



Department for
Communities and
Local Government

Mr J Harley
1 Melmount Park
Strabane
County Tyrone
BT82 9SU

Our Ref: APP/G0908/A/14/2224912

24 May 2016

Dear Mr Harley

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY MR STEVEN TODHUNTER
AT BLACK BROW FARM, GREAT ORTON, CARLISLE, CUMBRIA
APPLICATION REFERENCE 2/2014/0460**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Brian Cook BA (Hons) DipTP MRTPI, who made a site visit on 15 April 2015 into your client's appeal against the decision of the Allerdale Borough Council (the Council) to refuse planning permission for the erection of 1 No. 50m (hub) high, 74m (blade tip height) wind turbine plus ancillary development on land at Black Brow Farm, Great Orton, Carlisle, Cumbria in accordance with application reference 2/2014/0460, dated 23 June 2014.
2. On 30 September 2015 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 it relates to proposals which raise important or novel issues of development control and/or legal difficulties.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed and planning permission be granted subject to conditions. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and recommendation, allows the appeal and grants

planning permission subject to conditions. 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 deciding this 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.
5. In this case the adopted development plan for the area comprises Allerdale Local Plan (Part 1) adopted 2014. The Secretary of State considers that the development plan policies of most relevance to this appeal are those identified by the Inspector at IR12-13.
6. The Secretary of State has had regard to his Written Ministerial Statement (WMS) of 18 June 2015. The statement explained that the Secretary of State was setting out new considerations to be applied to proposed wind energy development. Subject to a transitional provision, the statement explained that the new considerations had immediate effect. Given its relevance to this case, the Secretary of State attaches substantial weight to the statement as the most recent expression of government planning policy for onshore wind development.
7. The statement includes a transitional provision to apply 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 application proposal the Secretary of State has considered the representations reported in the Inspector's report.
8. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ("the Framework") and the planning guidance published in March 2014; the National Policy Statements (NPS) for Energy (EN-1) and Renewable Energy (EN-3); the Community Infrastructure Levy (CIL) Regulations 2010 as amended and Planning Practice Guidance for Renewable and Low Carbon Energy (2013). The Secretary of State has also taken into account the Written Ministerial Statements on renewable energy published in June 2013 by the Secretaries of State for Energy and Climate Change and for Communities and Local Government and the Written Ministerial Statement on renewable energy published by the Secretary of State for Communities and Local Government in April 2014.

Main Issues

9. The Secretary of State considers that the main issues in this case are those identified by the Inspector at IR54.

Compliance with the development plan

10. The Secretary of State agrees with the Inspector's analysis that the Framework is supportive of renewable energy projects and that applications should be approved if impacts are, or can be made, acceptable, and that the adopted Allerdale Local Plan (Part 1) mirrors this support in principle. He notes that the Inspector has had due regard to the DCLG Planning Practice Guidance for Renewable and Low Carbon Energy (2013) which emphasises that protecting local amenity is an important consideration which should be given proper weight in planning decisions. He also agrees with the Inspector's conclusion at

IR64 that the development would not have a significant adverse impact on the location in relation to visual impact and impact on the character and sensitivity of the surrounding landscape, and would therefore not conflict with the key development plan policies in this case which are LP policies S19 (a)(ii), S32 and S33.

The effect on the landscape character and visual appearance of the area and cumulative impacts

11. In respect of the scheme's impact on landscape character and appearance, for the reasons given by the Inspector at IR55-63, the Secretary of State agrees that the area is characterised by wind turbines (IR58). The appeal site is within the Solway Basin national landscape character area (LCA) and with the County defined Ridge and Valley LCA and the SPD considers that the LCA has a moderate capacity for turbine development although large groups (between 6 and 9) would be the exception (IR58). The Secretary of State acknowledges the appeal proposal would continue a line of six wind turbines of similar size and design immediately to the west and there is a further turbine a little way to the north.
12. The Secretary of State agrees with the Inspector that the effect of the appeal proposal should be considered cumulatively with the others in the group of which it would become part. For the reasons given by the Inspector at IR56-59 he agrees that, cumulatively, the addition of one further turbine that would read as part of the existing group would not have any material effect on the landscape character of the wider LCA (IR59). In terms of visual impact and impact on the character and sensitivity of the surrounding landscape, the Secretary of State concurs with the Inspector's view (IR63) that the impact will be low, for the reasons set out by the Inspector at IR60-63.

Living conditions

13. The Secretary of State agrees with the Inspector for the reasons given at IR65 -71 that there would be no more than a marginal increase in noise over current highest levels and that the proposal would not harm the living conditions of nearby residents.

Benefits of proposed development

14. The Secretary of State agrees that the proposed wind turbine would assist in providing a valuable contribution to cutting greenhouse gas emissions and that this is a material consideration that weighs in favour of the development (IR81).

Written Ministerial Statement (WMS) of 18 June 2015

15. Turning to the consistency with the WMS which concerns wind farms, residents have raised concerns in relation to harm to residential amenity and noise affecting health. The Secretary of State agrees with the Inspector's analysis at IR65-71 and conclusion at IR72 that the appeal proposal either on its own or cumulatively with others would not harm the living conditions of nearby residents, nor would it conflict with LP policies S19 and S32. As such he agrees with the Inspector that the planning concerns of the residents have been addressed in the circumstances of this case. Accordingly, he considers that the transitional provision within the WMS is satisfied.

Other matters

16. For the reasons given at IR74-77 the Secretary of State agrees that planning permission should not be refused because of its position in relation to the bridleway. The Secretary of State further agrees with the Inspector, for the reasons given at IR78, that otherwise acceptable renewable energy developments should not be ruled out through inflexible rules on

buffer zones or separation distances. For the reasons given at IR79, the Secretary of State also agrees that there is no evidence that the proposal would have an adverse impact by way of shadow flicker, effects on wildlife or interference with radar, telecommunications reception or aviation. The Secretary of State concludes, for the reasons given at IR80, that there would be no harm to the significance of any heritage asset as a result of the appeal proposal.

Balance and conclusions

17. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. For the reasons set out in this letter, the Secretary of State concludes that the appeal proposal would be in accordance with the development plan. For the reasons given at paragraph 15 above he further concludes that the transitional provision of the WMS is satisfied. The Secretary of State also concludes that the proposed wind turbine would make a contribution to the reduction in greenhouse gas emissions, to which he gives significant weight.
18. Having considered the material considerations in this case, the Secretary of State does not consider that the proposal should be determined otherwise than in accordance with the development plan. Given this, the Secretary of State agrees with the Inspector's overall recommendation that the appeal should be allowed.

Conditions

19. The Secretary of State has had regard to the Inspector's remarks on conditions at IR42, the suggested conditions in the Schedule attached to the IR, paragraphs 203 and 206 of the Framework, and the guidance. He is satisfied that the proposed conditions are reasonable and necessary and meet the tests of paragraph 206 of the Framework.

Formal Decision

20. Accordingly, for the reasons given above the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission for the erection of 1 No. 50m (hub) high, 74m (blade tip height) wind turbine plus ancillary development on land at Black Brow Farm, Great Orton, Carlisle, Cumbria in accordance with application reference 2/2014/0460, dated 23 June 2014, subject to the conditions set out at Annex A to this letter.
21. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
22. 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

23. 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 six weeks from the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

24. A copy of this letter has been sent to Allerdale Borough Council. A letter of notification has been sent to all other parties who asked to be informed of the decision.

Yours sincerely

Phil Barber

Phil Barber

Authorised by Secretary of State to sign in that behalf

Annex A

SCHEDULE OF RECOMMENDED 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: 1 Landscape and routeways; T723-PLAN-LAY; T723-PLAN-LOC1; T723-PLAN-LOC2; T-SPEC-DETAIL1; and T-SPEC-DETAIL3.
- 3) No development shall take place until a scheme for the removal of the development hereby permitted and the restoration of the land has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved.
- 4) The development hereby permitted shall be removed and the land restored in accordance with the scheme of work approved in accordance with condition 3 not later than 26 years from the date that electricity from the development is first connected to the national grid OR within 12 months of the permanent cessation of electricity generation at the site whichever is the sooner. The dates of first connection to the national grid and the permanent cessation of electricity generation at the site shall be notified to the local planning authority in writing within 7 working days of the date occurring. For the avoidance of doubt if the turbine ceases to be operational for a continuous period of six months other than as may be required by condition 12 that would be 'permanent cessation of electricity generation' for the purposes of this condition.
- 5) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i) The timing of works;
 - ii) Fuel and chemical storage;
 - iii) Identification of all waste streams associated with the works and their appropriate management;
 - iv) Identification of environmental management mechanisms during the pre-construction, construction and decommissioning and emergency and pollution procedures and response plans;
 - v) Track construction including the laying of underground cables along side the tracks, materials proposed and track reinstatement;
 - vi) The erection of protective fencing at least 20m from any watercourse;
 - vii) The removal and restoration of all temporary working areas and compounds used during the construction phase.
- 6) No development shall take place, including any works of demolition, until a Construction Traffic Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i) Details of the construction of the site access;
 - ii) Details of any accommodation works and a programme for their removal and the reinstatement of any street furniture and verges along the route to the construction site;
 - iii) Details of road improvements/repairs that may be necessary as a consequence of the traffic associated with development;
 - iv) The parking of vehicles of site operatives and visitors;
 - v) Loading and unloading of plant and materials;

- vi) Construction traffic routing including scheduling and timing of movements, details of abnormal load escorts, temporary warning signs for vehicle drivers and pedestrians and management of junctions and crossings of highways and footpaths; and
vii) Full dimensions of the turbine and associated components.
- 7) No development shall take place until details of the model, colour and finish of the development hereby approved have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 8) No development shall take place until a written scheme has been submitted to and approved in writing by the local planning authority setting out a protocol and methodology for dealing with the assessment of electromagnetic interference in the event of a complaint being received by the local planning authority. The protocol and methodology shall include remedial measures to be taken to mitigate any electromagnetic interference. Operation of the development hereby permitted shall be carried out in accordance with the approved scheme.
- 9) No development shall take place until a written scheme has been submitted to and approved in writing by the local planning authority setting out a protocol and methodology for dealing with the assessment of shadow flicker in the event of a complaint being received by the local planning authority. The protocol and methodology shall include remedial measures to be taken to mitigate any identified occurrence of shadow flicker. Operation of the development hereby permitted shall be carried out in accordance with the approved scheme.
- 10) No development shall take place until written confirmation of the proposed date of commencement of the erection of the approved wind turbine, the expected date of completion of construction, the height above ground level of the highest structure and the position in latitude and longitude of the wind turbine hereby permitted has been submitted in writing to the local planning authority.
- 11) The level of noise emissions from the development hereby permitted when measured in free field conditions at the boundary of the nearest noise sensitive receptor which lawfully exists or has planning permission for construction at the date of this planning permission, or measured closer to the wind turbine and calculated out to the receptor in accordance with a methodology previously approved in writing by the local planning authority, shall not exceed 35dB LA90,10 min up to wind speeds of 10ms⁻¹ measured at a height of 10m above ground level at a specified location near to the wind turbine which has been previously approved in writing by the local planning authority.
- 12) In the event of a complaint being received in writing by the local planning authority alleging noise nuisance at a residential property within 3km of the application site due to the wind turbine hereby approved, the wind turbine operator shall, at its expense, employ a suitably qualified person approved by the local planning authority to undertake an assessment of the noise emissions from the wind turbine at the affected property or properties. The results of the assessment shall be provided in writing to the local planning authority within three months of the wind turbine operator first being notified of the complaint. If the assessment confirms a breach of condition 11 the operation of the wind turbine shall cease and shall not recommence until the steps to be taken to ensure compliance with condition 11 have been submitted to and approved in writing by the local planning authority.

END OF SCHEDULE OF RECOMMENDED CONDITIONS

Report to the Secretary of State for Communities and Local Government

by Brian Cook BA (Hons) DipTP MRTPI

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

Date: 30 November 2015

THE TOWN AND COUNTRY PLANNING ACT 1990

ALLERDALE BOROUGH COUNCIL

APPEAL BY

MR STEVEN TODHUNTER

Site visit made on 15 April 2015

Land to the east of Black Brow Farm, Great Orton, Carlisle, Cumbria

File Ref: APP/G0908/A/14/2224912

File Ref: APP/G0908/A/14/2224912

Land to the east of Black Brow Farm, Great Orton, Carlisle, Cumbria

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Steven Todhunter against the decision of Allerdale Borough Council.
- The application Ref 2/2014/0460, dated 23 June 2014, was refused by notice dated 14 August 2014.
- The development proposed is erection of a single wind turbine 79.6m to blade tip height, two metering units and an access track.

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

Procedural Matters

1. There are two planning application forms on the appeal file neither of which gives the full application site address. The declaration is only signed on one. I have taken the description of the proposal given in the summary details above from that application form. However, the description given on the Council's decision notice states that the height would be 74m to blade tip height and that is consistent with the application drawings. That is therefore the basis on which I have considered the appeal.
2. Various parties to this appeal refer to and include passages from documents such as the Cumbria Landscape Character Guidance and Toolkit, the Cumbria Joint Wind Energy Supplementary Planning Document (SPD) and other appeal decisions. None of these documents have been supplied in evidence and the context for the various passages quoted is not available to me. I can therefore give only limited weight to this evidence in framing my recommendation as can the Secretary of State in reaching his decision.
3. On 24 April 2015 the Planning Inspectorate wrote to the main parties requesting comments on two conditions that could resolve some ambiguities and omissions in those suggested by the Council. The appellant responded by email dated 27 April and the Council replied similarly on 29 April. I have taken the views expressed into account in reaching my recommendation as to the conditions that might be imposed on any grant of planning permission.
4. The Planning Inspectorate wrote again to the parties on 1 July 2015 inviting comments on the effects for the appeal of the Written Ministerial Statement (WMS) made by the Secretary of State on 18 June 2015 and the consequential amendments to the Planning Practice Guidance (PPG) on renewable and low carbon energy. The appellant responded on 13 and 24 July and the Council on 3 July. I have had regard to all these responses in coming to my conclusions.
5. The Secretary of State has determined a number of appeals since issuing the WMS, including one in respect of land near Stone Park Farm, Pingle Lane, Stone, Staffordshire (ref: APP/Y3425/A/14/2212769). I have not placed explicit reliance on this or any of the other decisions in making my recommendation and have not therefore sought the further views of the parties.
6. The appeal was recovered by the Secretary of State for his determination on 30 September 2015. The reason for recovery was that the appeal relates to

proposals which raise important or novel issues of development control and/or legal difficulties.

The Site and Surroundings

7. The appeal site is farmland with a typical field and hedge pattern interspersed by mature trees. It lies to the east of Wiggonby and to the south west of Great Orton. In the wider area are isolated dwellings and farms interspersed among hamlets and villages. Included among these are the properties at Black Brow which is a short distance to the west of the proposed turbine. The site is between the Solway Area of Outstanding Natural Beauty (AONB), some 7km to the north and the Lake District National Park (NP) boundary about 11km to the south.
8. In the immediate vicinity is a line of six wind turbines at the Orton airfield wind farm and a single turbine at Midtown Farm to the north. There is also a line of power cables and supporting pylons to the south of Wiggonby Road.

Planning Policy

9. The appellant refers to the need for a surge of investment in new energy sources including 33GW of new renewable energy capacity drawing attention to national policy statement (NPS) EN-3 which specifically relates to renewable energy infrastructure. Paragraph 3 of the National Planning Policy Framework (the Framework) confirms that NPSs form part of the overall framework for national planning policy and are a material consideration in decisions on planning applications.
10. The Framework itself is supportive of renewable energy infrastructure. Encouraging the use of renewable resources for example by the development of renewable energy is one of the 12 core planning principles set out in Framework paragraph 17. The Secretary of State will be very familiar with section 10 of the Framework and paragraphs 93, 97 and 98 in particular.
11. The planning application was prepared and submitted before the Allerdale Local Plan (part 1) (LP) was adopted in July 2014. Only three LP policies are cited in the reasons for refusal and the text of these only has been provided in evidence.
12. Policy S19 addresses renewable energy and low carbon technologies. It states that the Council will seek to promote and encourage the development of renewable and low carbon energy resources given the significant wider environmental, community and economic benefits. Proposals where impacts either in isolation or cumulatively are or can be made acceptable will be permitted. A positive view will be taken where a list of criteria are met. These cover issues such as the amenity of local residents from such as noise and shadow flicker; landscape character and visual impact; effects on protected species and habitats; restoration proposals and benefits to the local economy and community. Criterion (a)(ii) states (that the Council will take a positive view where proposals either in isolation or cumulatively) 'do not have significant adverse impact on the location in relation to visual impact and impact on the character and sensitivity of the surrounding landscape'.
13. LP policies S32 and S33 respectively seek to safeguard amenity and protect, conserve and, wherever possible, enhance landscape character and local

distinctiveness of the Plan area. Each lists a number of familiar criteria and both support policy S19.

Planning History

14. The Council issued a screening opinion on 11 November 2013 under the Town and Country Planning (Environmental Impact Assessment) (England) Regulations 2011 that the proposed development did not need to be supported by an environmental statement.
15. The Council's planning application report states that this decision was subject to challenge but was upheld by the Secretary of State. No further detail is available.

The Proposals

16. The development would comprise the erection of an Enercon E48 wind turbine with an anticipated output of 500Kw. Energy from wind would be generated for a period of 25 years. The turbine would comprise a tapered tubular tower supporting a nacelle containing the generator and gearbox to which three blades would be attached. The hub height would be 50m and each blade would be 24m long. The overall height would thus be 74m.
17. The transformer would be within the tower base while two small container units located adjacent to the turbine would house the switchgear and a high voltage meter room for Electricity North West who operate and maintain the local network. They have confirmed a grid connection for the turbine and all connection cables would be via underground ducting.
18. The planning application was supported by a number of reports including a planning statement and environmental report, and landscape and visual assessment and an 'Assessment of Environmental Noise' report by ACIA Engineering Acoustics (the ACIA report).

The Case for the appellant

19. With respect to the impact that the appeal development would have on the landscape the appellant disagrees with the Council's conclusion and notes that this view has been based on the large number of representations received rather than any independent professional planning assessment.
20. The location of the appeal proposal was chosen following a careful analysis of other refused schemes in the locality. With reference to a number of specific planning appeal decisions the appellant considers that a clear and unambiguous message has emerged to which he has responded. The appeal proposal has been sited with regular spacing, uniform height, linear arrangement and consistent form with the existing Orton airfield wind farm so as to present a planned and coherent overall development.
21. In focussing as it does on the detailed closer range view the Council has sought to undermine this approach. Given the scale of the turbines such an assessment is irrelevant. The visual coherence, linear arrangement, regular spacing and consistent form can only be properly assessed from a more distant perspective. The local landscape can only absorb an additional turbine if it is located at the appeal site chosen.

22. Turning to the effect on residential amenity from all but noise, the Orton airfield wind farm already compromises the residential amenities of those adjoining residents as evidenced by the Residential Impact Assessment. The introduction of an additional single wind turbine into the vista of the existing turbines is not considered to constitute an unacceptable impact on residential amenities. In this respect the statement in LP paragraph 225 justifying policy S19 that a minimum separation distance of 800m is expected between the turbine (where, as here, the blade-tip height would be over 25m) and residential properties must be read flexibly. If it was intended to be mandatory the word "required" would have been used.
23. With regard to adverse noise impact, the Council's position has shifted and does not support the reason for refusal. Initially the Environmental Protection Officer raised no concerns and recommended a condition be attached that noise levels at the nearest residential property should not exceed a simplified noise limit of 35dB(A). Later she required information about the nearest non-financially connected property; confirmation that the distance calculated for the predicted noise levels for the proposed turbine is the actual distance from the residential properties within Table 8 of the appellant's noise report; and whether account had been taken of the wind farm at Orton Grange.
24. All of this information was either in the noise report or known to the Council. The Orton Grange wind turbine is over 3km from the appeal proposal and is not considered to influence cumulative noise levels.
25. In the 13 July response to the WMS consultation an analysis of the responses received by the Council when it consulted upon the application was presented. Of the 25 reviewed two were from lobby groups. A further eight came from three properties. A distance of 2km from the proposed turbine includes the villages of Wiggonby, Great Orton, Orton Rigg and Baldwinholme. This is considered to represent the local community and fewer than 40% of the representations received came from this area. The Council issued 180 local neighbourhood household notifications. It can be assumed that these would have been distributed within what the Council considered to be the affected local community. The response rate was just over 5%. Finally, the views of the local community can be gauged by the response made by the parish councils. Aikton Parish Council within whose area the appeal site lies had no objection to the proposal. Orton Parish Council objected. The two parish populations are about the same at 450 persons or so. Aikton is within Allerdale, Orton is within the administrative area of Carlisle. The Parish Council in whose area the scheme would be located supports the proposal.
26. The further response of 24 July reiterated comments on the merits of the Council's case. It did however include a petition with 52 signatures supporting the appeal proposal.

The Case for the Council

27. The Council relies on the officer report as representing its case. This is set out under various headings.
28. Considering **landscape character** the area around the appeal site is one of rolling pasture land interspersed by mature hedgerows. Built structures relate to farm holdings and isolated dwellings although the small settlements of Wiggonby

and Great Orton are nearby. The immediate area is influenced by man-made structures to a degree with the Orton wind farm, the single turbine at Midtown Farm and a line of relatively large pylons to the south. The appeal site is sufficient distance from both the AONB and the NP for there to be no significant adverse impact on either.

29. The Cumbria Wind Energy SPD indicates that this landscape character area has a moderate landscape capacity for turbine development-‘up to a small group (3-5 turbines), exceptionally a large group (6-9 turbines)’.
30. Attempts have been made to relate the appeal proposal to the adjacent wind farm. It would generally follow the east-west linear alignment and the spacing at approximately 250m. Although marginally higher this would be accommodated to a large extent by changes in land levels.
31. However, at close range from the highway and the bridleway the pivoting in the line of the turbines would be apparent as would the introduction of a different turbine type. From the west in particular the proposed turbine would sit behind the existing structures rather than be seen in a linear formation. These factors would undermine the appearance of the additional turbine as being a planned and coherent part of the existing wind farm.
32. The existing wind farm is dominating in the landscape and the creation of a larger ensemble would extend the visual impacts over a broader area. The wind farm would be brought closer to the highway and would be much more apparent and visually intrusive to users of the highway. The existing group would also be brought much closer to the public footpaths/bridleways to the north of the development and some 200m closer to the southern edge of Great Orton. Thus there would be an even greater level of visual harm and dominance for villagers, walkers and those travelling to and from Great Orton and Wiggonby. In addition, there is the potential to add to the degree of visual confusion created by the Midtown Farm turbine to the north of the appeal proposal.
33. In the wider area there are six (four single and a pair) turbines already built, five more with planning permission, five more within the Carlisle area and a further two under consideration. The Council’s view therefore is that when taken together with these, the appeal proposal would exceed the capacity considered to be generally acceptable in this area within the Cumbria Wind Energy SPD.
34. In coming to the conclusion that the proposal would conflict with LP policy S19 regard has been had to a number of other appeal decisions. For similar reasons of visual impact and impact upon the character and sensitivity of the surrounding landscape, the proposal would also conflict with LP policies S32 and S33.
35. Although there are a number of Listed Buildings within Great Orton and some Scheduled Ancient Monuments further afield, in terms of **built heritage** it is considered that the appeal scheme would not have any significant impact on those heritage assets over and above the existing turbine development within the locality.
36. In terms of **residential amenity** there are four individual or groups of properties between 670m and 710m from the appeal development. The Residential Impact Assessment submitted with the proposal accepts that there would be some change in the view from each and assesses this as between medium and

low/medium. The proposal would therefore result in additional harm to the visual amenities of these local residents to add to the concerns already highlighted in respect of overall visual amenity.

37. With regard to **noise** the Environmental Protection Officer confirmed no objection subject to conditions linked to ETSU Guidelines and a procedure to address any complaints. However, further information was requested was not received and Members were advised of this.
38. On issues of **electromagnetic interference, aviation, RADAR, shadow flicker, biodiversity and highways/traffic** no adverse comment was received from any statutory or professional consultee and, subject to appropriate conditions, all these matters could be satisfactorily addressed.
39. With respect to **public rights of way** the County Council stated that for safety purposes the proposed turbine should be set back at least topple distance from the bridleway. This could be achieved but was not pursued with the applicant since it would bring the development closer to the highway thus exacerbating the visual impacts of the scheme.
40. Having regard to the large volume of representations from local residents the proposal was considered to be contrary to LP policies S19, S32 and S33. This conflict was not considered to be outweighed by the environmental and economic benefits of additional renewable energy and rural farm diversification.

Written Representations

41. The Council received 28 letters of representation at planning application stage and the Planning Inspectorate received five following notification of the appeal. It is understood that a further three were received by the Council at a later date and are therefore not included within the appellant's analysis. The points raised relating to planning matters that the Secretary of State will wish to consider can be summarised in bullet form as follows:
 - i) Industrial scale machine.
 - ii) Harm to residential amenity.
 - iii) Additional cumulative landscape impact in Solway Basin with 23 turbines already within a few kilometres.
 - iv) Adverse effect on wildlife including bird-kills, especially barn owls. Would be on flight paths for a number of species to Watchtree Nature Reserve.
 - v) Noise affecting health.
 - vi) Safety from toppling and icing.
 - vii) Shadow flicker is noticeable in the village from existing turbines.
 - viii) Small amount of energy does not justify high production costs, tariffs and decommissioning costs.
 - ix) The turbine would fall within the newly adopted 800m separation distance.
 - x) Discrepancy in turbine height.
 - xi) Concern that rated power used in noise report is less than true power rating for the model. Assumed to be to benefit from higher feed-in tariffs.

- xii) No local benefit or evidence that will supply landowner's premises before export to the grid.
- xiii) Photomontages under-represent the visual impact-not realistic.
- xiv) Existence of turbines already is no reason to add another.
- xv) Number and location of current turbines in application is inaccurate.
- xvi) Landscape capacity of area identified in SPD already exceeded.
- xvii) Cumulative assessment ignores larger scale turbines viewed when travelling west from Carlisle.
- xviii) Tree and hedgerow mitigation seasonal only.
- xix) Desktop noise study and ETSU R97 simplified criteria unsafe when multiple turbines.
- xx) Mitigation will not be sufficient to address highly sensitive receptors using local footpaths.
- xxi) Framework places great weight on intrinsic beauty of the landscape as well as benefits of renewable energy development-latter should not automatically override former.
- xxii) Phase 1 habitat survey not undertaken at optimal time so further work required.
- xxiii) Adverse impact on tourism.
- xxiv) Construction work would produce pollution from noise, dust, exhaust and other emissions.
- xxv) Coalition government stated that turbine development should not be supported if a local community is opposed to a scheme.
- xxvi) Does not need to be the size stated to achieve 500Kw generating capacity.
- xxvii) Will adversely affect walkers and riders on local paths and bridleways.
- xxviii) Affect on significant local sites such as Hadrian's Wall World Heritage Site, NP and Grade I Listed Building at St Andrew's Church, Aikton.
- xxix) Would set a precedent in an area that has more than its fair share of turbines.

Conditions

- 42. The Council has suggested a number of conditions in the event of the appeal being allowed. The appellant has not commented upon these. I have considered them in the light of the relevant sections of the PPG and include at Schedule 1 the conditions that I consider should be imposed if the Secretary of State allows the appeal. I have altered the wording of some of those suggested by the Council for clarity and consistency with the PPG.
- 43. In addition to the standard commencement condition a condition detailing the approved plans is required for certainty (conditions 1 and 2).
- 44. The turbine is proposed to be in place for a period of 25 years and a condition securing this and the restoration of the site subsequently is required. The Council's suggested condition also deals with the situation where electricity generation ceases permanently before that 25 year period ends. In those

circumstances it would appear that the Council's further suggested condition in the event of the operation of the turbine ceasing for a continuous period of six months prior to the expiry of the 25 year period is both superfluous and also potentially at odds with the condition suggested in the event of a noise complaint being made. Although the appellant explains the decommissioning process, no timescale is placed upon it. In my view 12 months should be more than adequate and the period specified in the condition will allow for that following cessation of power generation.

45. The proposed condition (condition 4 in Schedule 1) was put to the main parties and the Council objected to the wording. In my view, the Council misunderstands the effect of its own suggested condition. Firstly, it allows the proposed turbine to be in place for a period of 25 years from first connection to the grid, not from its installation. It then allows a period of 12 months from the cessation of electricity generation for the turbine and associated equipment to be removed and the site to be restored. That is a period of 26 years and that is what condition 4 in Schedule 1 reflects. It is not clear to me why a different removal and restoration period should be specified in the event of the turbine ceasing to be operational for a period of six months before the 25 year period allowed has ended.
46. Two further issues are raised by the Council's suggested condition. First, it does not require the operator to notify the Council of the date when electricity generation either begins or permanently ends. The enforceability of the condition is therefore uncertain. That is rectified by the condition in Schedule 1.
47. Second, while what is meant by the opening 'This permission shall remain valid for a period of 25 years from....' is clear, it is questionable whether any condition requiring any action after that point (such as the removal of the equipment) could be enforced if the planning permission no longer exists. That too is addressed by the more usual form of wording for a condition that requires development to come to an end after a period or an earlier event.
48. The Council considers it important that a scheme for the removal of the development and the restoration of the land is approved before the development commences and condition 3 in the Schedule secures that.
49. A construction method statement is required to minimise any risk of pollution of local watercourses (condition 5) and a construction traffic method statement is similarly required in the interests of highway safety (condition 6). In my view, the conditions suggested by the highway authority in respect of the design of the access gates and the surfacing of the access track would be embraced by the first clause of the construction traffic method statement condition. They do not need to be repeated.
50. While the statutory and other consultees have raised no objection [paragraph 38], protocols need to be secured by condition in the event of an issue arising (conditions 8 and 10). Similarly with shadow flicker (condition 9). Although not expected to be an issue, a protocol needs to be in place to address the point if it arises.
51. While details of the turbine and associated infrastructure have been provided in the plans to be approved, as set out in the 'Procedural Matters' above, there is

some ambiguity over turbine height. The Council also needs to have control over the colour and finish to be provided in the interests of visual impact (condition 7).

52. Finally, conditions are required to control noise emissions (conditions 11 and 12). That suggested by the Council unnecessarily addresses the nearest financially involved property and appears to me to be less stringent than that proposed by the appellant. As condition 11 is said to be that imposed on the Midtown Farm planning permission I consider that the same condition should be imposed in this case.

Conclusions

53. Throughout this section numbers in [] are references to source paragraphs elsewhere in the report from which the conclusions are drawn. Source references to the Framework are given in (#) although the principal reference is at [10]. Footnotes are generally to passages in the PPG.

Considerations on which the Secretary of State's decision should be based

54. The main considerations for the determination of this appeal are the effect that the development proposed would have on:
- a) the landscape character and appearance of the area; and
 - b) the living conditions of nearby residents with regard to any disturbance from noise emissions.

The effect on landscape character and appearance

55. The appeal site lies generally to the west of Carlisle and between the Solway Firth in the north and Lake District National Park to the south. More locally, the appeal site is to the south west of the broadly linear village of Great Orton and to the north of Black Brow Farm and some other properties [7 and 8].
56. I turn first to the effect on landscape character. The appeal site is within the Solway Basin national landscape character area (LCA) and within the County defined Ridge and Valley LCA. In the officer report [27] the Council describes this LCA as being characterised by:
- a) a series of ridges and valleys that rise gently toward the limestone fringes of the Lakeland Fells;
 - b) well managed regular shaped medium to large pasture fields;
 - c) dominant hedge bound pasture fields interspersed with native woodland, tree clumps and plantations;
 - d) scattered farms and linear villages found along the ridges; and
 - e) large-scale structures generally being scarce.
57. The appeal site itself is a field in agricultural use. The turbine would be erected within it and would have no material effect on the landscape fabric or structure. While the wider area within which it would sit exhibits most of the landscape characteristics listed above, the most significant exception is the last in the list. This is not an area where large-scale structures are generally scarce. In fact, the opposite is true as there are a large number of wind turbines present in what is effectively a corridor centred on the A595. Those referred to by the Council [33] do not reflect all those that can be seen in the wider area.

58. Many of the turbines that have been erected are in groups or clusters although single turbines can be seen. Indeed, albeit with the caveat set out in the 'Procedural Matters' paragraphs, I note that the SPD considers that the LCA has a moderate capacity for turbine development although large groups (between 6 and 9 turbines) would be the exception [29]. The appeal proposal would continue a line of six wind turbines of similar size and design immediately to the west (Great Orton wind farm) and there is a further turbine (Midtown Farm) a little way to the north [20, 30 and 31]. In my judgement, the landscape of this localised area is now characterised to a degree by wind turbines. Although the circumstances leading to the development of the existing group have not been explained in evidence, the fact remains that a group of at least six already exists and the appeal proposal would not lead to the upper guideline limit for such a group being breached.
59. In my judgement, the effect of the appeal proposal should be considered cumulatively with the others in the group of which it would become a part rather than as a stand-alone turbine. For the reasons set out, I do not consider that, cumulatively, the addition of one further turbine that would read as part of the existing group would have any material effect on the landscape character of the wider LCA.
60. Turning now to the effect on the visual appearance of the area, the existing group of turbines is very prominent in the view, from higher ground especially, over a very wide area. Although two of the six are on a different alignment, that is not apparent from distance; it appears as a line of turbines. The even spacing between them is discernable however and this spacing would be maintained by the appeal proposal. Although both the Council and some of those making representations point out that the model proposed would be different to the other six [31], this would also not be noticeable at distance. It would, in my opinion, simply appear as a line of seven three-bladed turbines rather than the six now viewed.
61. In closer proximity to the existing turbine group the fact that the line pivots after the fourth is more noticeable. However, the view of the group and the extent to which the outlier turbine to the north is appreciated as a part of it or indeed seen at all varies with the location of the viewpoint. There is however little doubt in my mind that the turbines, particularly those closest to the village of Great Orton, are prominent in views from some parts of the highway through the village and (although I did not see this for myself) the properties on the western side of that road. Moreover, the three turbines just to the north/north east of Black Brow are quite close to those properties and accordingly prominent in their view.
62. The appeal turbine would be further away from the latter properties but would be in a sector of the view where no turbine now exists. It would be slightly closer to properties at the southern end of Great Orton and, from some locations, would add a turbine in the view where none now exists.
63. I have little doubt that were the appeal proposal to be for a single turbine in an area otherwise without such vertical features the harm to the appearance of the landscape would be substantial. That is not the case however and the effect that there would be must be considered in the context of the cumulative impact of an

additional turbine in the group. In that context, I consider the appellant's assessment of the local impact as 'low' to be of the right order.

64. To conclude on this issue I do not consider that there would be a significant adverse impact on the location in relation to visual impact and impact on the character and sensitivity of the surrounding landscape. That is the scale of harm necessary to cause a conflict with LP policy S19(a)(ii) which is the LP policy that specifically addresses proposals for renewable energy and low carbon technologies [12]. Accordingly, there would be no conflict with this LP policy. LP policy S33 [13] which is also cited in the reason for refusal is a general landscape policy and reinforces LP policy S19 in that regard.

The effect on the living conditions of nearby residents

65. The ACIA report [18] explained in some detail the assessment criteria used, the national guidance followed in drawing up the report and the way that the (then) emerging Institute of Acoustics supplementary guidance notes had been taken into account. A review of the noise condition that the Great Orton wind farm is subject to has been undertaken. As I understand this critique, it is not likely to be effective and any existing dwelling within 400m of any of the turbines does not appear to be protected against noise at all. The noise condition attached to the Midtown Farm single turbine is also reviewed. This is the same type of turbine as proposed at the appeal site and the appellant suggests that the same noise condition should be applied.
66. No background survey was undertaken since the preliminary calculations indicated that noise emissions at residential properties were likely to be below 35dB $L_{A90,10 \text{ min}}$. The simplified noise assessment methodology set out in ETSU-R-97 was therefore used.
67. The methodology used and calculations made are clearly set out. On its own, the proposed turbine is predicted not to exceed the noise limit of 35dB $L_{A90,10 \text{ min}}$ at any receptor on a 'worst case' basis. The cumulative prediction takes into account the Great Orton wind farm and the Midtown Farm turbines. This compares the existing noise levels from the seven turbines with the predicted levels after adding the appeal proposal. As I understand the results, although there would be some small increase in noise levels at certain properties at the southern end of Great Orton as a result of the addition of the appeal turbine, it would only be at three properties (R8, R9 and R10) and only at a wind speed of 10ms^{-1} that the 35dB $L_{A90,10 \text{ min}}$ would be reached, but not exceeded.
68. The position at properties at Black Brow [7] would be different. Here, at wind speeds of 7ms^{-1} the 35dB $L_{A90,10 \text{ min}}$ limit would be breached at most locations after the introduction of the appeal turbine. However, at nearly all those properties that limit is already breached by the existing seven turbines at those wind speeds. I believe the appellant's commentary on the noise condition [65] is pertinent in that context.
69. The appellant's conclusion therefore is that the proposed turbine on its own would meet a 35 dB flat noise condition at all times at the nearest noise-sensitive properties and that the cumulative effect would, in the worst case, be no more than a marginal increase over the current highest levels. This would therefore be acceptable [ACIA report, section 7].

70. From the evidence the Council does not appear to question the ACIA report conclusions. The initial response from the Environmental Protection Officer was that there were no concerns about noise and that a condition in relation to noise levels not to be exceeded at the nearest residential property should be imposed [23 and 37]. A query was raised with regard to a particular property and whether or not it was financially involved in the proposed project. A second response however requested further information regarding whether the predicted noise levels related to actual residential property distances and whether the turbines at Orton Grange had been taken into account [23]. This information had not been provided by the time the Council determined the application [37] and, following an update report to that effect, reason for refusal 2 was added (namely that insufficient information had been provided to show that the proposal would not have an adverse impact on residential properties by way of noise).
71. To the extent that the requested information was not already available in the ACIA report, it was provided with the original grounds of appeal. The Council has not commented upon this at all. The appellant has confirmed that the Orton Grange turbines are over 3km away and, for that reason, were not included in the cumulative noise assessment. I see no reason to disagree with that conclusion.
72. On the evidence I see no reason to disagree with the appellant's report findings and conclude that the appeal proposal either on its own or cumulatively with others would not harm the living conditions of nearby residents. There would be no conflict with LP policies S19 and S32 in this regard [12 and 13].

Other matters

73. The appeal proposal would accord with the development plan [64 and 72] and, in accordance with s38(6) of the 2004 Act should be approved unless material considerations indicate otherwise. I turn to those matters in the following paragraphs.
74. The County Council's Public Rights of Way officer objected to the appeal proposal on the basis that it would, allowing for any inaccuracies in scaling plans, be located on the very edge of the fall zone of a designated bridleway to the north. The officer suggested that the turbine should be relocated to a point at least 80m from the bridleway.
75. The Council's delegated report response is that the proposed turbine would be approximately 60m from the bridleway. Although the Council considers that the suggested relocation is achievable it was not put to the (then) applicant since it would bring the turbine closer to the highway and thus would exacerbate the visual impacts that the Council contends would arise [39]. However, in its response on 29 April [3] the Council, correctly, observes that the red line application boundary is drawn so tight around the siting of the proposed turbine that no repositioning of the structure could be required by condition since this would put the turbine outside the application site.
76. The PPG deals with this issue of safety but considers fall-over distances only in relation to buildings and the strategic highway network. In the case of the former, a separation distance of blade tip height plus 10% is said to be often used. In this case that would be some 81.4m. For wind turbines near parts of the strategic highway a minimum set back distance of height+50m or height x

- 1.5, whichever is the lesser, is specified. In this case, that would be the latter and would be a set back of about 111m.
77. There is clearly a discrepancy between the view of the County Council's Public Rights of Way officer and the Council's case officer about the distance that the turbine would be from the bridleway when considering the fall-over distance. From my reading of the application drawings the interpretation of the Public Rights of Way officer is correct. No evidence from statute or guidance of any required safety distance from a bridleway has been put before me. I also note that this did not form part of the Council's reasons for refusal and no conflict with any LP policy has been brought to my attention. Taking all this into account, I consider that planning permission should not be refused for this reason.
78. It is clear from the representations received that there is an expectation that the LP rules out on amenity grounds any turbine proposal that falls within 800m of a residential property [41(ix)]. LP policy S19 certainly does not say that and supporting paragraph 225 must be read more flexibly than the use of the word 'expected' would suggest if it is to be consistent with national planning guidance. The PPG is quite explicit that otherwise acceptable renewable energy developments should not be ruled out through inflexible rules on buffer zones or separation distances¹. That Guidance was published several months before the LP was adopted. It has not been changed as a result of the WMS.
79. A number of other matters have been raised in the representations such as shadow flicker, effects on wildlife such as bats and interference with RADAR, telecommunications reception and aviation. In the main, these are general rather site specific evidence-based concerns. The statutory bodies have been consulted and no objections have been raised [38]. All of these matters have been addressed in the officer report and I have no evidence to disagree with the conclusions drawn. In respect of shadow flicker, the nearest dwelling is well beyond the distance over which this feature of wind turbine development would be likely to occur.
80. Attention has been drawn to the presence of a number of heritage assets [35]. There are three Grade II Listed Buildings in Great Orton while others are considerably further afield. There is no evidence about the contribution of their setting to the significance of any and English Heritage did not comment on the proposal. In my judgement the appeal site makes no contribution to the setting of any Listed Building in the village. To the extent that there are already a number of turbines visible, there would be no harm to the significance of any heritage asset as a result of the appeal proposal.
81. A number of representations have speculated about the reason for the turbine being erected and queried the power output rating used for the noise assessment arguing that this is for feed in tariff purposes [41(xi)]. However, Framework #98 makes it clear that applicants for energy development are not required to demonstrate the overall need for renewable and low carbon energy. It further recognises that even small-scale schemes provide a valuable contribution to cutting greenhouse gas emissions. The output of the appeal proposal would be 500Kw [16]. In view of national policy on renewable energy [9 and 10] this is a material consideration that weighs in favour of the development.

¹ Paragraph 008 Reference ID: 5-008-20140306

82. Finally, the WMS is the latest expression of policy announced by the current government following the general election in May 2015. It is therefore a material consideration to which the Secretary of State will wish to attribute substantial weight.
83. It is common ground that the appeal proposal is subject to the transitional provisions set out in the WMS. As the decision is now for the Secretary of State it is for him to consider if the appeal proposal has addressed the planning impacts identified by affected local communities and therefore has their backing. Key to the application of the transitional provisions therefore is an understanding of what comprises the affected local community in the particular circumstances of this appeal. That is clearly a matter of judgement for the Secretary of State but my conclusions are set out below.
84. It is misleading of the Council to say that there was a large volume of representations from local residents [40]. As the appellant's analysis shows, very few households within an area close to the appeal proposal objected to it and the two affected Parish Councils were split [25]. However, registering 'no objection' as Aikton Parish Council has is not the same as an expression of positive support as stated by the appellant [25].
85. It is my view that while a number of local residents have expressed objections, the local community has expressed no opinion either way. That is common in planning matters whereas a positive expression of backing for any scheme is unusual. For the reasons I have set out, I consider that the objections raised either do not amount to a conflict with the development plan or can be addressed by conditions. My conclusion is that, in this case, the transitional arrangements of the WMS do not amount to a material consideration that should outweigh the accordance with development plan policy. Accordingly, the appeal should be allowed.

Recommendation

86. I recommend that the appeal be allowed and planning permission be granted subject to conditions.

Brian Cook

Inspector

Schedule 1: 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: 1 Landscape and routeways; T723-PLAN-LAY; T723-PLAN-LOC1; T723-PLAN-LOC2; T-SPEC-DETAIL1; and T-SPEC-DETAIL3.
- 3) No development shall take place until a scheme for the removal of the development hereby permitted and the restoration of the land has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved.
- 4) The development hereby permitted shall be removed and the land restored in accordance with the scheme of work approved in accordance with condition 3 not later than 26 years from the date that electricity from the development is first connected to the national grid OR within 12 months of the permanent cessation of electricity generation at the site whichever is the sooner. The dates of first connection to the national grid and the permanent cessation of electricity generation at the site shall be notified to the local planning authority in writing within 7 working days of the date occurring. For the avoidance of doubt if the turbine ceases to be operational for a continuous period of six months other than as may be required by condition 12 that would be 'permanent cessation of electricity generation' for the purposes of this condition.
- 5) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i) The timing of works;
 - ii) Fuel and chemical storage;
 - iii) Identification of all waste streams associated with the works and their appropriate management;
 - iv) Identification of environmental management mechanisms during the pre-construction, construction and decommissioning and emergency and pollution procedures and response plans;
 - v) Track construction including the laying of underground cables along side the tracks, materials proposed and track reinstatement;
 - vi) The erection of protective fencing at least 20m from any watercourse;
 - vii) The removal and restoration of all temporary working areas and compounds used during the construction phase.
- 6) No development shall take place, including any works of demolition, until a Construction Traffic Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i) Details of the construction of the site access;

- ii) Details of any accommodation works and a programme for their removal and the reinstatement of any street furniture and verges along the route to the construction site;
 - iii) Details of road improvements/repairs that may be necessary as a consequence of the traffic associated with development;
 - iv) The parking of vehicles of site operatives and visitors;
 - v) Loading and unloading of plant and materials;
 - vi) Construction traffic routing including scheduling and timing of movements, details of abnormal load escorts, temporary warning signs for vehicle drivers and pedestrians and management of junctions and crossings of highways and footpaths; and
 - vii) Full dimensions of the turbine and associated components.
- 7) No development shall take place until details of the model, colour and finish of the development hereby approved have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 8) No development shall take place until a written scheme has been submitted to and approved in writing by the local planning authority setting out a protocol and methodology for dealing with the assessment of electromagnetic interference in the event of a complaint being received by the local planning authority. The protocol and methodology shall include remedial measures to be taken to mitigate any electromagnetic interference. Operation of the development hereby permitted shall be carried out in accordance with the approved scheme.
- 9) No development shall take place until a written scheme has been submitted to and approved in writing by the local planning authority setting out a protocol and methodology for dealing with the assessment of shadow flicker in the event of a complaint being received by the local planning authority. The protocol and methodology shall include remedial measures to be taken to mitigate any identified occurrence of shadow flicker. Operation of the development hereby permitted shall be carried out in accordance with the approved scheme.
- 10) No development shall take place until written confirmation of the proposed date of commencement of the erection of the approved wind turbine, the expected date of completion of construction, the height above ground level of the highest structure and the position in latitude and longitude of the wind turbine hereby permitted has been submitted in writing to the local planning authority.
- 11) The level of noise emissions from the development hereby permitted when measured in free field conditions at the boundary of the nearest noise sensitive receptor which lawfully exists or has planning permission for construction at the date of this planning permission, or measured closer to the wind turbine and calculated out to the receptor in accordance with a methodology previously approved in writing by the local planning authority, shall not exceed 35dB $L_{A90,10 \text{ min}}$ up to wind speeds of 10ms^{-1} measured at a height of 10m above ground level at a specified location near to the wind turbine which has been previously approved in writing by the local planning authority.

- 12) In the event of a complaint being received in writing by the local planning authority alleging noise nuisance at a residential property within 3km of the application site due to the wind turbine hereby approved, the wind turbine operator shall, at its expense, employ a suitably qualified person approved by the local planning authority to undertake an assessment of the noise emissions from the wind turbine at the affected property or properties. The results of the assessment shall be provided in writing to the local planning authority within three months of the wind turbine operator first being notified of the complaint. If the assessment confirms a breach of condition 11 the operation of the wind turbine shall cease and shall not recommence until the steps to be taken to ensure compliance with condition 11 have been submitted to and approved in writing by the local planning authority.



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). This new requirement for permission to bring a challenge applies to decisions made on or after 26 October 2015.

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 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 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.