CS.

*Other considerations*

10. The Secretary of State agrees with the Inspector at IR36-37 that significant weight should be given to the benefits of the scheme in encouraging the development and diversification of Low Abbey Farm; and to the contribution which the scheme would make to the reduction of greenhouse emissions. The Secretary of State also agrees with the Inspector at IR38 that no weight can be given to the proposed financial community benefits fund (IR38), or to any potential impacts on tourism or road safety (IR39).

### **Planning conditions**

11. The Secretary of State has given consideration to the Inspector's analysis at IR40, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework.

### **Planning obligation**

12. Having had regard to the Inspector's comments on the importance of ensuring that the extant permission for two smaller turbines could not be implemented (IR33), the planning obligation submitted by the appellant (document 8), paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010 as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR33 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework; and that it is necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development.

### **Planning balance and overall conclusion**

13. For the reasons given above, the Secretary of State considers that, although there is conflict with CS Policy CS18, the appeal is in accordance with LP Policy NE1, CS Policy CS16 and Policy CS20 and is in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan. However, while acknowledging that there would be some minor, localised harm to the character and appearance of the area he considers that this would be outweighed by the economic benefit to Low Abbey Farm and the contribution of the proposal to wider policy objectives to reduce reliance on non-renewable sources of energy. The Secretary of State agrees with the Inspector that, notwithstanding the presence of objections to the proposal at application and appeal stages, in the circumstances set out the proposal can be deemed to have the backing of the affected local community (see paragraph 6 above).

14. The Secretary of State therefore concludes that appeal be allowed and planning permission granted subject to the conditions set out in Annex A.

### **Formal decision**

15. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your appeal and grants planning permission subject to the conditions set out in Annex A to this decision letter for a single turbine measuring 30m to the hub and 45m to the blade tip, with associated infrastructure and an access track at Low Abbey Farm, Cross End, Kirkby Thore, Cumbria, CA10 1XR, in accordance with application ref: 15/0304 dated 30 March 2015.

16. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

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

17. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

18. A copy of this letter has been sent to Eden District Council, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Jean Nowak*

Authorised by Secretary of State to sign in that behalf

## SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: A3 1:20000 location plan, A2 site plan with route of access roadway ref 100785, A3 site plan ref 100785 and the turbine elevations on drawing ref 250-00-30-300.
- 3) The permission hereby granted shall endure for a period of 25 years from the date when electricity is first supplied from the wind turbine (the First Export Date). Written confirmation of the First Export Date shall be provided to the local planning authority no later than one calendar month after that event.
- 4) Not later than six months before the end of this permission, or prior to the removal of the turbine should this occur sooner, a decommissioning and site restoration scheme shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be fully implemented within six months of the removal of the turbine.
- 5) If the turbine hereby permitted ceases to operate for a continuous period of three months, it shall be dismantled and removed, and the site shall be restored, all in accordance with a scheme and programme which shall be submitted to and approved in writing by the local planning authority within three months of the end of that three months period.
- 6) The following noise limits shall not be exceeded when the wind turbine is in operation:
  - a) Day time limits (0700-2300) - The LA90 (10 minutes) specific noise level shall not exceed 35dB(A) at a wind speed of 10m/s at 10m height or the prevailing background noise level plus 5dB(A), whichever is the greater, as measured 3.5m from the façade of No 1 Low Abbey Cottages.
  - b) Night time noise limits (2300-0700) - The LA90 (10 minutes) specific noise level shall not exceed 43dB(A) at a wind speed of 10m/s at 10m height or the prevailing background noise level plus 5dB(A), whichever is the greater, as measured 3.5m from the façade of No 1 Low Abbey Cottages.
- 7) Prior to the erection of the wind turbine, the developer shall provide written confirmation to the Local Planning Authority and the Ministry of Defence of the proposed dates for commencement and completion of construction work, the maximum height of construction equipment, and the position of the turbine in latitude and longitude.
- 8) No development shall take place until a scheme of badger mitigation measures, including a programme for implementation, has been submitted to and approved by the local planning authority. The mitigation measures shall be implemented in accordance with the approved scheme and programme.



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

by Richard Clegg BA(Hons) DMS MRTPI

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

Date: 4 August 2016

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**TOWN AND COUNTRY PLANNING ACT 1990**  
**EDEN DISTRICT COUNCIL**  
**APPEAL BY**  
**URBAN WIND LTD**

Site visits made on 11 November 2015 and 6 January 2016

Low Abbey Farm, Cross End, Kirkby Thore, Cumbria, CA10 1XR

File Ref: APP/H0928/W/15/3132909

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**File Ref: APP/H0928/W/15/3132909**

**Low Abbey Farm, Cross End, Kirkby Thore, Cumbria, CA10 1XR**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Urban Wind Ltd against Eden District Council.
- The application, Ref 15/0304, is dated 30 March 2015.
- The development proposed is described as 'a single medium scale turbine measuring 30m to the hub and 45m to the blade tip, with associated infrastructure and an access track'.

**Summary of Recommendation: The appeal be allowed and planning permission granted subject to conditions.**

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**Procedural Matters**

1. The appeal was recovered for a decision by the Secretary of State for Communities and Local Government by a direction dated 21 June 2016. The Secretary of State believes that the appeal gives rise to important issues for the application of the wind farm policy and the appeal has therefore been recovered because of the particular circumstances.
2. The proposal is more clearly described simply as a single turbine measuring 30m to the hub and 45m to the blade tip, with associated infrastructure and an access track, and I have considered the appeal on this basis.
3. The appeal was made against a failure to give notice of a decision on the planning application within the prescribed period. The Council's report on the planning application<sup>1</sup> included recommended reasons for refusal relating to: a failure to establish that there would be no detriment to protected species; the effect on the character and appearance of the area, including the North Pennines Area of Outstanding Natural Beauty (AONB); and a failure to address the planning impacts identified by local communities.
4. On 16 January 2014 the Council had granted planning permission for two turbines measuring 22.4m to the blade tip in the same field as the taller turbine which is the subject of this appeal<sup>2</sup>. Condition No 1 of the permission requires development to begin within three years. The Appellant has submitted a planning obligation which makes a commitment that the extant permission will not be implemented (Document 8).
5. On 18 June 2015, the Secretary of State for Communities and Local Government issued a Written Statement entitled *Local planning* concerning the considerations to be applied to wind energy development proposals, and certain consequential changes were made to the national Planning Practice Guidance (PPG). Where, as in this case, a valid application had already been submitted, the Written Ministerial Statement (WMS) sets out a transitional provision whereby a proposal may be found acceptable, if, following consultation, it has addressed the planning impacts identified by affected local communities.
6. This report contains a description of the site and its surroundings, an explanation of the proposal, details of relevant planning policies, the gist of the submissions

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<sup>1</sup> The report is part of Document 5.

<sup>2</sup> The notice of planning permission is part of Document 7 and the approved plans are Plans B1-B3.



made in writing, followed by my appraisal and recommendation. A list of documents is appended.

### **The Site and Surroundings**

7. Low Abbey Farm lies on the north-east side of the Eden Valley, above the settlement of Kirkby Thore which is about 1.7-1.9km from the position proposed for the turbine. The turbine would be erected close to the top of a low ridge which rises to the north-east of the farmstead. It would be about 200m from the nearest buildings at the farmstead and about 420m from the dwellings at Low Abbey Cottages, which are situated on the access road to the farm. Between these dwellings and the position of the turbine is a telecommunications mast and about 700m to the south-west is a gypsum works.
8. The appeal site is elevated above Kirkby Thore and the gypsum works, but it is at a lower level than the escarpment to the east which is within the North Pennines AONB. The AONB boundary runs about 900m from the position of the proposed turbine. A few single turbines lie in this direction: their positions are shown on figure 17 of the Appellant's Landscape and Visual Appraisal (LVA)<sup>3</sup>.

### **Planning History**

9. Planning permission was granted in 2014 for two shorter turbines on the rising land above the farmstead. The location plan shows turbine No 1 in a similar position to the turbine which is the subject of this appeal, with turbine No 2 being a short distance to the south-east.

### **The Proposal**

10. The proposal involves the erection of a single wind turbine, with a hub height of 30m and extending to 45m at the upper blade tip. A transformer hut would also be erected on the site. Access would be taken along the existing drive to the farmstead. A short distance to the north of the farm buildings, the route would follow the line of a track across farmland which would be extended to reach the position of the turbine. As part of the proposal the Appellant has submitted a planning obligation which makes a commitment that the extant planning permission for two shorter turbines will not be implemented. The proposed turbine is expected to produce about 500,00kWh of electricity annually, which would be used by the farm and exported to the network<sup>4</sup>. It is designed to have an operational life of 25 years<sup>5</sup>.

### **Planning Policy and Guidance**

11. The Development Plan includes the saved policies of the Eden Local Plan and the Core Strategy Development Plan Document. Policy NE1 of the Local Plan explains that new development in the undeveloped countryside outside settlements and groups of dwellings will only be permitted to meet local infrastructure needs or if there is a need for it in a specific location which is sufficient to outweigh environmental cost. In addition compliance is required with several criteria, including that siting should minimise impact, and that the design is appropriate to the location. The Council's second recommended reason for refusal refers to

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<sup>3</sup> The LVA is at Appendix 4b of Document 4.

<sup>4</sup> Design and access statement, paras 1.4 & 8.1 (Document 4, Appendix 4a).

<sup>5</sup> Design and access statement, para 1.9 (Document 4, Appendix 4a).

Policy NE2. However this policy is specifically concerned with development in the AONB, whereas the appeal site lies outside the boundary. Whilst Policy NE2, therefore, does not apply in this case, the effect on the special character of the AONB is a relevant consideration given the position of the site relative to this designated landscape.

12. In the Core Strategy, Policy CS16 requires development to accord with the principles of protection and enhancement of the natural environment, including landscape and biodiversity. Specific provisions of the policy include the protection of existing wildlife. Amongst other requirements new development is required to protect, and where possible enhance, the rural landscape, natural environment and biodiversity (Policy CS18). Policy CS20 provides support for renewable energy proposals, particularly where there are no significant unacceptable effects which cannot be mitigated or are not outweighed by the need for such development or the benefits it may bring. The impact on landscape character, particularly in and around the AONB, is one of the factors which should be considered.
13. The Cumbria Wind Energy Supplementary Planning Document (SPD) includes a landscape capacity assessment. The appeal site lies within landscape type 6 – intermediate land<sup>6</sup>, which is assessed as having a moderate capacity to accommodate turbine development. Up to a small group of 3-5 turbines, and exceptionally a large group of 6-9 turbines, are referred to as an appropriate scale of development. Land to the east is part of the upland fringes landscape type. Here the capacity is given as low/ moderate, and the same scale of development is identified as appropriate, with the caveat that a large group may be acceptable on broader topographic sweeps. The SPD identifies particular sensitivities in respect of this landscape type including panoramic views over the Vale of Eden towards the Lakeland fells, and views from below where the scarp forms an imposing wall above the Vale. The North Pennines AONB Planning Guidelines address development outside the AONB. The most significant category of impact likely to affect the AONB is landscape and visual impact. In this regard reference is made to views from the western summits of the AONB towards the Lake District and views from the Vale of Eden of the great western escarpment. The guidelines explain that wind turbines can have significant impacts in such views as they are discernible at considerable distances in favourable weather conditions, typically project above the skyline, and their colour may stand out against the otherwise muted earth tones of the landscape.
14. I have had regard to national planning policy and guidance, in particular that contained in the National Planning Policy Framework (NPPF), the PPG, and the 2015 WMS.

### **The Case for the Appellant** (Documents 3, 4 and 6)

*The material points are:*

15. The proposal seeks to maximise the renewable energy potential of the land at Low Abbey Farm, whilst respecting landscape character and residential amenity. As the turbine would be sited on the uppermost slopes of a hill, it would have the

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<sup>6</sup> The Cumbria Landscape Classification is referred to in the Cumbria Wind Energy SPD. In Part 2 of the SPD, Map 7 shows the extent of the landscape types.

potential to be viewed as a prominent feature from within and against the backdrop of the western end of the AONB. However it would be read with the nearby woodland, the gypsum works, Low Abbey farm buildings and the telecommunications mast. Overall the turbine would have an indirect minor adverse to no change effect on the setting of the North Pennines AONB, a moderate localised adverse effect on the setting of the intermediate land landscape type and a minor adverse effect on the land at Low Abbey Farm. Visual effects from the viewpoints in the LVA vary from no change to major/moderate adverse effect, with the greatest visual effect occurring within the local area.

16. Pre-construction checks should be conducted to identify any badger setts near the site, and mitigation measures can be employed to prevent any adverse effects upon this species. The lack of information concerning merlins and barn owls suggest that they are not common in the area, and no adverse effects are anticipated.
17. Whilst it is acknowledged that the WMS is a material consideration, significant weight should be given to the NPPF and the Development Plan. The proposal complies with the sustainable development and renewable energy generation objectives of the NPPF and relevant policies in the Local Plan. It is considered that planning issues raised by the Parish Council were addressed with the production of additional information, and 44 letters of support were received from the local community. Consequently the proposal has the backing of the local community and is consistent with the WMS. Moreover the Appellant has offered to establish a community benefit fund, and to carry out an energy use review for all commercial, industrial and residential properties within the Parish. Overall the impacts of the proposal would not be significant, and it would be an acceptable form of development.

### **The Case for the Council** (Document 5)

*The material points are:*

18. Policy CS20 of the Core Strategy supports renewable energy proposals where there are no unacceptable effects which cannot be mitigated or outweighed by benefits, and the principle of such development is also supported by the NPPF. However the PPG makes it clear that the need for renewable energy does not automatically override environmental protections or the planning concerns of local communities (paragraph 5-007). The WMS is also of significance. Under its transitional provision a proposal for wind energy development can be found acceptable where a local planning authority is satisfied that it has addressed the planning impacts identified by affected local communities and, therefore, has their backing. The Council received 44 letters of support for the proposal, two letters of objection, and a further objection from the Parish Council. Although the Parish Council's objection is not wholly reflected in individual representations, it is considered that it represents the wider views of residents in the area, and that the proposal fails to accord with the provisions of the WMS.
19. From nearby viewpoints the turbine would be a dominant feature in the landscape to the visual detriment of the surrounding area. Two smaller turbines have been permitted at Low Abbey Farm, but the proposal fails to demonstrate that the larger structure would not cause significant harm to the character and appearance of the landscape. The turbine would be seen in the context of the

AONB, and it would be prominent in views from that designated landscape. In consequence the development would be detrimental to the setting of the AONB.

20. The nearest dwellings are the farmhouse at Low Abbey Farm and Low Abbey Cottages, which would be about 320m and 420m respectively from the turbine. Views from the farmhouse would be restricted and the main aspect from the Cottages would not be in the direction of the turbine. Consequently the turbine would not appear overbearing to occupants of these dwellings. Nor would there be any significant shadow flicker effect given the position and distance of the turbine relative to the dwellings. The turbine would be visible from the Settle-Carlisle Railway Conservation Area, but this part of the conservation area is about 700m away and is adjacent to the gypsum works. There would be a negligible effect on the setting of this heritage asset.
21. The Appellant's extended phase 1 habitat report<sup>7</sup>, recommends further survey work in respect of merlins, barn owls and badgers. Accordingly it is considered that the proposal has not established that there would not be any significant detrimental impact on protected species

### **Other Written Representations<sup>8</sup>**

*The material points are:*

22. Kirkby Thore Parish Council objects to the appeal proposal. The Parish Council considers that the turbine would be in a prominent position from where it would be seen over a significant distance. A tall vertical feature with moving blades would stand out in this location and it would detract from the Eden Valley and the North Pennines AONB. The community benefit suggested by the Appellant would not outweigh this negative visual impact, which would adversely affect tourism. The Parish Council represents the community and its decision to object to the planning application was unanimous. This proposal for a turbine at Low Abbey Farm does not have community backing.
23. At appeal stage two individuals expressed support for the proposal. It is argued that there would be no significant adverse effect on the character and appearance of the area or wildlife, and that the proposal would contribute to the provision of sustainable energy and would support the farm business.
24. The North Pennines AONB Partnership objected to the planning application. The turbine would be a prominent feature in views from the AONB, particularly from the North Pennine escarpment. It would be a visually distracting focal point, adding to visual clutter in sweeping panoramic views.
25. Two individual objections were received at application stage. The main concerns raised were the effect on the character and appearance of the area, that the proposal would be contrary to the wishes of the local community, an adverse effect on tourism, the availability of alternative means to generate energy and reduce carbon emissions, and highway safety. Forty-four representations in support of the proposal were received, making similar points to those put forward in response to the appeal (above, para 23).

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<sup>7</sup> Appendix 4c, Document 4.

<sup>8</sup> The representations made at appeal stage are in Document 2.

## **Conditions**

26. The Council submitted a list of suggested conditions (Document 5). These cover the following matters: the plans for determination, duration of planning permission and site restoration, notification of turbine position and the height of construction equipment to the Ministry of Defence, and noise levels. The Appellant has suggested conditions to secure mitigation measures in respect of badgers, and any additional surveys considered necessary in respect of merlins and barn owls (Document 6).

## **Inspector's Appraisal**

*References are made, where appropriate, to sources of material in earlier parts of the report by indicating the relevant paragraph number thus [8].*

### **Main considerations**

27. I have identified the following main considerations in this case:

- (i) The effect of the proposed development on the character and appearance of the area.
- (ii) The effect of the proposed development on protected species.
- (iii) The effect of other considerations on the overall planning balance.

### **Character and appearance**

28. Low Abbey Farm lies on the north-east side of the Eden Valley, above the settlement of Kirkby Thore but at a lower level than the escarpment to the east which is within the North Pennines AONB [8]. This stretch of countryside is identified as intermediate land in the Cumbria Landscape Classification [13]. The Wind Energy SPD refers to intermediate land as comprising a mainly broad scale open landscape of gentle ridges and wide valleys. The fabric is defined by features including walls, hedges and plantation blocks, and there are blocks of woodland to the north and north-east of Low Abbey Farm. Reference is made in the SPD to the relationship with the AONB escarpment, which forms a large scale backdrop to and affords prospects of the intermediate land. Although the landscape type is described as being largely unaffected by modern development pressures, the SPD does note the presence of occasional vertical man-made structures including pylons. A short distance to the south east of the intended position of the turbine is a telecommunications mast, and a distinctive feature in the locality is the gypsum works with its tall chimneys, which is about 700m to the south-west. The turbine would be erected close to the top of a low ridge which rises to the north-east of the farmstead [7]. The approved location plan for the permitted scheme shows one turbine in a similar position and the other nearby to the south-east [9]. That planning permission was granted to the owner of Low Abbey Farm. Although the current proposal is being pursued by a different party, it also has an objective of providing electricity to the farm [10]. Consequently, if the appeal is dismissed, I consider that there is a reasonable likelihood of the extant permission being implemented as an alternative scheme.

29. The overall sensitivity of the intermediate landscape type is identified in the SPD as moderate. The SPD also makes an assessment of the potential of landscape types to accommodate wind energy development. In the case of intermediate land, its capacity is assessed as moderate [13]. The capacity of neighbouring landscape types should also be considered. Land to the east is part of the upland fringes landscape type. Here the capacity is given as low/ moderate, and the same scale of development is identified as appropriate. The broad scale and sweep of the band of countryside between the AONB escarpment and the lower land in the Eden Valley would facilitate the assimilation of the turbine, and I consider that the development would have a negligible effect on the overall character of the intermediate and upland fringes landscapes. The site is about 900m from the boundary of the AONB. The escarpment rises beyond that boundary, and, given the distance from this feature and the lower level of the

site, the effect on the higher land in the AONB would similarly be negligible. In the vicinity of the site, the sensitivity of the landscape is reduced by the presence of the contemporary buildings at Low Abbey Farm, the range of utilitarian structures at the gypsum works and the nearby telecommunications mast. The erection of a turbine with an upper blade tip height of 45m would introduce a marked change into the area around the farmstead, but bearing in mind the influence of existing development and the prospect of the erection of two, albeit smaller, turbines, I consider that the proposal would cause only minor localised harm to the landscape of the area around Low Abbey Farm.

30. The Appellant submitted an LVA in which 13 viewpoints towards the appeal site are assessed. Subsequently, in response to an objection from the North Pennines AONB Partnership, visual information was submitted in respect of a number of additional viewpoints from elevated positions on the escarpment to the east. I included most of the Appellant's viewpoints, or positions close to them, in my programme of site visits. A public footpath runs about 550m to the south-west of the intended position of the turbine. In close views from the footpath (viewpoints 11 & 12 – VPs11 & 12), the turbine would be an imposing structure, seen in an elevated position rising above the skyline. A similar view would be obtained from the access road to the farm by Low Abbey Cottages (VP4). However the main aspect of these dwellings does not face towards the position proposed for the turbine. I anticipate that, if erected, the permitted turbines would also be apparent from the access road by Low Abbey Cottages and from positions on the nearby footpath. Although their overall height would only be about half that of the appeal proposal, I consider that the current scheme would result in a less cluttered appearance than that resulting from the presence of two turbines together with the telecommunications mast.
31. There are views towards the appeal site from the A66(T) and its vicinity. From the northern edge of Kirkby Thore, close to the school (VP6), the turbine would be about 1.9km away. It would be seen in the foreground of the AONB escarpment, but distance would lessen its visual effect, and from here and nearby positions along Priest Lane the eye is drawn by the extent of the gypsum works, which would remain the dominant feature to the north-east. Views from the A66(T) itself are further away: VPs 7 & additional VP2 are about 2.9km and 4.3km respectively from the site, and due to the combination of distance and intervening tree cover the proposed turbine would not appear as a distinctive feature from these directions. It would be similarly indistinct for these reasons in views from the road to the south of Long Marton (VP9) and from the edge of Temple Sowerby (VP8). There are a few smaller turbines to the north and north-east of the appeal site. The wire frame drawing from VP8 indicates the position of three of these turbines, but given their smaller size and greater distance from the vantage point they are not readily discernible, and I do not consider that there would be an adverse cumulative effect from here or other locations in this area.
32. From elevated positions on the AONB escarpment, there are extensive views across the Eden valley: examples are shown in additional VPs 3-6. The importance of such views is referred to in the SPD and the AONB Planning Guidelines [13]. An extensive area of access land includes Knock Pike and Dufton Pike (additional VPS 3 & 6), and the Pennine Way national trail ascends between these hills. Although the appeal site is about 900m from the boundary of the AONB, the distance from Knock Pike is about 3.6km and viewpoints at

Dufton Pike, Knock Ore Valley and Great Dun Fell are further away. The mast could be discerned from positions on the escarpment, but it would be modest in scale from this distance and height, appearing as one of a number of man-made features scattered across the expanse of the landscape. In this case, I do not consider that the turbine would be unduly prominent nor detract from the setting of the AONB in views over the surrounding countryside.

33. I have found that the appeal proposal would have a negligible effect on the overall character of the intermediate landscape, that it would cause only minor localised harm to the landscape of the area around Low Abbey Farm, and that it would not have a harmful effect on the setting of the AONB. It would be an imposing feature from nearby viewpoints, but there would be a less cluttered appearance on the low ridge above the farmstead than if the two smaller turbines were erected. It is, however, important to ensure that the extant permission could not be implemented. The planning obligation would secure this objective and is necessary to make the development acceptable in planning terms: it would also satisfy the other statutory tests. I conclude that the proposed development would cause only minor localised harm to the character and appearance of the area, but in consequence there would be conflict with Policy CS18 of the Core Strategy, which requires that new development should at least protect the rural landscape.

### ***Protected species***

34. The Council argues that it has not been demonstrated that there would be no adverse effect on three protected species, namely badger, barn owl and merlin. The Appellant submitted an extended phase 1 habitat report in conjunction with the planning application, which made reference to these species [21]. Whilst badgers are present in the locality, no evidence of activity was found within the survey area (400m from the proposed position of the turbine and 100m on each side of the line of the access track). The report acknowledged that badgers are less active in January, when the survey was undertaken, but subject to mitigation measures to prevent entrapment in excavations, no significant impact is predicted. Mitigation could be the subject of a condition.
35. Insofar as the merlin and barn owl are concerned, the report refers to a lack of information about their potential activity within and adjacent to the appeal site. Both species are noted as present in the Appleby Fells Site of Special Scientific Interest (SSSI), and there is a breeding population of merlins in the Moor House & Cross Fell SSSI: both SSSIs are about 4km from the intended position of the turbine<sup>9</sup>. Merlins will forage within about 5km of their nests and barn owls within about 3-5km<sup>10</sup>. Consequently, there is potential for these birds to travel across the appeal site. A data search was commissioned from the Cumbria Biological Data Centre: from the details of bird species provided, three were considered to be sensitive to wind turbine developments due to their higher collision risk, but these did not include merlin and barn owl. The species identified as sensitive to wind turbine developments were grey heron, red kite and lapwing: however, given the nature of the land where the turbine would be erected and the absence of any recent records of red kite, no significant impacts on these bird species are anticipated. The only other turbines identified which are operational or have

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<sup>9</sup> Extended phase 1 habitat report, table 4.1 (Document 4, Appendix 4c).

<sup>10</sup> Extended phase 1 habitat report, paras 5.11-5.12 (Document 4, Appendix 4c).



planning permission in the vicinity of the appeal site are the two smaller turbines at Low Abbey Farm. The purpose of the planning obligation is to prevent their implementation in addition to the appeal proposal. Consequently erection of the single turbine now proposed would not result in a barrier effect to birds commuting in the area. On the information before me, I conclude that the proposed development would not have a detrimental effect on the local populations of badger, merlin and barn owl, and in this respect it would not conflict with Policy CS16 of the Core Strategy.

### ***Other considerations***

36. The proposed turbine is expected to produce about 500,00kWh of electricity annually, enabling Low Abbey Farm to reduce its energy costs and contributing to diversification of the business through an additional income source [10]. It is argued that these financial benefits would help to ensure a stable future for the farm, with the continued employment of local people. These benefits would align with paragraph 28 of the NPPF, which encourages the development and diversification of agricultural businesses, and they merit significant weight.
37. I also attach significant weight to the contribution of the proposal, which would produce electricity from a renewable source, to the lowering of carbon outputs. This benefit would support objectives of the NPPF to secure radical reductions in greenhouse gas emissions (paragraph 93) and to support the move to a low carbon future (paragraph 95).
38. The Appellant has proposed that a community benefit fund be established. At application stage it was suggested that £1,250 be donated each year for the lifetime of the project to be used for environmental and social initiatives put forward by the Parish Council. Subsequently the Appellant offered to carry out an energy use review for properties within the Parish and to identify opportunities for community-based savings [17]. These measures are not included in the planning obligation, and there would be no means to ensure their provision. Accordingly they carry no weight.
39. The Parish Council and an individual objector have expressed concern that the proposal would have a detrimental effect on tourism which is important to the Cumbrian economy [22, 25]. Given my finding that the proposal would cause only minor localised harm to the character and appearance of the area, I do not consider that there would be a consequential adverse effect on tourism. Another individual objector has suggested that construction traffic would reduce highway safety [25], but I note that the Highway Authority has raised no objection to the development.

### ***Conditions***

40. I have already referred to a condition requiring mitigation measures in respect of badgers. Given my finding that there would be no detrimental effect on merlins and barn owls, a condition requiring additional surveys in respect of these species would be unnecessary. To safeguard the character and appearance of the area, conditions would be required concerning decommissioning of the installation at the end of its operational life, the earlier removal of the turbine if it does not produce electricity for a period of three months, and subsequent site restoration. The turbine is expected to have an operational life of 25 years: a condition limiting the duration of planning permission to 25 years would, therefore, be

appropriate, and if the turbine were to be decommissioned earlier a condition requiring removal after three months' inactivity should take effect. A condition specifying noise limits is necessary to protect the living conditions of local residents. The condition suggested by the Council refers to any nearby dwelling, and fails to meet the test of precision in paragraph 21a-004 of the PPG. I note that the Appellant's noise impact assessment identifies No 1 Low Abbey Cottages as the nearest non-associated dwelling to the position of the turbine<sup>11</sup>. An additional condition requiring assessment by a noise consultant in the event of a complaint at a dwelling is also imprecise, and in any event a condition imposing noise limits at the nearest non-associated dwelling should be sufficient to safeguard living conditions in the locality in the case of a proposal for a single turbine. The notification of construction details and the position of the turbine are necessary to ensure air safety. Finally, it would be important for the development to be carried out in accordance with the specified plans in the interest of clarity.

## Conclusions

41. The turbine would not have a detrimental effect on protected species and in this respect it would not conflict with Policy CS16 of the Core Strategy. It would cause only minor localised harm to the character and appearance of the area, but in consequence there would be conflict with Policy CS18. I also note that paragraph 5-007 of the PPG points out that the need for renewable or low carbon energy does not automatically override environmental protections. However the proposal would bring economic benefits to Low Abbey Farm, in addition to contributing to wider policy objectives to reduce reliance on non-renewable sources of energy, and these are matters which carry significant weight. Moreover Policy CS20 of the Core Strategy supports renewable energy proposals where there are no significant unacceptable effects which cannot be mitigated or are not outweighed by the need for renewable energy development or the wider environmental, social and economic benefits that the scheme may bring, and that is the situation in this case. As the turbine would meet a local infrastructure need, there is support in principle from Policy NE1 of the Local Plan. I consider that there is also compliance with the criteria of the policy: the siting at Low Abbey Farm minimises its impact, the design and materials are appropriate for a turbine in this location, and I do not consider that an unacceptable level of harm would be caused to any interests of acknowledged importance. Although there is conflict with Policy CS18, Policy CS20 explains that adverse effects should not necessarily preclude renewable energy proposals from proceeding. Given that there would be only minor localised harm to the character and appearance of the area, the conflict with Policy CS18 would be limited, and I conclude that the proposal accords with the Development Plan taken as a whole.
42. I have attached significant weight to the WMS, which is an up-to-date expression of Government policy. I note that the Council considers that the proposal fails to address the planning impacts identified by affected local communities and fails to have their backing. The Parish Council has objected to the proposal, and there were two individual objections at application stage, with a principal concern being

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<sup>11</sup> The Council's report refers to Low Abbey Cottages as being within the ownership of the Applicant. As ownership certificate B has been completed at both application and appeal stage, this may be intended to be a reference to Low Abbey Farm. In any event the noise impact assessment specifically states that No 1 Low Abbey Cottages has no financial interest in the proposal (Document 4, Appendix 4d, table 5.1).

the effect on the character and appearance of the area. On the other hand, there were 44 individual expressions of support from members of the local community at application stage and two in respect of the appeal, with reference being made to the contribution of the scheme to farm diversification and the generation of energy from renewable sources. Considering the scheme as a whole, which includes the commitment not to implement the extant permission for two turbines, the erection of the single turbine now proposed would avoid any serious landscape or visual harm, and no material harm would be associated with other matters raised. Having regard to the transitional provision, I consider that the proposal addresses the planning impacts identified by the local community. Nonetheless, there would be some harm to the character and appearance of the area, and it is open to the Secretary of State to reach a different view on the application of the transitional provision.

43. I conclude that the proposal accords with the Development Plan taken as a whole, and that, in any event, the minor localised harm to the character and appearance of the area would be outweighed by the economic benefit to Low Abbey Farm, and the contribution of the proposal to wider policy objectives to reduce reliance on non-renewable sources of energy.

### **Recommendation**

44. I recommend that the appeal be allowed and that planning permission be granted subject to the conditions in the Annex to this report.

*Richard Clegg*

INSPECTOR

## **SCHEDULE OF SUGGESTED CONDITIONS**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: A3 1:20000 location plan, A2 site plan with route of access roadway ref 100785, A3 site plan ref 100785 and the turbine elevations on drawing ref 250-00-30-300.
- 3) The permission hereby granted shall endure for a period of 25 years from the date when electricity is first supplied from the wind turbine (the First Export Date). Written confirmation of the First Export Date shall be provided to the local planning authority no later than one calendar month after that event.
- 4) Not later than six months before the end of this permission, or prior to the removal of the turbine should this occur sooner, a decommissioning and site restoration scheme shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be fully implemented within six months of the removal of the turbine.
- 5) If the turbine hereby permitted ceases to operate for a continuous period of three months, it shall be dismantled and removed, and the site shall be restored, all in accordance with a scheme and programme which shall be submitted to and approved in writing by the local planning authority within three months of the end of that three months period.
- 6) The following noise limits shall not be exceeded when the wind turbine is in operation:
  - a) Day time limits (0700-2300) - The LA90 (10 minutes) specific noise level shall not exceed 35dB(A) at a wind speed of 10m/s at 10m height or the prevailing background noise level plus 5dB(A), whichever is the greater, as measured 3.5m from the façade of No 1 Low Abbey Cottages.
  - b) Night time noise limits (2300-0700) - The LA90 (10 minutes) specific noise level shall not exceed 43dB(A) at a wind speed of 10m/s at 10m height or the prevailing background noise level plus 5dB(A), whichever is the greater, as measured 3.5m from the façade of No 1 Low Abbey Cottages.
- 7) Prior to the erection of the wind turbine, the developer shall provide written confirmation to the Local Planning Authority and the Ministry of Defence of the proposed dates for commencement and completion of construction work, the maximum height of construction equipment, and the position of the turbine in latitude and longitude.
- 8) No development shall take place until a scheme of badger mitigation measures, including a programme for implementation, has been submitted to and approved by the local planning authority. The mitigation measures shall be implemented in accordance with the approved scheme and programme.

## **ATTENDANCE AT SITE VISIT<sup>12</sup>**

### **FOR THE APPELLANT:**

Mr T Lawler	Urban Wind Ltd.
Mr D Cannon	Low Abbey Farm.

### **FOR THE LOCAL PLANNING AUTHORITY:**

Mr D Cox	Planning Officer.
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## **DOCUMENTS**

- 1 Notification of the appeal.
- 2 Correspondence received in response to Document 1.
- 3 The Appellant's statement.
- 4 Appendices to Document 3<sup>13</sup>.
- 5 The Council's statement.
- 6 The Appellant's response to Document 5.
- 7 Planning permission ref 13/0761, application and supporting material for the erection of two wind turbines at Low Abbey Farm.
- 8 Planning obligation relating to Document 7 and copy of the register of title of Low Abbey Farm.

## **PLANS**

- A1 Proposed turbine - A3 1:20000 location plan.
- A2 Proposed turbine - A2 site plan with route of access roadway ref 100785.
- A3 Proposed turbine - A3 site plan ref 100785.
- A4 Proposed turbine - elevations on drawing ref 250-00-30-300.
- B1 Permitted turbines – location plan dated November 2013.
- B2 Permitted turbines – site plan dated November 2013.
- B3 Permitted turbines – elevations on drawing entitled ASSY 442SR TURBINE 18m TOWER.

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<sup>12</sup> The main parties were only represented at the appeal site. I visited several other locations in the area on an unaccompanied basis

<sup>13</sup> Appendices 1 & 2 include Plans A1-A4.



## **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 for permission 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**

With the permission of the High Court 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. 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 for leave under this section must be made within six weeks from the day after the date of the decision.

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### **SECTION 3: AWARDS OF COSTS**

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### **SECTION 4: 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 Inspector's report of the inquiry or hearing within 6 weeks of the day after 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.