



Department for
Communities and
Local Government

David Hardy
Eversheds LLP
Bridgwater Place
Water Lane
Leeds
LS11 5DR

Our Ref: APP/H0900/A/14/2224323

Your Ref: 079571.000083

3 November 2015

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY FCC ENVIRONMENT
LILLYHALL LANDFILL SITE, JOSEPH NOBLE ROAD, LILLYHALL INDUSTRIAL
ESTATE, WORKINGTON, CUMBRIA**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Jessica Graham BA(Hons) PgDipL, who carried out an Inquiry which sat on 14, 15 and 16 April 2015 into your client's appeal against a decision of Cumbria County Council ('the Council') to refuse planning permission for the erection and operation of 4 wind turbines, to a maximum height of 99 metres, and associated infrastructure in accordance with application reference 2/12/9011, dated 7 September 2012.
2. The appeal was recovered for the Secretary of State's determination on 2 October 2014, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the appeal involves a renewable energy development.

Inspector's recommendation and summary of the decision

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

Procedural matters

4. In the course of the appeal, the appellant amended the scheme to three wind turbines by removing one, but leaving the others in the same positions as originally proposed. Further Environmental Information (FEI) on the implications of that amendment was produced by the appellant, and duly advertised (IR1.2). The Secretary of State agrees with the Inspector that the appeal should be determined on the basis of the amended scheme for three turbines (IR1.4, 11.21 and 12.1 – 12.2).

5. Following the Secretary of State's Written Ministerial Statement (WMS) of 18 June 2015 on Local Planning, the Inspector provided the opportunity for parties to comment on any relevant implications of the WMS and amended guidance on their case and the responses were included in the Inspector's summaries of the main parties' cases (IR1.8).
6. The Secretary of State has taken account of the Environmental Statement which was submitted, together with the Further Environmental Information submitted in November 2014 to support the amendment to a three turbine scheme (IR4.2). He agrees with the Inspector that the Environmental Statement together with the further information submitted including that noted at IR4.3-4.4 reasonably complies with the provisions of Schedule 4 of the Environmental Impact Assessment (EIA) regulations, and he has taken into account the Environmental Information as defined in the regulations in reaching his decision on the appeal.

Policy and Statutory considerations

7. In deciding the appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the Allerdale Local Plan (Part 1) Strategic and Development Management Policies adopted in July 2014 ('the Local Plan'), the saved policies of the Allerdale Local Plan adopted in November 1999, the Cumbria Minerals and Waste Local Development Framework Core Strategy (2009) and the Cumbria Minerals and Waste Local Development Framework Generic Development Control Policies (2009). The Council determined the application by reference to the 1999 Allerdale Local Plan, however it is common ground that there are no saved policies within the 1999 Local Plan which are relevant to the currently proposed development. The Secretary of State considers that the development plan policies most relevant to the appeal are those set out by the Inspector at IR5.2.
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; and the National Policy Statements for Energy (EN-1) and Renewable Energy (EN-3).
9. The Secretary of State has had regard to his WMS of 18 June 2015. 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. The transitional provision applies 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. It is the transitional provision which is relevant to this case: that is the proposal can be found acceptable if, following consultation, it can be demonstrated that the planning impacts identified by affected local communities have been addressed and therefore the proposal has their backing.
10. The Secretary of State has also had regard to the WMSs 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 WMS on renewable energy published by the Secretary of State for Communities and Local Government in April 2014.

11. The Secretary of State has also taken into account the guidance listed at IR5.8 – 5.14 and the English Heritage/Historic England guidance entitled “The setting of Heritage Assets” as updated in July 2015.
12. In accordance with section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA), the Secretary of State has paid special regard to the desirability of preserving listed structures or their settings or any features of special architectural or historic interest which they may possess.

Main issues

13. The Secretary of State agrees that the main disputed issues in this case are the impact that the proposed development would have upon the character and appearance of the landscape, and its visual impact upon occupiers of nearby residential properties and settlements and upon users of public rights of way, considered in the context of other existing and consented wind energy development (IR11.1).

The development plan

14. The Secretary of State agrees with the Inspector at IR11.19 – 11.20 that the proposal conflicts with Local Plan policy S33, which seeks to preserve landscape character and protect the distinctiveness of the area, and S19 (on renewable energy) because there would be an unacceptable significant adverse impact on the surrounding landscape, notwithstanding its renewable energy benefits. The Secretary of State considers that the conflict with these two policies is sufficiently significant to amount to conflict with the development plan as a whole.

Benefits

15. For the reasons given, the Secretary of State agrees with the Inspector that the development has substantial benefits weighing in its favour (IR11.52-11.56). These benefits include the provision of sufficient electricity to power around 3,500 homes each year, saving around 7,200 tonnes of carbon, and, more widely, the diversification of energy supply resources and mitigation of climate change. The Secretary of State accords these benefits substantial weight.

The effect on the character and appearance of the landscape

16. The Secretary of State agrees with the Inspector’s observations at IR11.2 that the appeal site is within the Lillyhall landfill site and that the industrial appearance and energy generating purpose would be congruent with the character and appearance of their immediate surroundings when viewed in the context of their existing adjoining uses. However, the Secretary of State also agrees with the Inspector’s assessment at IR11.15 that, from many locations, the Lillyhall turbines would be perceived as enlarging the wind-farm landscape, due to their visual juxtaposition with other wind-farms and turbines, such that the distribution and density of turbines in the landscape would appear enlarged and widespread.
17. The Secretary of State has had regard to the Inspector’s assessment of the strategic context and cumulative impact of the proposal on the character and appearance of the landscape at IR11.5-11.17 and agrees with her conclusion that the proposed development would cause substantial cumulative harm to the character of the landscape (IR11.18), to which he gives substantial weight. As stated above, the Secretary of State agrees that the proposal conflicts with Local Plan policy S33, which seeks to preserve landscape character and protect the distinctiveness of the area, and S19 (on renewable

energy) because there would be an unacceptable significant adverse impact on the surrounding landscape, notwithstanding its renewable energy benefits (IR11.19-11.20).

Visual impact on dwellings

18. The Secretary of State endorses the points that the Inspector makes at IR11.23-24 and agrees with her assessment at IR11.26-11.40 of the visual impact the proposal would have on specific residential properties identified at IR11.22. For the reasons given, the Secretary of State agrees with the Inspector's conclusion at IR11.41 that there would not be an unacceptable impact on residential amenity at any of these properties. However, he also agrees that harm caused, though not reaching the level of "unacceptable", still needs to be weighed in the overall planning balance (IR11.42).

Visual impact on Public Rights of Way, highways and nearby settlements

19. The Secretary of State agrees with the Inspector's findings that the visual impact experienced by users of three nearby rights of way would not be so extensive or distracting as to significantly impair their enjoyment of the routes (IR11.43-11.47). He also agrees that though the cumulative visual impact of the scheme would be experienced by users of the A595, this would not have any further bearing, such as affecting the use of the highway or highway safety (IR11.49).
20. The Secretary of State agrees with the Inspector that in no case would the cumulative presence of turbines dominate or cause unacceptable visual effects for residents of the settlements identified at IR11.50. However, as with the visual impacts on local residents at the individual properties considered above, the adverse visual impacts arising for residents in those settlements, though not unacceptable, need to be weighed in the overall planning balance (IR11.51).

Heritage assets

21. Turning to the potential impacts of the scheme on the Grade II listed Wythemoor Sough and Barn, for the reasons given at IR11.58-11.59, the Secretary of State agrees with the Inspector that the presence of the modern turbines in the immediate vicinity of the farm buildings would have an adverse impact on its setting. Like the Inspector, he finds the harm to be minor and therefore 'less than substantial'. Consequently the Secretary of State has applied the approach set out in paragraph 134 of the Framework, weighing the harm against the public benefits of the proposal. However, as the Inspector states, a conclusion that a development proposal would fail to preserve the setting of a listed building is a consideration that must carry considerable weight and importance in the overall planning balance (IR11.60).
22. The Secretary of State agrees with the Inspector's conclusions in relation to Workington Hall Registered Park and Garden, that the proposed development would not cause any harm to the setting or significance of this designated heritage asset.

Other matters

23. The Secretary of State agrees with the Inspector's reasoning and conclusions in respect of Hen harriers and noise (IR11.61-11.62). He also agrees with the Inspector's assessment regarding the weight that should be ascribed to public opinion. He endorses her conclusion that it is the planning impacts which must be addressed, and that just because the numbers of individuals in the local community who identified planning impacts were few in number does not itself reduce the weight afforded to the planning impacts identified (IR11.63-11.67). Like the Inspector, the Secretary of State

has considered each of the relevant material considerations on the basis of its own merits.

Conditions

24. The Secretary of State has considered the Inspector's reasoning and conclusions on conditions, as set out at IR10.1 – 10.6. He is satisfied that, in the form recommended by the Inspector, they are reasonable and necessary and would meet the tests of paragraph 206 of the Framework and the guidance. However, he does not consider that they would overcome his reasons for dismissing the appeal.

Planning balance and conclusion

25. Having had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, the Secretary of State agrees with the Inspector and finds that the proposed development would result in substantial cumulative harm to the character of the landscape, which conflicts with Development Plan policies S19 and S33 which leads him to conclude that the proposal does not accord with the development plan taken as a whole. The Secretary of State has therefore gone on to consider whether there are any material considerations which might justify allowing the appeal.

26. The Secretary of State, like the Inspector, gives considerable weight to the desirability of preserving the settings of listed buildings as set out in Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. The Secretary of State considers that the harm to the setting of Wythemoor Sough, though minor, is nonetheless a matter which weighs considerably against the proposal. Applying paragraph 134 of the Framework, the Secretary of State considers that the public benefits of the proposal do not significantly counter-balance the considerable weight to be accorded to the impact on heritage assets.

27. The Secretary of State assigns further weight against the scheme due to the substantial cumulative harm to the character of the landscape, the harm arising from cumulative visual impacts upon nearby dwellings, public rights of way, highways and nearby settlements.

28. Having applied the transitional provision set out in the June 2015 WMS, the Secretary of State is not satisfied that the planning impacts identified by affected local communities have been addressed. These include concerns about the cumulative impacts on the character of the landscape as well as the impacts on residential amenity. Having concluded at paragraphs 17-20 above, in agreement with the Inspector at IR11.68, that the proposal would have some impacts on the landscape and on visual and residential amenity, he concludes that those planning impacts as identified by the affected communities have not been addressed. As such he finds that the proposed scheme would not meet the transitional arrangements set out in the WMS of 18 June 2015. The Secretary of State gives significant weight to this non-compliance.

29. Against these harms, like the Inspector, the Secretary of State considers that the benefits from the contribution to the national renewable energy objectives, improving the security of energy supply, the reduction in carbon dioxide and greenhouse gas emissions, thereby helping to mitigate climate change, lend substantial weight in favour of the proposal (IR11.54).

30. Weighing all the above factors in the planning balance, the Secretary of State considers that the benefits are clearly and convincingly outweighed by the totality of the adverse impacts that would be caused by the proposed development.

Formal Decision

31. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the erection and operation of 4 wind turbines, to a maximum height of 99 metres, and associated infrastructure in accordance with application reference 2/12/9011, dated 7 September 2012, amended to three turbines, as agreed during the appeal.

Right to challenge the decision

32. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. From 26 October 2015, 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.

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

Yours faithfully

Julian Pitt

Authorised by Secretary of State to sign in that behalf

Report to the Secretary of State for Communities and Local Government

by Jessica Graham BA(Hons) PgDipL

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

Date: 18 August 2015

TOWN AND COUNTRY PLANNING ACT 1990

CUMBRIA COUNTY COUNCIL

APPEAL MADE BY

FCC ENVIRONMENT

Inquiry opened on 14 April 2015

Lillyhall Landfill Site, Joseph Noble Road, Lillyhall Industrial Estate, Workington, Cumbria

File Ref: APP/H0900/A/14/2224323

File Ref: APP/H0900/A/14/2224323

**Lillyhall Landfill Site, Joseph Noble Road, Lillyhall Industrial Estate,
Workington, 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 FCC Environment against the decision of Cumbria County Council.
- The application Ref 2/12/9011, dated 7 September 2012, was refused by notice dated 28 February 2014.
- The development proposed is the erection and operation of 3 wind turbines, to a maximum height of 99 metres, and associated infrastructure.

Summary of Recommendation: that the appeal be dismissed.

CONTENTS	Page
1. Procedural matters	2
2. The site and surroundings	3
3. The proposal	3
4. Environmental information	4
5. Planning policy and guidance	4
6. The case for the appellant	7
7. The case for the Council	16
8. Other representations made at the inquiry	21
9. Written representations	23
10. Conditions	24
11. Inspector's conclusions	26
12. Inspector's recommendations	39
 <i>Appendices</i>	
A. Appearances	40
B. Documents	41
C. Suggested conditions (3 turbine scheme)	46
D. Suggested conditions (4 turbine scheme)	57

1. Procedural matters

References in round brackets are to documents (listed in Appendix B), while references in square brackets are to paragraphs within this report.

- 1.1 By letter dated 2 October 2014, the Secretary of State for Communities and Local Government (“the SoS”) directed that he would determine the appeal himself. The reason given for that direction was that “the appeal involves a renewable energy development”.
- 1.2 The scheme originally proposed in the planning application dated 7 September 2012, detailed in the Environmental Statement (ES), and determined by the Council, was for four wind turbines. In the course of the appeal, the appellant amended the scheme to three wind turbines by removing one, but leaving the others in the same positions as originally proposed. Further Environmental Information (FEI) on the implications of that amendment was produced by the appellant, and duly advertised.
- 1.3 Since the FEI complied with the statutory requirements for notification, and consideration of the amended scheme would not prejudice any interested party, my recommendation to the SoS is that he proceed to determine whether planning permission should be granted for the proposal as amended; that is, the three-turbine scheme. However, the decision as to whether or not the amendment to the original proposal can be accepted is ultimately a matter for the SoS to decide. My report therefore also includes assessment of the original four-turbine scheme, in case the SoS should decide not to accept the amendment to three turbines.
- 1.4 In the interests of clarity, I should point out that I do not agree with the appellant’s contention that the SoS has a “choice” of preferring either the three- or four-turbine scheme, dependant on where he considers the balance of favourable and adverse considerations to fall [6.39]. It is not the case that the appellant submitted two separate proposals, to be considered concurrently: only one planning application has been made, and subsequently amended. For the reasons set out above I consider that the amendment can be accepted, and the appeal determined on the basis of whether or not the three-turbine scheme should receive planning permission. That being so, the only scenario in which the SoS would need to determine whether or not the four-turbine scheme should receive planning permission would be if he were to disagree with my recommendation that the appellant’s post-refusal reduction of the scheme to three turbines can be accepted.
- 1.5 The inquiry sat on 14, 15 and 16 April 2015. I made an accompanied visit to the site and surrounding area on 16 April, and extensive unaccompanied visits on 13 and 17 April and 13 May 2015.
- 1.6 At the inquiry, the appellant rightly pointed out that the 12 month extended period for the recovery of appeals concerning renewable energy, set out by the (then) SoS in a Ministerial Statement of 9 April 2014, has now expired. Nevertheless, my understanding is that this appeal remains recovered for determination by the current SoS, and my report proceeds on that basis.
- 1.7 On 20 April 2015, after the inquiry had closed, Allerdale Borough Council wrote to the Planning Inspectorate to express concern that its position on the

application of paragraph 225 of the Local Plan had been misrepresented at the inquiry (PID 1). The County Council and the appellant were given the opportunity to comment on the substance of the letter (PID 2 & 3). I have taken all of this into account in my consideration of the appeal.

- 1.8 On 18 June 2015, after the inquiry had closed, the Government issued a Written Ministerial Statement (WMS) entitled "Local Planning" which sets out considerations to be applied to proposed wind energy development. The County Council and the appellant were given the opportunity to comment on the implications for their respective cases. Those responses are attached (PID 4 & 5), and their content included in my summaries of the main parties' cases.

2. The site and surroundings

- 2.1 The appeal site is an area of land which extends to approximately 5 ha. It is part of a landfill site within the appellant's Waste Management Complex, on the Lillyhall Industrial Estate, to the southeast of Workington.
- 2.2 Branthwaite Road runs along the northern boundary of the appeal site, and beyond that to the north are agricultural fields. To the west is the Lillyhall Industrial Estate, while to the east is an area of semi-mature woodland planting, adjoining an area of habitat restoration on reclaimed open cast workings, and the site of the three "Potato Pot" wind turbines, for which planning permission was granted on appeal on 23 October 2013¹.
- 2.3 The closest existing dwellings to the appeal site are Wythemoor Head to the south, Wythemoor Sough, Wythemoor House and Whyclose to the north east, and Gale House, Gale House Barn and the manager's flat at Oily's Pub to the north. The village of Winscales lies approximately 1km to the north of the appeal site, and the village of Gilgarran some 1.5km to the south.

3. The proposal

- 3.1 The scheme as originally submitted ("the four-turbine scheme") proposed four wind turbines, each with a blade tip height of up to 99m, a hub height of 64m, and a maximum rotor diameter of 70m. The proposed development also included crane hardstanding areas; new access tracks; a substation building; a kiosk; a temporary construction compound; and underground cabling connecting the turbines to the substation. The main access to the appeal site would be taken from Branthwaite Road. The amended proposal ("the three-turbine scheme") would comprise all of the same elements, save for the deletion of the easternmost wind turbine.
- 3.2 Each of the proposed wind turbines would have a generation capacity of up to 2.3MW. The four-turbine scheme would consequently have a potential generation capacity of up to 9.2MW, and the three-turbine scheme a potential generation capacity of up to 6.9MW.

¹ Ref: APP/G0908/A/12/2189934

4. Environmental Information

- 4.1 The proposed development is EIA development for the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011 (as amended) (“the EIA Regulations”).
- 4.2 The planning application for the four-turbine scheme was duly accompanied by an Environmental Statement (ES), which consisted of a Non-Technical Summary, and three volumes containing, respectively, a written statement; figures and visualisations; and technical appendices. A Landscape and Visual Impact Assessment (LVIA) Update was submitted in January 2013, and a supplementary Cumulative LVIA in July 2013. The visual material incorporated in these documents was produced in accordance with the 2006 Scottish National Heritage Good Practice Guidance then current.
- 4.2 Further Environmental Information (FEI) was then submitted in November 2014 to support the proposed amendment to a three-turbine scheme. This consisted of a Non-Technical Summary; written statement; visualisations and a Residential Visual Amenity Assessment; a volume of appendices; and a pack of images for use at the identified viewpoints. The visual material incorporated in these documents was produced using the 2014 Scottish Natural History Good Practice Guidance, which supersedes the earlier 2006 version.
- 4.3 The appellant’s landscape witness, Mr Charrier, produced additional visual material as part of his evidence (APP 1). This consists of three A3 volumes providing updated visualisations, figures and a viewing pack for the 4 turbine scheme in the same format as the FEI material, in order to facilitate comparisons between the two schemes. It was agreed at the inquiry that the FEI visuals and those in Mr Charrier’s appendices should be referred to in evidence, and this report adopts the same approach.
- 4.4 At the inquiry I heard further evidence on a wide range of environmental matters, including the characteristics of the landscape, local infrastructure, the impact on biodiversity and its habitats, and the extent to which these could be mitigated.
- 4.5 I am satisfied that all of this represents the necessary environmental information for the purposes of the EIA Regulations, and I have taken this information into account in making my recommendations.

5. Planning policy and guidance

The Development Plan

- 5.1 The Council determined the application by reference to the Allerdale Local Plan adopted in November 1999. However, that Plan has since been largely replaced by the Allerdale Local Plan (Part 1) Strategic and Development Management Policies adopted in July 2014 (“the Local Plan”), and it is common ground that there are no saved policies within the 1999 Local Plan which are relevant to the currently proposed development. In addition to the Local Plan and the saved policies of the 1999 Local Plan, the Development Plan comprises the Cumbria Minerals and Waste Local Development Framework Core Strategy (2009) and the Cumbria Minerals and Waste Local Development Framework Generic Development Control Policies (2009).

- 5.2 The Local Plan Policies of particular relevance to this appeal are Policies S1, S19 and S33. S1 provides that when considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework (NPPF). S19 states that the Council will seek to promote and encourage the development of renewable and low carbon energy resources: proposals where impacts are, or can be made, acceptable will be permitted. Policy S33 states that the landscape character and local distinctiveness of the area shall be protected, conserved, and wherever possible enhanced; proposals for development should be compatible with the distinctive characteristics and features of Cumbria's landscape types and sub types.

National planning policy

- 5.3 The NPPF was published by the government in March 2012. It does not alter the statutory status of the Development Plan, and confirms the primacy of the relevant statutory provisions in the Planning and Compulsory Purchase Act 2004 and the town and Country Planning Act 1990 (as amended), which state that applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise. It is important to note that the NPPF is not itself a part of the Development Plan, but it is a significant material consideration in all planning decisions.
- 5.4 One of the 12 core principles set out at Paragraph 17 of the NPPF is that the planning system should support the transition to a low carbon future in a changing climate, and encourage the use of renewable resources, for example by the development of renewable energy. Paragraph 93 states that planning plays a key role in helping shape places to secure radical reductions in greenhouse gas emissions, minimising vulnerability and providing resilience to the impacts of climate change, and supporting the delivery of renewable and low carbon energy and associated infrastructure. It identifies this as central to the economic, social and environmental dimensions of sustainable development.
- 5.5 Paragraph 97 of the NPPF states that local planning authorities should recognise the responsibility on all communities to contribute to energy generation from renewable and low carbon sources. Paragraph 98 explains that applicants for energy development should not be required to demonstrate the overall need for renewable energy, and says it should be recognised that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions; it goes on to say that renewable energy applications should be approved if their impacts are, or can be made, acceptable. The approach to be followed is set out in the National Policy Statements for Energy (EN-1) and for Renewable Energy Infrastructure (EN-3), per footnote 17 to paragraph 97 of the NPPF.
- 5.6 EN-1, the *Overarching National Policy Statement for Energy*, was published in July 2011 and sets out high level objectives, policy and a framework for the delivery of major infrastructure. Paragraph 2.2.4 explains that it is important for the planning system to ensure that decisions on renewable energy take account of the views of affected communities. The need for more electricity capacity to support an increased supply from renewables is set out at

paragraph 3.3.10, while the urgency of that need is set out at paragraph 3.4.5.

- 5.7 EN-3, the *National Policy Statement for Renewable Energy Infrastructure*, was also published in July 2011. It describes onshore wind as the most established large-scale source of renewable energy in the UK, and states that onshore wind farms will continue to play an important role in meeting renewable energy targets.

Other guidance

- 5.8 The *UK Renewable Energy Roadmap Update 2013* was published in November 2013. It reiterates the Government's commitment to achieving the UK's 15% renewable energy target by 2020, and paragraph 114 states that onshore wind has an important part to play in a responsible and balanced UK energy policy.
- 5.9 The Government's *Planning Practice Guidance* (PPG) was issued in March 2014. The section on "renewable and low carbon energy" refers to the advice in the NPPF that all communities have a responsibility to help increase the use and supply of green energy, and explains that this does not mean that the need for renewable energy automatically overrides environmental protections and the planning concerns of local communities. Rather, the PPG notes: "As with other types of development, it is important that the planning concerns of local communities are properly heard in matters that directly affect them" (Ref 5-003-20140306). Subsequent paragraphs 14-31 cover the particular planning considerations that relate to wind turbines.
- 5.10 The *Cumbria Wind Energy Supplementary Planning Document* (CD 3.1) was adopted in July 2007, and is in two parts. Part 1 provides guidance on addressing environmental, social and economic effects when preparing wind energy proposals, and part 2 provides technical guidance on landscape capacity, landscape and visual effects and carrying out landscape and visual impact assessments.
- 5.11 The *Cumbria Landscape Character Guidance and Toolkit* (2011) ("the CLCGT") is the result of a review, undertaken by Cumbria County Council in partnership with the Cumbrian local planning authorities, of the Cumbria Landscape Classification and the Cumbria Landscape Strategy produced in the 1990s. It is intended to describe and map the elements and features that make up distinctively different types of landscape throughout the county, and provide a framework to help protect, manage, enhance and restore landscapes in the future, and keep their distinctiveness (CD 8.14).
- 5.12 In 2013, consultants were commissioned by Cumbria County Council, in partnership with Allerdale Borough Council, Lancashire County Council, the Lake District National Park Authority and Carlisle City Council, to undertake a piece of work which would build upon existing local landscape character guidance, following industry standard best practice approaches, specifically to consider the cumulative effect of vertical infrastructure upon landscape character and visual amenity in Cumbria and North Lancashire. The ensuing report, *Cumulative Impacts of Vertical Infrastructure*, was published in October 2014 (CD 3.2).

- 5.13 The Statement of Common Ground (SoCG) between the Council and the appellant sets out, at paragraph 8.20, an agreed list of energy policy documents, and a helpful summary statement of energy policy is attached as Appendix 2 to the SoCG.
- 5.14 Other sources of relevant guidance are the Landscape Institute and Institute of Environmental Management and Assessment's *Guidelines for Landscape and Visual Impact Assessment* (Third edition) 2013; Scottish Natural Heritage Guidance *Assessing the Cumulative Impact of Onshore Wind Energy Developments* (2012) and Scottish Natural Heritage's *Siting and Designing Wind Farms in the Landscape Version 2* (2014).

6. The case for the appellant

The following paragraphs summarise the appellant's case, which is set out more fully in its closing submissions (ID 12) and post inquiry correspondence (PID 3, PID 5).

Untenable position of the Council

- 6.1 The appellant submits that the position of Cumbria County Council is untenable. On the one hand it accepts that the continued need for renewable energy is likely to result in an increase in large scale wind energy schemes within Landscape Character Type (LCT) 5(a). On the other, it espouses what amounts to an embargo on any further commercial scale wind turbines within LCT 5(a).
- 6.2 If wind turbines are too close to existing turbines, then the Council argues that they result in unacceptable cumulative effects. If they are proposed in hitherto undeveloped tracts of LCT 5(a) land, then the Council argues that they fall foul of the need to prevent new areas being lost to wind energy. The Council's cross examination of Mr Charrier, the appellant's landscape witness, demonstrated that it is simply saying "no" to any more wind turbines. Such a stance is contrary to policy at every level, from national energy policy, through adopted Development Plan policy, down to local guidance.
- 6.3 By contrast, the position of the appellant is facilitative of further renewable energy but also environmentally responsible. Unless and until there is a change of national policy, it is a fact that new wind farm schemes will be brought forward in Cumbria. In order to ensure that hitherto unaffected parts of LCT 5(a) do not become characterised by wind turbines, the best place to locate new wind farms is in areas already characterised by wind turbines, providing only that the additional environmental burdens are not unacceptable. In this case, in-filling should be seen as a virtue, not a vice. It is exactly by allowing this sort of scheme that further encroachment into the open countryside can be avoided. Even Mr Woolerton, the Council's landscape witness, is of the view that the Potato Pot scheme was correctly decided. Accordingly, what the development now proposed is doing is tucking in between the correctly decided Potato Pot and the existing larger Winscales wind farm, in an efficient and acceptable way.
- 6.4 Appropriate clustering is a far better strategic plan than forced dispersal. The concerns and objections expressed by the Council and local residents are the very arguments that will lead to the scattering of wind energy developments over an even wider geographic spread of Cumbria.

The right location

- 6.5 This much-needed wind farm would be located within Lillyhall, a working landfill site with associated infrastructure including industrial buildings, gas flare and heavy plant movements. Adjoining the appeal site to the north-west is the Lillyhall Industrial Estate, which characterises the immediate locality with its large industrial units. The overall character of the appeal site and its immediate context is that of a working, semi-industrial urban fringe area due primarily to the proximity of the Industrial Estate. To the east, the character of the area quickly changes to become one of predominantly pastoral agriculture.
- 6.6 The proposed development would sit well with the pattern of existing and consented wind farm development, including the Potato Pot scheme, as well as being satisfactorily accommodated by the underlying local landscape character.
- 6.7 The planning application was considered by the Council's Development Control and Regulation Committee on 18 October 2013, and the Assistant Director for Planning and Sustainability recommended that planning permission should be granted. Mrs Petersen, the Council's planning policy witness at the inquiry, was the case officer. The appellant contends that her evidence on the content and meaning of her report was very difficult to understand and to reconcile with the written text. She appeared to be unable to separate out the issue of cumulative assessment from weight to be accorded to an undetermined scheme in the planning balance. The cumulative effects of Lillyhall with Potato Pot clearly were considered in her report and taken to be the "key" issue. Mrs Petersen maintained her original view that the development currently proposed was preferable to the Potato Pot scheme, and on a standalone basis, should have been granted planning permission. The only reason for objecting to the grant of planning permission is cumulative impacts.

Consideration by the Council

- 6.8 By the time the planning application was considered a second time on 26 February 2014, Mr Woolerton (the Council's landscape witness) had become involved and had provided his detailed input into the revised officer report to Committee. His professional view was accepted without challenge; the Council's position has been built on the view of a single landscape professional. If Mr Woolerton has misunderstood guidance, or been too sensitive in his calibration of harm, then it follows that the Council's case will suffer in equal measure.
- 6.9 The Planning Committee followed Mr Woolerton's advice, and resolved to refuse planning permission on the basis that the scheme would result in unacceptable cumulative effects on landscape; residential amenity for occupants at Wythemoor Sough, Wythemoor Head, Wythemoor House, Wheclose, Gale House, Gale House Barn and Oily's Manager's Flat; users of the A595; and residents of Gilgarran, High Harrington, Distington and Branthwaite. In addition, there would be "perceived visual impact" for users of bridleways 260005 and 404020 and public footpath 260001.
- 6.10 The Council's Statement of Case later clarified that unacceptable cumulative effects on landscape character, visual and residential amenity would arise principally by consolidating and extending the existing effects of consented schemes; that nearby residents would be affected because the turbines would

have an overbearing effect on visual and residential amenities; that there would be unacceptable visual impacts for people using public rights of way in close proximity to the appeal site; and that Branthwaite was now excluded from the original list of settlements.

- 6.11 Following the Council's refusal of the four-turbine scheme, the appellant proposed an alternative three-turbine format by deletion of Turbine 4. The principal objective was to optimise design congruity with the approved Potato Pot scheme in terms of equal turbine spacing, equal turbine geometries and similar linear formats which both relate well to the gently undulating topography.

Remarkably low level of objection

- 6.12 The appellant holds it to be remarkable that the only letters of objection to the planning application came from Allerdale Borough Council, Friends of Rural Cumbria's Environment (FORCE), Winscales Parish Council and three individual letters from residents living in Gilgarran, Branthwaite and Great Broughton. Most significantly, none of the closest residents have objected even though they have been fully aware of the proposed development; this absence of objection is an important material consideration in itself, given that the Council has cited a number of these properties in its reasons for refusal. For a wind farm in this day and age, the absence of objection really is worthy of comment. If the local residents had wanted to object then they would have done, even if it had only been in writing.

The Development Plan

- 6.13 The adopted Development Plan is in place, has a renewable energy policy and, subject to a minor caveat in Policy S19 criterion a(ii), is consistent with the NPPF. The most relevant policies in the Local Plan are S19, S1 and S33 [5.2]. Policy S1 enshrines the wording of Paragraph 14 of the NPPF, in relation to the presumption in favour of sustainable development, into adopted Development Plan policy. The main issues in respect of Policy S19 are the tests for effects on residential amenity and landscape under criteria a(i) and a(ii) respectively.
- 6.14 It was candidly accepted by Ms Petersen that there is an inconsistency in approach between these criteria, given that a(i) requires that effects are not unacceptable, whereas a(ii) requires that there should not be any significant adverse effects on the character and sensitivity of the local landscape. She also accepted that following advice from Allerdale Borough Council, no weight should be attached to the 800m separation distance in the explanatory text to Policy S19. However, the appellant does not actually need to go so far; there is flexibility in the wording of the policy in any event, as was set out by the Inspector who examined the Local Plan. The approach of the Inspector who determined the Fox House Farm appeal in September 2014² is pragmatic, and should be followed. Mrs Petersen also agreed that criterion a(ii) should be interpreted, in accordance with the NPPF, as including the prefix "unacceptable" before "significant adverse effects".

² Appeal ref:APP/G0908/A/13/2210439 (CD 7.17)

- 6.15 In relation to a(i), the appellant contends that the public interest test would not be failed at any residential property, and so this criterion is satisfied. In relation to criterion a(ii), because any wind farm will result in significant adverse landscape and visual effects over a number of kilometres as is expressly acknowledged in national policy, consideration has to be given to the balance between harm and benefits. When such an exercise is undertaken objectively, it is clear that the benefits of this scheme would outweigh any cumulative harm to landscape and visual interests.

National planning policy and guidance

- 6.16 The NPPF makes clear its support for renewable energy proposals in particularly trenchant terms [5.5, 5.6]. It makes an explicit direction that, in the determination of planning applications for wind energy development, the decision maker should follow the approach set out in the relevant National Policy Statements - which contain the government's statements on the magnitude and urgency of need.

Ministerial Statements and the PPG

- 6.17 It is important to actually read the content of the PPG, rather than to focus on the reported Ministerial aspirations which pre-dated its finalisation. The final wording of the PPG must be the definitive document for policy purposes, and not any prior indications of what others hoped might be included within it. Taken together and properly understood, the Ministerial Statements of 6 June 2013 did not constitute a change in government planning policy in relation to onshore wind development and deployment. Nor did they signal any diminution in the need case for onshore wind, or direct the decision maker to actually do anything differently, or at all. They gave notice of and looked forward to the PPG itself.
- 6.18 When the PPG arrived, the four bullet points identified within the Ministerial Statements as being matters that need to be carefully considered were carried forward, with the addition of two more: (1) the need case (2) cumulative matters (3) topography (4) heritage assets (5) national designations and (6) amenity. However, all these points were already addressed in national planning policy and guidance, and well-known decided case law, and they gain no greater weight from being repeated. The appellant agrees that each and every issue raised demands careful attention.
- 6.19 The important point is that there is nothing in the PPG that does, or should be taken to, imply a recalibration of the threshold of acceptable change, and it does not say that any greater weight should be afforded to local concerns. There is no reference in the text of the PPG which suggests that a recalibration of harm, explicit or implicit, had taken place. In none of the recent SoS decisions does he anywhere state that by reason of the Ministerial Statements or PPG any additional weight to any finding of harm has been applied. The PPG, meanwhile, exhorts local planning authorities to design their policies – and, by extension, interpret them when making planning decisions – in a way that maximises renewable energy development, subject to the caveat of the impacts being acceptable.

Energy policy context

- 6.20 Energy policy is clear. When the relevant documents [5.14] are read together, there is no reasonable room for dispute regarding (1) the seriousness of climate change and its potential effects; (2) the seriousness of the need to cut carbon dioxide emissions or (3) the seriousness of the Coalition Government's intentions regarding deployment of renewable energy generation.
- 6.21 The Roadmap Update of November 2013 confirmed that on-shore wind continues to have an important role to play in UK energy policy, and a long term investment programme underpins that commitment. The document emphasises that renewable energy offers the UK a wide range of benefits from an economic growth, energy security and climate change perspective. It notes that 4.1% of energy consumption came from renewable resources in 2012 against a target of 15% by 2020; that on-shore wind is one of the most effective and proven renewable energy technologies, and has an important part to play in a responsible and balanced UK energy policy; and that renewable energy helps the UK achieve challenging decarbonisation targets.
- 6.22 The appellant submits that it would be erroneous to suggest that somehow the need case for on-shore wind has abated. It hasn't. And the SoS has repeatedly agreed that it hasn't.

Cumulative landscape impact

- 6.23 It will be a point obvious to anyone driving around the area that, as the *Cumbria Landscape Character Guidance and Toolkit* acknowledges, parts of LCT 5(a) to the east of Workington are subject to the characterising influence of wind turbines. This is supported by the *Cumulative Impact of Vertical Infrastructure Study*, and corroborated by Mr Charrier's own assessment. The appeal site lies within National Character Area 7: West Cumbria Coastal Plain, and again the profile recognises that as part of Britain's "energy coast", the energy generation industry is likely to shape the character of the landscape into the future.
- 6.24 The proposals would concentrate development into an area already characterised by wind turbines, and importantly, would not result in any further encroachment into the open countryside. Accordingly, the risk of still unaffected parts of LCT 5(a) becoming characterised is avoided. This accords with guidance in the Toolkit which advises that "wind turbines and other energy infrastructure should be carefully sited and designed to prevent this sub-type becoming an energy landscape".
- 6.25 Mr Woolerton has been keen to suggest that the tract of land between Winscales and Potato Pot windfarms is a tract of LCT 5(a) land which has not been characterised by wind turbines, and which should be protected. This is simply not the case. He placed considerable reliance on the view from High Park, Viewpoint (VP) 12, which lies within LCT sub-type 9(d): Ridge and Valley and not within LCT 5(a). However, much more relevant are the local viewpoints within LCT 5(a) itself, including VP 2, VP 5 and VP 7.
- 6.26 From VP 2 on the minor road to Branthwaite, both Potato Pot and Winscales would already have a strong characterising influence upon landscape character, irrespective of Lillyhall. At VP 5, a layby on the A595, Winscales

obviously has a strong characterising influence but such influence extends south-east to Potato Pot. From VP 7, it will be seen that with Winscales to the north-west, regular single turbines along the horizon and Potato Pot very prominent in views to the south-west, characterisation by turbines has already taken place. Of course, the current proposal would consolidate and intensify such characterising effects, but it is quite wrong to suggest that this would be happening in a tract of land which has not already been changed by wind energy development.

- 6.27 That does not mean that the appellant denigrates the local landscape, such that it can be “written off” or “kicked a little bit more without thought”. That is not, and has never been, the position of the appellant. Indeed, it would be a wholly unattractive argument to make. Mr Charrier openly accepts that parts of the local landscape would be subject to substantial change which is adverse in nature. What the appellant is saying is that the clock cannot be turned back, and wind turbine related characterising change has already come about.
- 6.28 Mr Woolerton was also keen to distinguish between, and compartmentalise, the notions of inter-windfarm separation and design relationship. This is not the correct approach. Paragraph 4.11 of *Siting and Designing Wind Farms in the Landscape* (CD 8.8) discusses the relationship between physical separation and similarity of design. The proposed development would be sufficiently separate from Potato Pot that in most cases it would not read as an extension, but it has been designed carefully to be similar. This accords with the SNH Guidance, rather than failing to accord with it, as was erroneously suggested. It is the design relationship between the two schemes which helps to inform judgements on the acceptability of cumulative effects. There is agreed to be a consistent and coherent design in terms of spacing, scale and layout. All of the issues which guidance tells us can lead to unacceptable effects have been avoided.
- 6.29 The local host landscape is not especially sensitive to windfarm development. The proposed development would be located on an active landfill site which has permission to continue operation until at least 2029, and is adjacent to the Lillyhall Industrial Estate which is vast. Restoration of the Lillyhall landfill site is not dependent on the windfarm, and nor will the windfarm affect the restoration, save for the obvious introduction of necessary infrastructure.
- 6.30 The appellant has looked very carefully at the ability of the local landscape to accommodate further windfarm development, and submits that the concentration of characterising effects is acceptable because the scheme is of good design, and fits well with the pattern of existing and consented development, as well as underlying local landscape character. It is only in LCT 5(d): Urban Fringe, in which industrial and urban influences reduce local landscape sensitivity and restrict visibility, that a new characterising effect would be created where one was not experienced before.
- 6.31 In what the appellant submits turned out to be a very ill-judged comparative exercise, Mr Woolerton relied on the approach adopted in the Broughton Lodge appeal decision (CD 7.19) to justify refusal of planning permission, and criticised the conclusions made by the Inspector who determined the Potato Pot appeal decision (CD 7.6). As was made clear during cross examination, the polar opposite is true. Broughton Lodge is a very good example of where an

Inspector concluded that it was not right to extend the characterising effects of turbines into a hitherto undeveloped part of LCT 5(a). The appellant understands this. Potato Pot marks the outer limit of the zone of characterisation around Workington, and the proposed development would tuck intelligently behind it. The Broughton Lodge appeal decision is actually more supportive of the appellant's approach than the Council's approach.

- 6.32 Any significant effects on landscape character would be fully reversible, and this serves to mitigate the degree of harm. There would be no significant effects on the Lake District National Park, or the Solway Coast Area of Outstanding Natural Beauty. At Workington Hall Registered Park and Garden significant effects would only be experienced along the southern edge of the designated area, a part which is not, and never has been, open to the public. This part is already influenced by the A596 which forms the boundary, and from where the Winscales windfarm is already in view. The majority of the designation would not experience any significant effects. Mr Woolerton had considered the impacts on the RPG, and in cross examination he was clear that he had no concerns.

Cumulative visual impact

- 6.33 In no case would the cumulative presence of turbines dominate or cause unacceptable visual effects for residents of the closest settlements.
- 6.34 Nor, the appellant submits, would the presence of the proposed turbines result in a visual impact so serious that it would unacceptably impair the experience of users of the local public right of way network. The bridleway is less than salubrious. Part of it also runs through woodland. There would be some open views, particularly from the Gilgarran end, but the Potato Pot turbines will already result in primary characterisation. The Inspector who determined the Potato Pot appeal found such effects to be acceptable. The footpath to the north of the appeal site is gated, and feels very unwelcoming. Terms such as "threatening" and "fearsome", used by Mr Woolerton, are very subjective and views looking along the footpath are in fact towards the fells; the proposed wind turbines at Lillyhall would be off to one side. While not a determinative factor, there is no evidence to suggest regular use of the local rights of way. Nor is the language of Mr Woolerton consonant with the experiences from windfarms up and down the United Kingdom, where public rights of way very happily run by, and through, windfarms.

The visual component of residential amenity

- 6.35 Extremely detailed and comprehensive factual information has been provided by Mr Charrier concerning the likely impacts on the visual component of residential amenity (APP). The full detail of the study is specifically incorporated herein. In no case would the cumulative effects of Lillyhall and Potato Pot (or any other turbines which form part of the baseline) give rise to visual effects which would be visually overbearing, overwhelming or oppressive, such that the residences affected would be rendered unattractive places in which to live. Given the scale of the proposed development, spacing of the turbines, separation distances involved, orientation of the properties and amenity spaces and openness of view, any effects on outlook would not cross the public interest line. Detailed submissions on the correct approach to be

taken are attached as an appendix to the appellant's closing submissions (ID 12, Appx A).

Further material considerations

- 6.36 Pursuant to the statutory duty contained within Section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990, special regard should be had to the desirability of preserving the listed building and setting at Wythemoor Sough and other listed buildings within the study area. Mrs Petersen confirmed that in her view, the impact on the overall heritage significance at Wythemoor Sough would be minor, and the Council has not relied on it as a reason for refusal. This agrees with the conclusions reached in the ES (CD 9.1, 10.8.9 – 10.8.12). Clearly it is a matter to be taken into account but, when the statutory duty has been properly discharged, any such minor harm to setting which translates as "less than substantial" harm to overall heritage significance would be outweighed by the wider benefits of the scheme, pursuant to paragraph 134 of the NPPF. Detailed legal submissions on the correct approach to heritage related decision making are attached as an appendix to the appellant's closing submissions (ID 12, Appx B).
- 6.37 The proposed development would concentrate development into an area already characterised by wind turbines, and would not tip the landscape over any new threshold of cumulative unacceptability. Importantly, it would not result in any further encroachment into the open countryside. Accordingly, the risk of still unaffected parts of LCT 5(a) becoming characterised is avoided.
- 6.38 Evidence submitted by the appellant has demonstrated that the cumulative impacts on landscape and visual impacts are not such that there is any significant conflict with the Development Plan, when it is read as a whole. In the event that there is found to be limited conflict with elements of adopted policy, then the advice contained within the NPPF and PPG needs to be properly applied; in particular, it is contrary to the PPG for a Council to include a rigid minimum separation distance in a Development Plan policy.
- 6.39 The four-turbine scheme would produce the most renewable energy, and it is interesting to note that Mr Woolerton does not see much difference between this and the three-turbine scheme. Mrs Petersen said that the differences were marginal. However, it is clear that the three-turbine scheme would bring some design benefits, be of smaller scale, and increase separation distances. If these benefits are felt to outweigh the reduction in power, then the smaller scheme should be preferred. The appellant contends that the genuine choice is between the four- and three- turbine format, and not between wind farm or no wind farm at all. Whichever version of the scheme, the appellant believes this is the right location for this much-needed wind farm. The environmental, economic and social impacts would be acceptable, and planning permission should be granted in the form in which it has been sought.

Comments on the WMS of 18 June 2015 and associated amendments to the PPG

- 6.40 The appeal was valid at the time of publication of the WMS and the amended PPG. The adopted Development Plan does not identify a suitable site for wind energy development, and there is no Neighbourhood Plan applicable to the appeal site. Therefore, the "Transitional Provisions" set out in the WMS apply to the determination of this appeal. Under those Transitional Provisions the

requirement for a wind energy development to be located within an area identified for such purposes falls away, and the only new material consideration arising from the WMS and the amended PPG is the addressing of planning impacts identified by the affected local community.

- 6.41 The SoS is, as with all planning applications, obliged to determine the proposal strictly in accordance with S.38(6) of the Planning and Compulsory Purchase Act 2004: that is, in accordance with the Development Plan, unless material considerations indicate otherwise. In the case of wind energy development, the NPPF is an important material consideration, as are relevant sections of the National Policy Statements EN-1 and EN-3. There has been no change to the NPPF, or the National Policy Statements, as a result of the introduction of the WMS and the amended PPG. Neither the amended PPG nor the WMS constitutes a statement of national planning policy, though they are both relevant material considerations for the purposes of S.38(6) of the 2004 Act.
- 6.42 The WMS and amended PPG note that planning permission for wind energy development can be granted where, following consultation, the planning impacts identified by the affected local community have been "fully addressed". Whether or not they have been is identified as a matter of planning judgement for the decision maker, and only "planning impacts" can be taken into account. It is clear therefore that the intention of the WMS and amended PPG is to focus on the substance of those concerns in planning terms, rather than on the number of people raising those concerns.
- 6.43 If the decision maker, exercising its planning judgment, is satisfied that the appellant has fully addressed the planning impacts identified by affected local communities and that the proposal complies with the principle of the adopted Development Plan, as supported by the NPPF and NPS, then it must be concluded that the proposal has the backing of the affected local community. The wording of the WMS and amended PPG is clear on this point. The use of the phrase "*and therefore* has their [the affected communities] backing" (emphasis added) creates a clear objective test to determine whether a scheme can be deemed to have the backing of the community.
- 6.44 In the current case, the proposal has been the subject of EIA which has necessarily entailed detailed discussions with the Council and other relevant consultees. The appellant initially wrote to 99 stakeholders, as detailed in chapter 3 of the ES. A well-publicised public exhibition was held in March 2011, following which the appellant wrote to the nearest residential neighbours of the site to offer up-to-date briefings on the proposal, and held regular community liaison meetings. The ES submitted with the application described how the design evolution of the proposed development had responded to the various planning and environmental issues which had been raised during pre-application consultation.
- 6.45 The Council also carried out consultation in the course of determining the application. Following determination, the appellant's removal of one of the turbines from the original scheme was informed by the consultation responses received, and the views expressed by the Council in refusing permission. At the inquiry, no objector or action group sought or obtained Rule 6 status. A specific inquiry session was held to enable members of the public to address the inquiry.

6.46 It is the appellant's view that all relevant planning concerns of the local community have been identified and documented in the material produced by all parties for the application and appeal, and that these concerns have been fully addressed. The Inspector and the SoS have access to all of this information. To the extent that the relevant planning impacts identified by affected local communities have been satisfactorily addressed (and are therefore not matters which should give rise to a refusal of planning permission) then planning permission can safely be granted. The appellant contends that its evidence to the inquiry demonstrates that this is indeed the case.

7. The case for the Council

The following paragraphs summarise the Council's case, which is set out more fully in its closing submissions (ID 11) and post-inquiry correspondence (PID 2 & PID 4).

7.1 The relevant issues in this appeal are as identified by the Inspector and which form the basis of the Council's reasons for refusal, namely: (1) the cumulative impact of the proposed development on the character and appearance of the landscape, (2) the cumulative visual impacts of the proposal on the living conditions of the occupants of specific residential properties, and (3) the cumulative impacts of the proposal on the users of public rights of way.

The Policy Framework

7.2 It is agreed by the main parties that the most relevant Development Plan policies to the determination of this appeal are Policies S1 and S19 of the Allerdale Local Plan [5.2]. They are up-to-date policies, the Plan having been adopted in July 2004, after the publication of the NPPF. Full weight should accordingly be given to them. Policy S1 effectively reproduces paragraph 14 of the NPPF and creates a presumption in favour of sustainable development. The Council accepts that the proposals are sustainable development within the meaning of Policy S1, and that the presumption arises.

7.3 Policy S19 is a permissive policy, specific to (among other things) renewable energy resources. To be permitted under this policy, proposals must satisfy a number of criteria which include: (a)(i) not having an unacceptably adverse impact on the amenity of local residents, and (a)(ii) not having significant adverse visual impacts or significant adverse impacts on the character of the surrounding landscape. The Council accepts that if the wording of (a)(ii) were taken literally, no wind turbine proposals would comply; it therefore agrees with the appellant that it should be interpreted as requiring any such adverse impacts to be "unacceptable" in order to be in conflict with that part of the policy. In broad terms, the Council's contention is that the proposals are contrary to both these criteria of Policy S19 and so, being in conflict with the Development Plan, should not be approved.

7.4 The policy witnesses for the Council (Mrs Petersen) and the appellant (Mr Stewart) both agreed that these policies are "up to date" for the purposes of paragraph 14 of the NPPF. It follows that the first limb of paragraph 14 applies, rather than the second, and so the proposals should be approved if they are found to comply with Policies S1 and S19, or refused if they are found

not to comply with them (unless, in either case, material considerations indicate otherwise).

- 7.5 Paragraph 225 of the supporting text to Policy S19 states that a minimum separation distance of 800 metres between wind turbines and residential properties will generally be expected. At the inquiry the Council did not rely on that supporting text, which does not form part of the policy itself. Mrs Petersen explained in her oral evidence that she had recently had a telephone conversation with an Officer of Allerdale Borough Council about paragraph 225 in the context of this appeal: she said she was informed that it was merely a guideline to which little weight should be given and that, instead, each case should be assessed on its own particular merits.
- 7.6 However, after the inquiry closed, Allerdale Borough Council wrote to the Planning Inspectorate expressing concern that its position in connection with paragraph 225 of the Local Plan had been misrepresented (PID 1). It maintained that its advice to Mrs Petersen had been that paragraph 225 "should be a material consideration". Cumbria County Council subsequently confirmed in writing that this was the advice given (PID 2). It apologised for its witness having misinterpreted that advice, and clarified its position on paragraph 225 as that weight should be given to it, as it is supporting text for a recently adopted policy, and therefore a material consideration.
- 7.7 As to other material considerations, the Council considers it to be of note that paragraph 98 of the NPPF requires such proposals to be approved unless material considerations indicate otherwise – but only if their impacts are, or can be made, acceptable. Hence, the same issues arise.
- 7.8 It is thus clear from the relevant policy framework that despite such proposals amounting to sustainable development in principle, planning permission should only be granted if their adverse impacts are, or can be made, acceptable. There is no overriding or absolute presumption in their favour. That is acknowledged by Mr Stewart in his proof (APP 2, 5.1.3) and stated in terms in the PPG, which says "the need for renewable or low carbon energy does not automatically override environmental protections". Therefore, although the Council does not dispute the benefits that would arise from the proposals, the adverse impacts must be assessed and weighed against the benefits in the overall planning balance.

Impacts

- 7.9 The appeal site is located on part of the operational Lillyhall landfill site, on an area which has not been, and is not to be, worked. It cannot be viewed from the vast majority of the viewpoints referred to in evidence and, as the appellant's landscape witness (Mr Charrier) agreed in cross examination, must be considered in the context of the wider landscape in which it sits. The Lillyhall Industrial Estate is adjacent to the appeal site to the west, but its significance is relatively local, as illustrated by its appearance in the context of only 2 of the 27 viewpoints relied upon. Further, the Industrial Estate is heavily landscaped, and thereby screened from views.
- 7.10 In assessing the effects of the proposals on the character of the landscape, the total landscape must be considered. The surrounding landscape to the north, south and east has more of a rural character than an urban one. To the east of

the appeal site the character of the area, as described by Mr Charrier, "...quickly transitions to a predominantly pastoral agricultural landscape" (APP 1, 5.8). The area to the east, leading from the appeal site to Potato Pot, is one of open countryside. That position on the ground is reflected in the local landscape character type in which the majority of the appeal site sits, namely the Ridge and Valley LCT 5(a).

- 7.11 Back in 2007, the Cumbria Wind Energy SPD stated that this LCT area had a medium capacity for wind farm development. However, at that time there were only 61 turbines at 10 locations within the area: it now accommodates at least 164 turbines, at some 38 locations (LPA 2, 5.3.4). The capacity for the area must be assessed in that changed context. Significantly, the SPD points out that in judging the acceptability of a new proposal, "it is crucial to determine the "threshold" beyond which wind energy developments in a particular area become unacceptable... although the effect of a single scheme is limited, when added to the effect of other schemes in the area, operational, approved or proposed, it creates unacceptable cumulative impacts" (CD 3.1, 3.21). Given the scale of wind turbines in the area, the cumulative impacts of any new proposals are of critical importance.
- 7.12 In response to the significant increase in numbers of wind turbines consented in the County, the Council commissioned an independent study of the distribution of vertical infrastructure, and its effects on landscape and visual receptors. The resulting *Cumulative Impacts of Vertical Infrastructure* report was produced in October 2014 [5.12]. In its conclusions, concern is expressed over valued landscape areas and visual receptors being affected by such infrastructure. A concentration of such effects is stated to be evident in a number of areas, with particular reference made to the corridor of land between Workington and Carlisle. That is stated as a concern, in the context of a need to reduce the increase in numbers in such areas (CD 3.2, 4.3.1 – 4.3.3).
- 7.13 The PPG specifically requires attention to be given to cumulative impacts, especially given the increasing impacts of wind turbines as the number of them in any area increases (APP 2, 5.2.4). In assessing cumulative impact, policy and guidance is consistent that it is the *totality* of impacts which must be assessed from the existing, consented and proposed developments and not merely the incremental added effects of any new proposals. The current Guide to Landscape and Visual Impact Assessments advises that the concerns of stakeholders, including local communities, are over "the totality of the cumulative effect of past, present and future proposals", and those assessing the effects "should reflect these concerns as realistically as possible (CD 8.2, 7.16). As Mr Charrier states in his proof of evidence, it is the "totality of cumulative effects... which are considered to be of most importance to the decision making process" (APP 1, 3.14).
- 7.14 Furthermore, in assessing cumulative impacts, the issue of separation is crucial. The Scottish Natural Heritage guidance notes that a key factor in determining the cumulative impact of wind farms is "the distinct identity of each group of wind farms, typically related most closely to their degree of separation and similarity of design... it is critical to achieve a balance between wind farms and the undeveloped open landscape retained between them. Adequate separation will help to maintain wind farms as distinct entities." (CD 8.10, 4.11). Although the extent of separation is ultimately to be assessed on a

case by case basis, the SPD suggests at least 6km (CD 3.1, 1.29). This is consistent with the approach taken in the Broughton Lodge appeal decision (CD 7.19).

- 7.15 The landscape witnesses for the Council and the appellant have assessed the cumulative impacts of the proposal both on the character of the landscape, and in visual terms. Each acknowledges that the matter is ultimately one of judgment. Nevertheless it is significant that they have reached considerable agreement, up to a distance of some 2.86km (ID 2, Table 2). Mr Charrier's evidence in relation to many viewpoints is that the cumulative impacts on landscape character and visual impacts will be "significant adverse" throughout the 25 year duration of the proposed development, which he regards as "long term" (APP 1, 7.81).
- 7.16 Mr Woolerton considers those significant impacts to be much wider, up to 13km from the proposed turbines. He gave very clear and cogent reasons as to why such impacts would clearly be significant and adverse. The Council submits that it is difficult to accept the alternative view of Mr Charrier in relation to those longer distance viewpoints, particularly given the lack of meaningful separation between the proposed wind turbines and those of Potato Pot. They would be insufficiently close to be regarded as part of the same windfarm, but too close to be regarded as distinct entities. That would result in the creation of a new windfarm landscape on the open land between the appeal site and Potato Pot.
- 7.17 Given the relatively high level of agreement between the landscape experts as to the significant adverse and long term impacts of the proposals, on landscape character and visually, the fundamental issue is whether those impacts are acceptable or unacceptable.
- 7.18 Mr Charrier contended for the appellant that there are two reasons why the effects should be regarded as acceptable, despite being significantly adverse. Firstly, he placed considerable reliance upon the fact that wind turbines are a characterising influence of the area where the appeal site is located. That was repeated on many occasions throughout his evidence in chief. In his view, new proposals should be focused in such areas, rather than encroaching into other parts of LCT 5(a) landscape which are currently unaffected by such development, and should be protected.
- 7.19 The Council submits that such an approach is fundamentally flawed, and clearly erroneous. It is not supported by any policy or guidance. Nowhere is it stated that once an area of LCT 5(a) land has been subject to the development of a material number of such turbines, it should no longer be protected from further adverse development, which protection should remain solely for unaffected areas. Nor has that approach been taken by previous Inspectors on appeal. Mr Stewart sought to suggest otherwise by reference to the Hunday Farm appeal decision (CD 7.15). However, that Inspector was merely taking existing turbines into account in his consideration of whether the landscape character effects were significant. In contrast, Mr Charrier has found significant and adverse effects, but seeks to justify them as acceptable in this area on the basis that other unaffected areas should instead be protected at this area's expense. That is a wholly different approach.

- 7.20 In addition, that approach effectively makes the cumulative impact assessment irrelevant. Having undertaken the assessment and found significant adverse cumulative effect, it is found to be acceptable because it is within an area in which turbines are a characterising influence. That would be the position for every proposal in this area, however great the impacts, and would create a very concerning precedent. That is contrary to all the policy and guidance, which stresses that with greater numbers of such developments in an area, the importance of the cumulative impact assessment increases, not decreases. All areas of LCT 5(a) land should be subject to the same degree of protection.
- 7.21 Moreover, it is apparent from the map in the *Cumulative Impacts of Vertical Infrastructure* report that the vast majority of LCT 5(a) land in this vicinity is already significantly affected by such infrastructure (CD 3.2, Map 4-1).
- 7.22 In any event, the appeal site and the area to the east is a significant area of land, which serves an important purpose as a green open area between existing turbines. As Mr Charrier acknowledged in cross examination, it retains the character of LCT 5(a) land. The proposed development would infill this important gap, with insufficient separation between the proposed wind farm and that at Potato Pot to enable them to appear as two distinct entities.
- 7.23 The second reason given by Mr Charrier for regarding the significant impacts of the proposal as acceptable was their design. The Council does not accept this argument, and the guidance does not in any way support such an approach. Good design is important, but the significant impacts will nonetheless occur. If the appellant's approach were adopted, it would follow that proposals could be regarded as acceptable, despite their significant impacts, provided they were of appropriate design.
- 7.24 Instead, it is clear that the cumulative significant adverse impacts of the proposals would be unacceptable, and contrary to the Development Plan, and should accordingly be refused planning permission.

Other matters

- 7.25 In determining the Potato Pot appeal decision, the appointed Inspector considered the cumulative impact with the current proposals. However, he did so in the context of his assessment of whether planning permission should be granted for Potato Pot. He did not have the same evidence before him as is available to this inquiry. Indeed, it is of note that the appellant itself at that appeal gave evidence that the cumulative impacts would be unacceptable. Further, material changes have occurred since that decision, in that three additional separate turbines have been granted consent, which have material implications in terms of landscape character and visual impacts.
- 7.26 As to the lack of objections by third parties, there are many possible explanations. In any event, objections were made by Allerdale Borough Council, Friends of Rural Cumbria's Environment (FORCE), Winscales Parish Council, and four local residents.

Conclusion

- 7.27 The Council submits that both the 3 and 4 turbine schemes would have unacceptable cumulative impacts, which would not be outweighed by the

benefits, and they are therefore contrary to the Development Plan. Consequently, for those reasons, the Inspector is respectfully invited to recommend refusal of the proposals whether on the basis of 3 or 4 turbines.

Comments on the WMS of 18 June 2015 and associated amendments to the PPG

- 7.28 The WMS specifies two criteria which must be satisfied if an application for wind energy development is to be permitted. As regards the first, the current appeal site is not identified as an area suitable for wind energy development in a Local or Neighbourhood Plan. The application therefore fails this criterion.
- 7.29 As regards the second, Allerdale Borough Council, three local residents and a local action group (FORCE) objected to the planning application. The objections were primarily with regard to the landscape and visual impacts of the proposed turbines, particularly given the concentration of turbines in this part of West Cumbria. At the public inquiry, two local residents and FORCE made verbal submissions objecting to the proposal.
- 7.30 The Council is firmly of the view that the current proposal fails to meet both criteria in the guidance.

8. Other representations made at the inquiry

Oral representations made in addition to those of the main parties are summarised below.

- 8.1 **Ms M Twiss** is originally from Cockermouth, and has lived in Winscale for the last 2 years. She is very concerned about the drip-feed of planning applications, the majority of which have been allowed, that has led to a substantial increase in the numbers of wind turbines. On a clear day, she is able to see 28 turbines from her property, including the wind farms at Winscale and Tallentire, and turbines from Bothel as far as Carlisle. Another large turbine has recently been permitted at Hunday Farm, just behind her house, and she will be able to see the three permitted 100m high turbines at Potato Pot when they are built. This gives rise to a feeling of being surrounded by wind turbines, without any corridor or break in the views. She has been told that another farm will shortly be making an application for a wind turbine, and is concerned that all the single applications soon add up. Applications for solar farms are also coming forward.
- 8.2 She believes that the reason why few local residents have objected to the current proposal is that they feel disenfranchised. It is difficult to speak up as a lone voice against big companies who can afford representation. She pointed out that people who live here should have a decent quality of life, and that just because there are already wind turbines in the area, doesn't mean that there should be more. Similarly, the fact that the area has a history of mining does not justify covering it in wind turbines. She drew an analogy with Hampshire, where previously-used land has been regenerated to create a leisure facility and ecology area, and feels that the same could be done here.
- 8.3 She considers that while 3 or 4 wind turbines may not have much effect on their own, it is the collective impact that is important, and agrees with Mr Woolerton's evidence in this regard. She expressed concern that renewable energy considerations sometimes take a back seat to financial considerations. She is also concerned that since it is possible a new nuclear power station will

be constructed at Moorside, the National Grid will need to renew its pylon provision, and due to the prevalence of wind turbines, their existing corridor might have to be varied.

- 8.4 She explained that she is able to hear noise from the existing wind turbines near her property at night, such that she has had to move from the bedroom at the front of her house to the back, and is concerned that noise would increase with additional turbines. She requested that the SoS look at the bigger picture, and bears in mind the duty of care to people who live in the area. She points out that it is a lovely area but is under attack, and in future its qualities could well be overpowered by wind turbines.
- 8.5 **Cllr N Cockburn** said that having attended the Allerdale Local Plan Inquiry, she was very concerned to hear (in the course of Ms Petersen's examination in chief) that an Officer of Allerdale Borough Council advised that the separation distance set out at Policy S19 should simply be dismissed. It should not be dismissed: Councillors and Officers fought very hard to get the Local Plan and Policy wording in place. It was examined in detail, and found sound.
- 8.6 She said that those living and working in the area do not see the landfill site, but do see wind turbines. In her view, adding another group of turbines would have a significant detrimental effect.
- 8.7 She is concerned that the use of conditions to protect residential amenity does not work, and cited the Tallentire wind farm as an example, explaining that people have to complain before operators fix the problems. Where two or more schemes are erected at once, the respective operators argue that adverse effects are caused by the cumulative impact, which means that it is then very difficult to sort out who has to pay to correct them. In her experience, where noise consultants have been appointed under a noise condition and problems admitted, tweaks have been made but the problems persist: the Council's only recourse then is to take the operator to Court. She pointed out that while shadow flicker is covered by condition, it happens repeatedly. She also pointed out that conditions do not prevent wind turbines from chopping up owls which, she contends, is something that has happened locally; all conditions can do is require the counting of their bodies. She is concerned about the adverse impact the proposed wind turbines would have on hen harriers, having seen them in close proximity to the appeal site (TP 2).
- 8.8 **Cllr M Fitzgerald** advised that she had not intended to speak at the inquiry, but had been moved to do so by the dismissive comment in the appellant's opening submissions to the effect that the Friends Of Rural Cumbria's Environment ("FORCE") object to all wind turbine proposals. She explained that that is not the case, as FORCE only objects to inappropriate development. FORCE may well have decided not to object to this particular proposal, given its location on a landfill site, were it not for all the other turbines already permitted in this area. FORCE considers that the number of turbines here is reaching an unacceptable level, bringing some local residents to despair.
- 8.9 She listed the objectives of FORCE as being to support renewable energy and alternative methods of reducing emissions, as long as these cause no other harm; to propose changes to policy and procedure concerning renewable energy; to formulate a strategy to address cumulative impacts; to encourage more weight to be given to the concerns of residents; to encourage the public

to think about and engage with the renewable energy debate; and to encourage energy conservation methods. She emphasised that FORCE is not a serial objector, there have been a number of proposals for wind turbines which it has supported, and others to which it has not objected. Its concern is that serious thought needs to be given to the proliferation of wind turbines, and future sites carefully considered.

- 8.10 She pointed out that in order to ensure consistency of decision making, the cumulative impact of all other existing and consented schemes must be taken into account when assessing the current proposal, including the wind turbines allowed on appeal at Potato Pot. The proximity of the current proposal to that permitted scheme would give the impression of extending it and magnifying its effects. She argued that smaller turbines should also be taken into account when assessing cumulative impacts, and pointed out that the situation has changed considerably since the SPD was introduced in 2007. Further guidance on renewable energy was published by the government in 2013, explaining that the views of local communities should not be overridden and that attention should be given to cumulative impacts. Also the new Local Plan has been adopted, and contains a policy setting out separation distances, which was found sound by the Local Plan Inspector. That policy is permissive, but places a duty on the developer to show that the benefits of the scheme would outweigh the adverse impacts. The appellant in this case has not done so.
- 8.11 FORCE believes that local residents have been demoralised by the number of applications for wind energy development. In 2012 there were 51 full applications and 58 applications for screening opinions, and in 2013 a further 33 full applications and 49 applications for screening opinions. The brand name "Energy Coast" was originally associated with nuclear power, and has only subsequently encompassed the wind farms that have appeared. Ms Fitzgerald pointed out that if you make the area sound like a large power station, there is a danger that that is what you will end up with.
- 8.12 FORCE is aware that residents living near the Tallentire and Winscale wind farms suffer from noise and shadow flicker, but have simply been told to record such incidents in a diary: it is very hard to get these adverse impacts put right. All FORCE, which has more than 1,000 members, tries to do is to help people like that, and it is disrespectful to dismiss it as an organisation which objects to everything. If that is how it looks, it is a reflection of the fact that it is getting harder to find suitable locations for wind turbines.
- 8.13 Developers used to argue that there were no relevant and up-to-date Local Plan policies, but that is no longer the case, with the recent adoption of the new Local Plan. FORCE agrees with the NPPF that all communities are obliged to play their part in contributing to renewable energy generation, but this part of Cumbria has done so already. She emphasised the point that FORCE does not object to all renewable energy proposals, but rather seeks to ensure that careful thought is given to their location.

9 Written representations

- 9.1 Four letters of objection to the proposed development were received by the Council at the application stage (collected in Folder TP 1), and two further representations objecting to the proposal were received by the Planning Inspectorate at the appeal stage (collected in folder TP 2). The concerns and

comments set out in these written representations are also expressed in the evidence of the Council, and/or subsequently articulated by others who spoke at the inquiry, as outlined above, so I do not repeat those matters here.

10 Conditions

- 10.1 The Council and the appellant helpfully collaborated to produce an annotated list of suggested conditions (ID 7), which then formed the basis for a discussion session at the inquiry. Following that discussion, they produced an updated set of conditions (PID 1) which were agreed between them.
- 10.2 Should the SoS be minded to grant planning permission for the proposed development, I consider that all of the agreed conditions would be necessary, relevant, enforceable, precise and reasonable in all other respects, in accordance with paragraph 206 of the NPPF. I have made some minor amendments, to improve clarity and concision, and my list of suggested conditions is set out at Appendices C (for the three-turbine scheme) and D (for the four-turbine scheme). In the following paragraphs, numbers in brackets refer to the conditions there listed, and are common to both Appendices.
- 10.3 It is necessary to impose the standard conditions governing the time limit for the commencement of development (1), and requiring compliance with the approved plans (2).
- 10.4 The proposed development is intended to be temporary, rather than permanent, and conditions are therefore needed to secure its removal, and the restoration of the site, after 25 years (3 and 4). A condition is also needed to secure the removal or repair of any turbine which ceases to operate within that period (5). Conditions governing the design, height and colour of the turbines (6 and 7), and details of the construction compound (8) and switchgear control building (9), are necessary to ensure the visual impact of the development is minimised; for the same reason, conditions are needed to ensure that electrical cabling is laid underground (10), and to prevent external illumination other than aviation safety lighting (11 and 17).
- 10.5 Construction traffic is likely to cause some disruption, and would require a range of measures to ensure safe access, and minimise the impact on other highway users. To this end, conditions requiring the Council's prior approval of a Construction Traffic Management Plan (12) and a Construction Method Statement (13) are needed. To minimise the disturbance experienced by nearby occupiers, it is necessary to impose conditions limiting the hours during which construction and deliveries may take place (14 and 15), and establishing schemes to deal with any problems with telecommunication interference (18), television and broadband reception (19) and shadow flicker (20) that may arise as a consequence of the proposed development.
- 10.6 Conditions are also needed to safeguard wildlife and its habitat (16) and, in the light of the site's historic use, to ensure any further remedial work necessary as a consequence of previous coal-mining activity is duly carried out (22). A condition is required to provide some flexibility, to an agreed tolerance of 20m, for the micro-siting of the wind turbines while protecting the visual amenity of users of the nearby office accommodation (21). The noise condition agreed between the parties is complex, but I agree that this level of detail is

necessary to protect nearby residents from any unacceptably adverse impact on their living conditions (23).

11 Inspector's conclusions

- 11.1 The main issues are the impact that the proposed development would have upon the character and appearance of the landscape, and its visual impact upon occupiers of nearby residential properties and settlements and upon users of public rights of way, considered in the context of other existing and consented wind energy development.

The effect on the character and appearance of the landscape

- 11.2 The appeal site is located within the existing Lillyhall landfill site, which is a working landfill with associated visible infrastructure, machinery and industrial buildings. Alongside this is the Lillyhall Industrial Estate, which contains a variety of industrial units of varying sizes [6.5]. While the proposed 99m high wind turbines would clearly be structures of a considerably larger scale, their industrial appearance and energy-generating purpose would be congruent with the character of their immediate surroundings. There would be a visual and functional logic to their presence, when viewed in the context of the existing adjoining uses.
- 11.3 However, views in which the proposed turbines would be seen together with the industrial character of their immediate surroundings are somewhat limited. There are many views from the wider area in which the landfill site and adjoining industrial estate would not be apparent, due to the undulating topography of the landscape, the presence of intervening vegetation, the disparity in height between the turbines and the structures associated with the landfill site and industrial estate, and the considerable remediation and landscaping work that has been carried out to date [7.9].
- 11.4 In these wider views, the landscape context in which the proposed turbines would be set is defined by the CLCGT as Landscape Character Type (LCT) 5a Lowland: Ridge and Valley, characterised by lowland agricultural pasture and rolling farmland. A large quantity of existing wind turbines are already visible in this LCT: according to the updated ES, the numbers of turbines which potentially contribute to cumulative impact at the viewpoints varies between 44 and 138, with an average for the twelve illustrated viewpoints of 105 (LPA 2, 6.8.3).
- 11.5 The Government recognises, through its national policy statements and guidance, that there is an ongoing and urgent need for more renewable energy development [6.20]. The appellant argues that in order to ensure the hitherto unaffected parts of LCT 5(a) do not become characterised by wind turbines, the best place to locate new wind farms is in areas already characterised by turbines [6.3].
- 11.6 I have considerable sympathy with local residents' views that this part of Cumbria already makes an extensive contribution to the provision of wind energy [8.2, 8.11], such that the burden might now more fairly be shared across the rest of the country: after all, the NPPF specifies that there is a "...responsibility on all communities to contribute to energy generation from renewable or low carbon sources" [5.6]. The existence of the turbines now proposed would be temporary, being limited by condition to a period of 25 years [10. 4], but that is still a long time in terms of human lifespans.

- 11.7 In any event, in the absence of any regional or wider community targets to quantify and mediate those contributions, it does not necessarily follow that permitting further development within areas already characterised by wind turbines will necessarily “protect” hitherto unaffected parts of LCT 5(a) from this type of development. There is no indication that granting permission for the current scheme would prevent other proposals coming forward for similar development in unaffected parts of LCT 5(a), each of which would still need to be determined on its own merits.
- 11.8 The appellant makes the related point that appropriate clustering of wind energy development is a better strategic plan than forced dispersal, since the latter approach would lead to further encroachment into the open countryside [6.4]. That may well be so, but the merits of differing strategic approaches to different types of development is not a matter that can properly be resolved by an Inspector (or even the SoS) in the context of a s.78 appeal concerning the merits of a specific proposal on a specific site. Wider questions of strategic approach need to be formulated, and robustly examined, through the Local Plan process.
- 11.9 Here, the Allerdale Local Plan does not set out a strategic preference for “clustering” or “dispersal”. In terms of locational strategy, the only specific direction provided by Policy S19 is that only small scale renewable energy schemes will be acceptable within the Hadrian’s Wall world Heritage Site and its buffer zone, and the Solway Coast AONB. The overall approach is that proposals will be permitted provided their impacts (either in isolation or cumulatively) can be made acceptable [5.2]. I make no criticism of that approach, which reflects the guidance of paragraph 98 of the NPPF, and avoids the pitfalls that bedevil any broad-brush attempt to stipulate separation distances between schemes, or the number of wind turbines that might be acceptable in any given area.
- 11.10 The WMS of June 2015 [1.8] sets out two pre-conditions for a grant of planning permission for wind energy development, the first of which is that the development site is in an area identified as suitable for wind energy development in a Local or Neighbourhood Plan. The current proposal does not fall within any such identified area, but that is not, as the Council appears to argue, a consideration that weighs against a grant of planning permission [7.28]. Rather, since the transitional provisions set out in the WMS apply to this case, only the second of its pre-conditions is relevant: that is whether, following consultation, it can be demonstrated that the planning impacts identified by local communities have been fully addressed and therefore the proposal has their backing. I return to the topic of concerns raised by the local community below, but since the planning impacts they identified included the effect the development would have on the character and appearance of the area, it is appropriate to continue with that assessment first.
- 11.11 The Cumbria Wind Energy SPD, adopted in 2007, stated that this LCT area had a medium capacity for wind farm development. However, at that time there were only 61 turbines at 10 locations within the area: it now accommodates at least 164 turbines, at some 38 locations [7.12]. In response to the significant increase in numbers of wind turbines consented in the County, the Council commissioned an independent study of the distribution of vertical infrastructure, and its effects on landscape and visual receptors. The resulting

Cumulative Impacts of Vertical Infrastructure report, produced in October 2014, maps the distribution of the significance of the effects of medium-scale vertical structures, and shows that the majority of the landscape to the south, east and north of Workington is already subject to “significant” levels of cumulative effects (CD 3.2).

- 11.12 The ES and other visual material produced by the appellant provides a detailed, thorough, and very professional assessment of the baseline of existing and consented wind energy development within the surrounding area, updated to include changes arising since the submission of the original four-turbine scheme in September 2012. Of particular note is the grant of planning permission, on appeal in October 2013, for three 100m wind turbines on land nearby at Potato Pot [2.2]. The closest of these would lie around 800m from the nearest of the proposed turbines at Lillyhall. Two 74m turbines were permitted at Tarn Bank and East Town End in November 2013, adjacent to the existing Winscales Wind Farm, and effectively consolidate that wind farm such that it appears to consist of 20 turbines. In addition, a 77m turbine was permitted on appeal³ in May 2014 at Hunday Farm, some 700m south-west of the Winscales wind farm and 1.7km north-east of the current appeal site.
- 11.13 The Inspector who determined the Potato Pot scheme noted that the area within about 1km of that appeal site would be dominated by the three wind turbines, which would become the key characteristics of that area. I note that a similar effect would be created by the turbines now proposed, which would become the key characteristics of the area (resulting in a “wind farm landscape”) extending up to about 900m from the turbine array (LPA 2, 7.3.4). These two new areas of wind farm landscape would overlap. Further, the dominant characterising influence of the 20 turbines associated with the Winscales wind farm extends to approximately 1km from that array, and the Hunday Farm turbine, lying between Winscales and Lillyhall, extends the wind farm landscape further toward the current appeal site.
- 11.14 I appreciate that there would be some gaps between the respective wind farm landscapes, but I share the Council’s concern that these would be too small to provide visual respite from the presence of wind turbines, such that the overall impact of the spatial relationship between the turbines of Winscales, Hunday Farm, Potato Pot and Lillyhall would be a broad, linear, wind farm landscape extending to some 8km, and 3km wide in places (LPA 2.2, 7.3.5). The proposed turbines at Lillyhall would effectively infill an otherwise open space.
- 11.15 The appellant rightly points out that this space is not an “unaffected” tract of LCT 5(a) land since, as is apparent from Viewpoints 2 and 5, the turbines of both Potato Pot and Winscales would already have a strong characterising influence upon landscape character, irrespective of Lillyhall [6.26]. However, I am not persuaded that this would in any way make a virtue of infilling this space with additional wind turbines [6.3]. The appellant fairly acknowledges that the presence of the proposed Lillyhall turbines would consolidate and intensify the existing characterising effects [6.26]. I agree with the Council’s assessment that the impacts would be wider than this: from many locations, the Lillyhall turbines would be perceived as enlarging the wind farm landscape,

³ Ref: APP/G0908/A/13/2198688 (CD 7.15)

due to their visual juxtaposition with other wind farms and turbines, such that the distribution and density of turbines in the landscape would appear enhanced and widespread (LPA 2.2, 7.14).

- 11.16 It is fair to note that the amendment of the proposed array of turbines, from four to three, has resulted in a design that would have a better visual balance with the three consented turbines of the Potato Pot scheme [6.11]. However, this does not overcome the problem of the limited separation distance between the two schemes; in some views the turbines of the two schemes, being all of similar height, would appear to be part of a single, larger, wind farm [7.16].
- 11.17 My attention was drawn to a comment made by the Inspector who determined the Potato Pot appeal, to the effect that were the proposed Lillyhall scheme to be built in addition to that which was before him, it would be unlikely that there would be any significant adverse cumulative effect to landscape character (CD 7.6, para 10). However, it is material to note that the baseline of existing and permitted wind turbines has changed significantly since the time when that Inspector carried out his assessment, and he did not have the benefit of the information and conclusions contained in the recent CIVI study, published in October 2014 (CD 3.2). My assessment of the current proposal proceeds on the basis of the up-to-date information and evidence that is now before me.
- 11.18 I conclude that in an area which is already subject to "significant" levels of cumulative effects [11.11], and in the context of acknowledged concern about reducing such effects [7.12], the proposed development would consolidate and extend existing cumulative impacts, exacerbating the current situation. It would cause substantial cumulative harm to the character of the landscape.
- 11.19 The proposed development would therefore conflict with Local Plan Policy S33, which seeks to ensure that the landscape character and local distinctiveness of the area is protected, conserved, and wherever possible, enhanced [5.2].
- 11.20 Local Plan Policy S19 is permissive of renewable energy development, but it is subject to a number of criteria, which include the proviso at (a)(ii) that it does 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". However, any wind farm will result in significant adverse landscape and visual effects over a number of kilometres, as is expressly acknowledged in national policy [6.15]. As agreed by the Council and the appellant, then, the question when considering compliance with Policy S19 is whether there would be "unacceptable" significant adverse impacts [7.3]. In my judgment, the extent of the harm caused by the proposed development would be "unacceptable", in terms of its impact on the character and appearance of the area, and the proposal would therefore conflict with Policy S19 in this respect.
- 11.21 It is relevant to note here, in case the SoS were to consider that this appeal should be determined on the basis of the original four-turbine scheme rather than the amended three-turbine scheme, my view that substantially the same effects would arise in that case. The presence of the additional turbine would extend the characterising influence of the Lillyhall array, and would result in a less balanced visual relationship with the consented Potato Pot scheme, but the consequent differences in its overall impact would be marginal [6.39].

Visual impact on dwellings

- 11.22 The Council is concerned about the visual impacts which would be experienced by the residents of Wythemoor Sough, Wythemoor Head, Wythemoor House, Whyeclose, Gale House Barn, Gale House, and the Manager's Flat at Oily's.
- 11.23 It is important to note at the outset that the planning system exists to regulate the development and use of land in the public interest. In most cases, the outlook from a private property is a private interest, not a public one: in other words, there is no "right to a view" that would protect private views from development that would adversely affect them. However, the question of public interest may be at issue where a development proposal would have such a severe adverse impact on the outlook from a private residence that it would render it an unsatisfactory place to live, for future as well as current occupiers.
- 11.24 This point was specifically addressed by my colleague, Inspector Lavender, in an appeal decision in 2009⁴. He wrote: "...when turbines are present in such number, size and proximity that they represent an unpleasantly overwhelming and unavoidable presence in main views from a house or garden, there is every likelihood that the property concerned would come to be regarded as an unattractive and thus unsatisfactory (but not necessarily uninhabitable) place in which to live. It is not in the public interest to create such living conditions where they did not exist before." The (then) SoS subsequently endorsed this approach in an appeal decision in 2011⁵. He held that when assessing the effect on visual outlook, it is helpful to pose the question: would the proposal affect the outlook of these residents to such an extent, i.e. be so unpleasant, overwhelming and oppressive that this would become an unattractive place to live?
- 11.25 In this current case, the landscape witnesses for the Council and the appellant have both conducted thorough assessments of the visual impact that the development would have on the identified residential properties, and the appellant has also provided extensive visual material (APP 1.1). None of the occupiers of the dwellings concerned expressed any objections to the proposed development, or attended the inquiry. I am grateful to the Council for making arrangements for me to visit each of the properties in question, so that I could assess the situation for myself in the course of my accompanied site visits.
- 11.26 Wythemoor Sough is oriented such that the windows of its principal, south-east facing elevation enjoy long views over the landscape towards the Lakeland fells. These views are also available from the garden and sitting-out area on this side of the house. Views from the windows of the north-west facing elevation are somewhat curtailed by the established woodland planting to the west of the dwelling. This planting would screen the lowest parts of the proposed Lillyhall turbines, but the upper parts, including the hub and the moving blades, would be visible in oblique views from the windows of this elevation, and direct views from the adjoining yard and the access road to the property. The three Lillyhall turbines would occupy a 24° arc of view, with the closest lying 570m from the dwelling.

⁴ Appeal Ref: APP/X220/A/08/2071880 (CD 7.21)

⁵ Appeal Ref: APP/D0515/A/10/2123739 & 2131194 (CD 7.1)

- 11.27 It is important to bear in mind that the occupiers of this dwelling would also have views toward the consented Potato Pot turbines, from the opposite side of the house. Those three turbines would appear as a compact group occupying a 18° arc of view, with the closest some 770m from the dwelling. The Inspector who determined the Potato Pot appeal concluded that those turbines would be dominant features at the property and have a significant adverse effect on its visual amenity, but would not be overbearing or result in the dwelling becoming an unattractive or unpleasant place to live (CD 7.6, para 23).
- 11.28 I can understand the Council's concern about the cumulative impact of the two schemes, since the occupiers would be faced with views of turbines from both aspects of their dwelling. However, the total angle of view occupied by turbines would be just over 41°, so I do not agree with the Council's assessment that the six turbines of the two schemes would be viewed through a vista that encompasses virtually 180 degrees (APP 2.2, 7.6.6). The Lillyhall scheme would not increase the extent to which the Potato Pot scheme would intrude upon the main vista to the south-east, but rather would appear as a separate and distinct feature on the opposite side of the house. I consider that while the presence of the Lillyhall turbines would have a significant adverse effect on the visual amenity of the occupiers, which would add to the significant adverse impact arising from the Potato Pot turbines, the cumulative impacts of the two schemes would not be so overwhelming or all-encompassing as to render Wythemoor Sough an unattractive place to live.
- 11.29 It is relevant to note here, in case the SoS were to consider that this appeal should be determined on the basis of the original four-turbine scheme rather than the amended three-turbine scheme, that Turbine 4 would lie only some 489m from the dwelling, and its presence would increase the arc of view occupied by the Lillyhall turbines to 40.5°. This would obviously increase the adverse visual impacts experienced at the dwelling; not, in my judgment, to such an extent as would render it an unattractive place to live, but I would caution that the cumulative effects might then be approaching that level of harm.
- 11.30 Wythemoor House lies on the opposite side of the road to Wythemoor Sough. Its principal elevation is angled more to the east than the south-east, such that while it also enjoys long views toward the Lakeland Fells, the views it would have towards the Potato Pot turbines would be far more oblique than those from Wythemoor Sough. The Inspector who determined the Potato Pot appeal concluded that those turbines would not intrude into or dominate the views from this property, and would have a "less than significant" impact on its visual amenity (CD 7.6, para 22).
- 11.31 Oblique views toward the Lillyhall turbines, from the windows on the opposite side of the house, would be somewhat impeded by the intervening barns to the west of the dwelling, and roadside vegetation, but more direct views would be available from the yard. The three turbines would occupy a 24° arc of view, with the closest lying 631m from the dwelling, and would not be visible in the main easterly views toward the fells. The proposed turbines would be clearly apparent from this property, but would not, in my judgment, constitute an overly dominant or oppressive feature. I find that considered in conjunction with the Potato Pot turbines, the cumulative impacts would result in a slight

reduction in the overall visual amenity of Wythemoor House, but not such as to render it an unattractive place to live. If the four-turbine scheme were to be considered, the nearest turbine would be closer and the arc of view occupied wider. The extent of the reduction in visual amenity would consequently be greater, but not such as would approach any danger of rendering the dwelling an unattractive place to live.

- 11.32 Wythemoor Head is also predominantly east-facing, orientated to enjoy views toward the Lakeland Fells. The northern gable-end, which faces toward the appeal site, is blank save for a ground-floor window serving the kitchen, although I note the main kitchen windows face east. There is also a north-facing window in the porch. The consented Potato Pot turbines would be visible to the east, but at a distance of around 1km and occupying a very narrow arc of view. The proposed Lillyhall turbines would occupy a 25° arc of view, with the closest around 606m from the dwelling.
- 11.33 While only very limited views of these turbines would be available from inside the house, they would be a substantial presence in views from the yard, and the access to the property. Given the limited separation distance and absence of any intervening screening, this would have an adverse impact on the visual amenity of Wythemoor Head. The extent of that adverse impact would be greater if the four-turbine scheme were to be considered, since the presence of the fourth turbine would increase the arc of view occupied by the Lillyhall scheme to 40° and the nearest turbine would then be only some 502m from the dwelling, but in neither case would the cumulative visual impacts from wind turbines be so overbearing as to render Wythemoor Head an unattractive place to live.
- 11.34 Whyeclose is a bungalow orientated to face south-west. It is set back some distance from the road, and is reached by a drive which has a tall coniferous hedge, some 3-4m high, along its western side. From the kitchen, lounge and bedroom windows there would be oblique and partially-screened views toward the Potato Pot turbines, around 1km to the south east. There would also be oblique views, in the other direction, towards the proposed turbines at Lillyhall, the closest of which would be around 566m away. These views would however be substantially screened by the intervening hedge along the access way.
- 11.35 The main garden, and patio area, lie to the rear of the dwelling. While there would be views from the end of the garden back over the roof towards the turbines, they would be restricted from the patio area by the intervening presence of the building. Taking all of this into account, I consider that while the proposed development would have an adverse impact on the visual amenity of this dwelling, neither the 3-turbine nor the 4-turbine scheme would have such a harmful effect as to make Whyeclose an unattractive place to live.
- 11.36 Gale House and Gale House Barn lie some 562m and 528m respectively to the north of the closest proposed turbine at Lillyhall. The Potato Pot turbines will be visible (when constructed) to the south east, but at a distance of some 1.7km away. Gale House is a bungalow, with a main elevation that faces eastwards towards the fens. From the windows in this elevation, and also the south-facing windows, oblique views toward the proposed Lillyhall turbines would be largely obscured by the neighbouring two-storey Gale House Barn to the south. The turbines would be visible from the eastern and western extents

of the garden, but from the paved areas closest to the house views would again be restricted by Gale House Barn and Gale House itself. I consider that the proposal would have only a limited adverse impact on the visual amenity of Gale House.

- 11.37 There would be a more marked visual impact at Gale House Barn, since the main elevation faces south-east rather than east, and while the distant fens would remain the main focus in views which would be largely unimpeded, there would be oblique views of the Lillyhall turbines, with little intervening screening, from the ground- and first-floor south-east facing windows. There would also be open views from the garden areas and patios to the south and east of the house. But while the proposed turbines would have a significant adverse visual impact, their presence would not be so overwhelming or oppressive as to render Gale House Barn an unsatisfactory living environment.
- 11.38 It is relevant to note here, in case the SoS were to consider that this appeal should be determined on the basis of the original four-turbine scheme rather than the amended three-turbine scheme, that the blades of Turbine 4 would overlap slightly with those of Turbine 3, which would appear visually awkward. This would increase the adverse visual impacts experienced at Gale House Barn, although not, in my judgment, to such an extent as would render it an unattractive place to live.
- 11.39 Oily's is a pub, which has a manager's flat located at first-floor level. It lies some 876m north of the closest proposed turbine at Lillyhall, and over 2km from the permitted wind farm at Potato Pot. There would be open views of the proposed Lillyhall turbines from the south-west facing window of the bedroom and the lounge, but I note that the lounge also has a south-east facing window, from which only very oblique views would be possible. The Hunday Farm turbine would be visible from the north-facing windows of the flat, but at a distance of almost 1km away. Taking into account the wide range of views available from this first-floor dwelling, and the extent to which the main views of the fells would remain unimpeded, I am satisfied that the proposed development would not have such an adverse visual impact as to make it an unattractive place in which to live.
- 11.40 At the inquiry, and in post-inquiry correspondence, there were divergent views as to the application of paragraph 225 of the Local Plan, which is part of the supporting text for Policy S19 [7.5, 7.6]. It states that in order to address community concerns, and in the interests of residential amenity and safety, a minimum separation distance of 800m between wind turbines (of over 25m to blade tip) and residential properties will be expected. Importantly, it then goes on to recognise that in some cases, due to site-specific factors, it may be appropriate to vary this threshold if the evidence shows there would be no unacceptable impact on residential amenity.
- 11.41 While all but one of the residential properties at issue here would be less than 800m from the nearest of the proposed turbines, I have concluded that while they would experience adverse visual impacts to varying degrees, none would become an unattractive or unpleasant place to live as a consequence of the proposed wind farm. In other words, there would not be an "unacceptable" impact on residential amenity: the proposed development would therefore accord with the objectives of Local Plan Policy S19 (a)(i), which is supportive

of renewable energy development proposals which, either in isolation or cumulatively, do not have an unacceptably adverse impact on the amenity of local residents.

- 11.42 That is not of course to say that because the adverse visual impacts would not reach the level of being “unacceptable”, the harm caused would be irrelevant. That still needs to be weighed in the overall planning balance.

Visual impact on Public Rights of Way

- 11.43 The Council’s third reason for refusal, as clarified in its Statement of Case (CD9.10), included concerns that the proposed development would have unacceptable visual impacts in the views of people using public rights of way in close proximity to the site; specifically, Public Footpath 260001 and bridleways 260005 and 404020.
- 11.44 Public Footpath 260001 runs from the A595, past Gale House, to the minor road between Lillyhall and Branthwaite. The first part of its route follows the Gale House access drive, which is lined with tall vegetation that would provide partial filtering of views toward the proposed turbines, even in winter. Once past Gale House Barn and entering the pasture fields beyond, views of the turbines from this footpath would be open and unobstructed, and would remain so for the rest of its short length.
- 11.45 While the turbines would be perpendicular to the route, their height and close proximity – 290m at the closest point – would mean that they became the most dominant features in the landscape for users of this footpath. The visual impact of the Lillyhall turbines would be compounded by concurrent views of the Potato Pot turbines, some 1.8km to the south-east. However, bearing in mind that the main view ahead toward the Lakeland Fells would remain intact, and that the footpath is only around 1km long and of a functional nature rather than forming part of a longer recreational route, I consider that the extent of the adverse visual impacts here would not be so overwhelming or intimidating as to unacceptably impair the experience of its users.
- 11.46 Bridleways 260005 and 404020 are two connecting bridleways between Gilgarran and the A595. Bridleway 404020 leads from Gilgarran to the district boundary, and bridleway 260005 then runs from the district boundary to the A595. Travelling north west out of Gilgarran, there would be unobstructed views of the proposed turbines some 1.6km to the north, from the short stretch of bridleway running downhill into Struthers Wood, where visibility then becomes largely restricted. Travelling south east from the A595, there would be clear views from within the Lillyhall Industrial Estate of the turbines at close range to the north east, but from here, and travelling in both directions along the section of bridleway between the Industrial Estate and Wythemoor Head, the contextual association between the proposed turbines and the industrial character of their immediate setting would be apparent.
- 11.47 Taking all of this into account, I consider that the visual impacts experienced by users of these bridleways would not be so extensive or distracting as to significantly impair their enjoyment of the route.

Visual impact on the A595 and nearby settlements

- 11.48 The Council's third reason for refusal also included concerns that the proposed development would have an unacceptable adverse cumulative visual impact on users of the A595, and on the settlements of Gilgarran, High Harrington and Distington.
- 11.49 I have identified above the harmful impact that the proposed turbines would have in terms of intensifying, and extending, areas already characterised as being part of a wind farm landscape [11.14 – 11.15]. This cumulative visual impact would be experienced by users of the A595. There is however no suggestion that it would have any other bearing, such as affecting the usage of the road, or highway safety.
- 11.50 Similarly, there is no dispute that adverse cumulative visual impacts would be experienced at Gilgarran, High Harrington and Distington. However, in no case would the cumulative presence of turbines dominate or cause unacceptable visual effects for residents of these settlements. [6.33]
- 11.51 As noted in connection with individual dwellings above, the adverse visual impacts arising from the proposed development need to be weighed in the overall planning balance.

Other matters

Benefits

- 11.52 EN-1, the Government's overarching National Policy Statement for Energy, explains that as part of the UK's need to diversify and decarbonise electricity generation, the Government is committed to increasing dramatically the amount of renewable generation capacity; in the short to medium term, much of this new capacity is likely to be onshore and offshore wind. In respect of the UK's commitments to sourcing 15% of energy from renewable sources by 2020, it states that to hit the target, and to largely decarbonise the power sector by 2030, "it is necessary to bring forward new renewable electricity generating projects as soon as possible. The need for new renewable electricity generation projects is therefore urgent" [5.6].
- 11.53 More recently, in 2013, the Government published its Third Update to the UK Renewable Energy Roadmap. This confirmed that on-shore wind continues to have an important role to play in UK energy policy, and a long term investment programme underpins that commitment. The document emphasises that renewable energy offers the UK a wide range of benefits from an economic growth, energy security and climate change perspective, and that a key benefit of deploying renewable energy technologies is the potential reduction in carbon emissions. It notes that 4.1% of energy consumption came from renewable resources in 2012 against a target of 15% by 2020, and that on-shore wind is one of the most effective and proven renewable energy technologies, which has an important part to play in a responsible and balanced UK energy policy [6.21].
- 11.54 The FEI records that the proposed development would have an installed capacity of up to 6.9MW, which would provide sufficient electricity to power around 3,500 homes each year, achieving an annual saving of around 7,200 tonnes of carbon. This would make a material contribution to the attainment of

the national renewable energy policy objectives set out above; it would help to improve the security of the energy supply through diversifying the range of resources, would have direct and indirect economic benefits, and would reduce carbon dioxide and greenhouse gas emissions, thereby helping to mitigate climate change.

11.55 The SoS may decide not to accept the amendment of the proposal from 4 turbines to 3, and to determine the appeal instead on the basis of the scheme as originally submitted. In that case, the ES records that the installed capacity of the four-turbine scheme would be 9.2MW, which would provide sufficient electricity to power around 5,000 homes each year, saving around 10,400 tonnes of carbon.

11.56 In either case, the development would clearly have substantial benefits.

Heritage assets

11.57 I note that neither the Council, nor any other consultees, have raised any concerns about the impact that the proposed development would have upon the area's heritage assets. However, the ES identified potential impacts upon the listed building at Wythemoor Sough, and the Registered Park and Garden at Workington Hall. S.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires decision-makers, including the SoS, who are considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting. I therefore need to advise the SoS as to the extent, and implications, of any such effects.

11.58 The compound structure identified as Wythemoor Sough and Barn is a Grade II Listed building, dating from the mid to late 18th Century. It has historical value as it provides a link to the past, and in conjunction with its associated farm buildings on the northern side of the adjoining road, provides an illustration of the development of Cumbrian farming practices. These buildings, and the farmyard and garden, form part of the Listed building's setting, as does the surrounding agricultural land, which would have been farmed by the inhabitants of the house. The setting contributes towards the significance of this designated heritage asset.

11.59 The proposed turbines would be located some 500m to the west of Wythemoor Sough, but would be separated from it by a forestry plantation of relatively recent date. The turbines, located beyond the plantation on the landfill site, would not be sited within agricultural land that has any remaining contextual or visual association with Wythemoor Sough. However, the presence of such large, modern features at fairly close range in views from the immediate vicinity of the farm buildings would contrast strikingly with the small-scale vernacular of this historic building. This would not compromise the significance of the heritage asset, but it would have an adverse impact on its setting. I agree with the conclusion of the ES assessment that this adverse impact would be minor. Nevertheless, following the clarification provided by the Court of Appeal⁶, a conclusion that a development proposal would fail to preserve the

⁶ Barnwell Manor Wind Energy Ltd v E Northants DC & Ors [2014] EWCA Civ 137

setting of a Listed building is a consideration that must carry considerable weight and importance in the overall planning balance.

11.60 Workington Hall Registered Park and Garden (RPG) is the garden and grounds of the now ruined Workington Hall. RPGs do not fall within the remit of S.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, or any equivalent statutory provision. They do however constitute "designated heritage assets" as defined by the NPPF. The ES records that while the proposed turbines would be visible in some views out from the southern, higher part of the RPG, this would be at a distance of some 2.6km. There are no designed views out of the RPG in that direction, and I am satisfied that the proposed development would not cause any harm to the setting, or significance, of this designated heritage asset.

Hen harriers

11.61 I do not lightly dismiss the concerns raised about the impact of the proposal on hen harriers (TP 2), a rare species of bird protected by Schedule 1 of the Wildlife and Countryside Act 1981, which does not nest in the West Cumbria Foothills, but does overwinter there. However, I am satisfied that the ornithological surveys undertaken by the appellant accorded with the relevant practice guidance, and also had due regard to advice and comments received from the RSPB (APP 2.4). Consequently, I have no reason to doubt their conclusions, which indicate that the proposed turbines would be very unlikely to have an adverse impact on overwintering hen harriers in the area. The potential presence of hen harriers in the vicinity of the appeal site is not, therefore, a consideration that weighs against the proposed development.

Noise

11.62 Similarly, I can understand the very real concerns raised by local residents about the Council's ability to enforce noise restriction conditions in an area where a large number of wind turbines are operating under different ownership [8.7, 8.12]. However, the wording of the noise condition here proposed is very detailed, and makes provision for any complaints to be investigated by an independent consultant, in accordance with an assessment protocol that must be approved by the Council [10.6]. I am satisfied that if the SoS decided to grant planning permission subject to this condition, its terms would enable the Council to take effective action in response to any future noise complaints associated with the cumulative impacts of these, and other, turbines.

Public opinion

11.63 The appellant drew my attention to what it described as the remarkably low level of objection to the proposed development [6.12]. I agree that there were far fewer objections to this proposed wind farm than is, in my experience, usually the case. However, that may be attributable to a number of reasons; as explained by local residents, it may very well be due to the fact that people who live in this area feel inundated by wind energy development and, having previously spent a great deal of time and energy objecting to it, with what they perceive as little effect on the outcome, are now disinclined to engage further [8.2, 8.11].

- 11.64 In any event, I do not agree with the appellant's argument that the absence (or indeed the presence) of objections from local residents "is an important material consideration in itself" [6.12]. I have addressed this issue before, in a report to the SoS concerning a proposed wind farm on a site near Aylesbury⁷, where it was argued that advice in the PPG, in conjunction with Ministerial Statements made by the (then) SoS, gave a strong hint to decision makers that they should be giving more weight to the views of local communities. I explained there that my concern with that interpretation of the Government's intended approach was not only that it would undermine the objectivity of the decision-making process, but also that it would be at odds with making decisions in the public interest.
- 11.65 There are many types of development – not just renewable energy schemes, but new towns, airports and hospitals – whose wider benefits are not always immediately visible (or available) to the specific locality in which the project is sited. However, the benefits to society and the wider economy as a whole may be significant, and that must be reflected in the weight that decision makers give to these considerations in the overall planning balance. To pre-weight the scales in favour of local opinion would be to prevent many such schemes, unpopular on a local scale but necessary on a national scale, from being delivered.
- 11.66 I went on to explain that rather than making local opinion a deciding factor, it seems to me that the PPG emphasises the need for decision makers to pay very careful attention to the concerns of local communities since they, after all, are the people who will have to live with the consequences of the development that is under consideration. In so far as the concerns they raise are material and relevant, they must be given due weight in the overall balance of considerations. But the extent of the weight that is due to such considerations remains a matter for the decision maker. In that case, the (then) SoS confirmed in his Decision Letter that he found no reason to disagree.
- 11.67 This remains consistent with the approach set out in the WMS of June 2015, which explains the need to demonstrate that the *planning impacts* [my emphasis] identified by local communities have been fully addressed [6.42, 7.29]. It is these planning impacts that are to be weighed in the balance, rather than simply the numbers of individuals, or the percentage of each community, who support or oppose the proposal in question. While the local residents who identified planning impacts in the current case were few in number, that is not a reason, in my view, to reduce the weight afforded to the planning impacts identified. I have considered each of the relevant material considerations raised on the basis of its own merits, and have set out my findings above.

Conclusions

- 11.68 I have found that the proposed development would result in substantial cumulative harm to the character of the landscape [11.18]. That is a consideration to which I attach a great deal of weight. The proposal would also have adverse visual impacts on nearby residential properties, and while these would not be so harmful as to render any existing dwelling an unattractive

⁷ Ref: APP/J0405/A/13/2205701 (CD 7.13; IR 1260-1261, DL 20-21)

place in which to live, they nevertheless weigh against the proposed development [11.41]. Added to this is the moderate weight I attach to the adverse visual impacts that would be experienced by users of roads and other public rights of way in the locality, and by residents of nearby settlements. Further, considerable weight and importance must be attached to the failure to preserve the setting of the Listed Building at Whythemoor Sough [11.59].

- 11.69 On the other side of the balance, the substantial benefits that the proposed development would provide are of great weight [11.56]. However, these benefits are clearly and convincingly outweighed by the totality of the adverse impacts that would be caused by the proposed development.
- 11.70 If the SoS were to determine the appeal on the basis of the originally submitted four-turbine scheme, I have found that the difference in the overall impact on the character of the landscape would be marginal: it would not alter the great weight of the harm caused [11.21]. Similarly, there would be little overall difference in the adverse visual impacts that would be experienced by users of roads and other public rights of way in the locality, and by residents of nearby settlements. There would be no change in the weight afforded to the failure to preserve the setting of a Listed Building.
- 11.71 I have, however, found that there would be increased adverse visual impacts at the residential properties discussed above; in particular, Wythemoor Sough [11.29], Wythemoor Head [11.33] and Gale House Barn [11.38]. This adds to the weight against the proposed development. On the other side of the balance, the additional turbine would increase the benefits accruing from the proposed development [11.55]. Nevertheless, weighing all of the considerations together, I consider that the benefits of the four-turbine scheme would also be clearly and convincingly outweighed by the totality of the adverse impacts associated with that scheme.

12 Inspector's recommendation

- 12.1 For the reasons set out above, I recommend that the appeal be determined on the basis of the amended (three turbine) scheme, and that it be dismissed.
- 12.2 If the SoS decides to determine the appeal on the basis of the originally submitted four-turbine scheme, I recommend that the appeal be dismissed.
- 12.3 If the SoS decides instead that the appeal should be allowed, I recommend that he attach the conditions set out in Appendix C if it is the three-turbine scheme that is allowed, or Appendix D if it is the four-turbine scheme that is allowed.

Jessica Graham

INSPECTOR

Appendix A: APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:	
Ms R Stockley, of Counsel	Instructed by Ms M Spark of Addleshaw Goddard, solicitors for Cumbria County Council
She called:	
Mr R Woolerton MA(LD) BA(Hons) FLI	Director, Woolerton Dodwell Associates
Mrs J Petersen DipTP MA MRTPI	Senior Planning Officer (Development Control), Cumbria County Council

FOR THE APPELLANT:	
Mr D Hardy, of Counsel	Partner, Eversheds LLP
He called:	
Mr T Charrier BA PGDip CMLI	Principal Landscape Architect, Stephenson Halliday
Mr D Stewart MA (Cantab) DipTP MRTPI	David Stewart Planning Ltd

INTERESTED PERSONS:	
Ms M Twiss	Local resident
Cllr M Fitzgerald	Representing Friends of Rural Cumbria's Environment (FORCE)
Cllr N Cockburn	Ward Member for Broughton St Bridget's

APPENDIX B: DOCUMENTS

THE COUNCIL'S PROOFS AND APPENDICES

LPA 1	Proof of Evidence of Mrs J Petersen
	Appendices to Mrs Petersen's Proof, comprising:
LPA 1.1	Plan showing the stages of Lillyhall Landfill Site
LPA 1.2	Plan showing the stages of Lillyhall Landfill Site and Potato Pot
LPA 1.3	Decision notice for Bennett Bank Landfill Site wind turbine
LPA 2	Proof of Evidence of Mr Mr R Woolerton
	Appendices to Mr Woolerton's Proof, comprising:
LPA 2.1	Preface and Conclusion of <i>Windfarm Visualisation</i> by Alan Macdonald (2012)
LPA 2.2	Extract from <i>Angus Windfarms Capacity and Cumulative Impacts Study</i> (2008)

THE APPELLANT'S PROOFS AND APPENDICES

APP 1	Proof of evidence of Mr T Charrier (and separately bound summary)
	Appendices to Mr Charrier's proof of evidence, comprising:
APP 1.1	A: landscape and visual amenity
APP 1.2	B: landscape and visual amenity
APP 1.3	C: viewing pack for site visit
APP 1A	Mr Charrier's Rebuttal Proof of evidence
APP 2	Proof of evidence of Mr D Stewart (bound with summary)
	Appendices to Mr Stewart's proof of evidence, comprising:
APP 2.1	Recent appeal decisions post the NPPF
APP 2.2	Summary of residential amenity issues for nearest properties
APP 2.3	Plan of Workington Hall Registered Park and Garden
APP 2.4	Report on hen harriers by Envirotech

THIRD PARTY REPRESENTATIONS

Folder TP1	Representations received by the Council in response to the planning application
Folder TP2	Representations received by the Planning Inspectorate in response to the appeal

CORE DOCUMENTS

Adopted Development Plan	
CD 1.1	Allerdale Local Plan (Part 1) Strategic and Development Management Policies (adopted July 2014) (Extracts)
CD 1.2	Cumbria County Council Minerals and Waste Development Framework (adopted April 2009)

CD 1.3	Inspector's Report on the Examination into the Allerdale Local Plan Part One (1 July 2014)
CD 1.4	Draft Cumbria Minerals and Waste Local Plan 2014 to 2029, Regulation 18 Consultation dated 10 March 2015
National Planning and Energy Policy and Legislation	
CD 2.1	DCLG: National Planning Policy Framework (March 2012)
CD 2.2	Overarching National Policy Statement for Energy EN-1 (July 2011)
CD 2.3	National Policy Statement for Renewable Energy Infrastructure EN-3 (July 2011)
CD 2.4	Written Ministerial Statements relating to Local Planning and Onshore Wind issued by the Department of Energy and Climate Change and the Department for Communities and Local Government on 6 June 2013
CD 2.5	National Planning Practice Guidance (online resource) (6 March 2014) (Extracts)
Other Local Planning Authority Documents	
CD 3.1	Cumbria Wind Energy Supplementary Planning Document, Parts 1 & 2 (July 2007)
CD 3.2	Cumbria County Council: Cumulative Impacts of Vertical Infrastructure: Part 1 Key Findings and Guidance (October 2014)
CD 3.3	Report to Planning Sub Committee 2/93/9033 Lillyhall Landfill Site (27 May 1994)
CD 3.4	Minutes of Planning Sub Committee Meeting (27 May 1994)
CD 3.5	Planning Permission 2/93/9033 Lillyhall Landfill Site (31 March 1995)
CD 3.6	Report to Development Control and Regulation Committee 2/13/9007 Lillyhall Landfill Site (26 February 2014)
CD 3.7	Planning Permission 2/13/9007 Lillyhall Landfill Site (12 March 2014)
CD 3.8	Planning Permission 2/75/0872 Lillyhall Landfill Site (12 February 1976)
CD 3.9	Planning Permission 2/76/1017 Lillyhall Landfill Site (22 April 1977)
CD 3.10	Planning Permission 2/79/0462 Lillyhall Landfill Site (3 October 1979)
CD 3.11	Planning Permission 2/80/0973 Lillyhall Landfill Site (27 March 1981)
CD 3.12	Planning Permission 2/86/0077 Lillyhall Landfill Site (17 June 1986)
CD 3.13	Planning Permission 2/90/1199 Lillyhall Landfill Site (11 January 1991)
CD 3.14	Planning Permission 2/91/0057 Lillyhall Landfill Site (28 February 1991)
CD 3.15	Planning Permission 2/93/9033 Lillyhall Landfill Site (31 March 1995)
CD 3.16	Planning Permission 2/94/9028 Lillyhall Landfill Site (31 March 1995)
CD 3.17	Planning Permission 2/95/9017 Lillyhall Landfill Site (4 April 1996)
CD 3.18	Planning Permission 2/95/9018 Lillyhall Landfill Site (4 April 1996)
CD 3.19	Planning Permission 2/95/9025 Lillyhall Landfill Site (4 April 1996)
CD 3.20	Planning Permission 2/95/9019 Lillyhall Landfill Site (25 June 1996)
CD 3.21	Planning Permission 2/95/9020 Lillyhall Landfill Site (25 June 1996)
CD 3.22	Planning Permission 2/95/9026 Lillyhall Landfill Site (25 June 1996)
CD 3.23	Planning Permission 2/02/9007 Lillyhall Landfill Site (31 May 2003)
CD 3.24	Planning Permission 2/04/9010 Lillyhall Landfill Site (4 June 2004)
Regional Spatial Strategy Evidence Base Documents	
CD 4.1	SQW and LUC: Cumbria Renewable Energy Capacity and Deployment Study (August 2011)
Planning, Renewable Energy and Climate Change Documents	
CD 5.1	DTI Energy White Paper "Meeting the Energy Challenge" (2007) (Extracts)

CD 5.2	HM Government: The UK Renewable Energy Strategy (2009)
CD 5.3	DECC: UK Renewable Energy Roadmap (July 2011)
CD 5.4	DECC: UK Renewable Energy Roadmap Update (December 2012)
CD 5.5	DECC: UK Renewable Energy Roadmap Update (November 2013)
CD 5.6	Committee on Climate Change: Renewable Energy Review (May 2011)
CD 5.7	IPCC Synthesis Report (November 2014)
CD 5.8	Energy White Paper: Our Energy Future – Creating a Low Carbon Future (February 2003)
High Court and Court of Appeal Decisions	
CD 6.1	R (Hulme) v Secretary of State for Communities and Local Government [2010] EWHC 2386 (Admin)
CD 6.2	Michael William Hulme v Secretary of State for Communities and Local Government and RES Developments Limited [2011] EWCA Civ 638
CD 6.3	R (Lee) v Secretary of State for Communities and Local Government, Maldon District Council, Npower Renewables [2011] EWHC 807 (Admin)
CD 6.4	(1) Derbyshire Dales District Council (2) Peak District National Park v (1) Secretary of State for Communities and Local Government (2) Carsington Wind Energy Limited [2009] EWHC 1729 (Admin)
CD 6.5	Sea & Land Power & Energy Ltd v Secretary of State for Communities and Local Government, Great Yarmouth Borough Council [2012] EWHC 1419 (Admin)
CD 6.6	(1) South Northamptonshire Council (2) Deidre Veronica Ward v (1) Secretary of State for Communities and Local Government (2) Broadview Energy Development Limited [2013] EWHC 11 (Admin)
CD 6.7	Anita Colman v Secretary of State for Communities and Local Government, North Devon District Council and RWE Npower Renewables Ltd [2013] EWHC 1138 (Admin)
Wind Farm Application and Appeal Decisions	
CD 7.1	Burnthouse Farm (APP/D0515/A/10/2123739 and APP/D0515/A/10/2131194)
CD 7.2	Carland Cross (APP/D0840/A/09/2103026)
CD 7.3	Westnewton (APP/G0908/A/10/2132949)
CD 7.4	Tallentire (APP/G0908/A/10/2131842)
CD 7.5	Flimby (APP/G0908/A/09/2118993)
CD 7.6	Potato Pot (APP/G0908/A/12/2189934)
CD 7.7	Cleek Hall (APP/N2739/A/12/2172629)
CD 7.8	Newlands Farm (APP/E0915/A/09/2101659 and APP/E0915/A/09/2101667)
CD 7.9	Treading (APP/D0515/A/12/2181777 and APP/A2525/A/12/2184954)
CD 7.10	Gayton le Marsh (APP/D2510/A/12/2176754)
CD 7.11	Weddicar Rigg (APP/Z0923/A/13/2191361)
CD 7.12	Carsington Pastures (APP/P1045/A/07/2054080)
CD 7.13	Dorcas Lane Wind Farm (APP/J0405/A/13/2205701)
CD 7.14	Charity Lane, High Harrington (APP/G0908/A/13/2190693)
CD 7.15	Hunday Farm (APP/G0908/A/13/2198688)
CD 7.16	Harrington Parks Farm (APP/G0908/A/12/2174364)
CD 7.17	Fox House Farm, Broughton Moor (APP/G0908/A/13/2210439)
CD 7.18	Lane Head Farm, Wigton (APP/G0908/A/13/2191503)
CD 7.19	Broughton Lodge, Workington (APP/G0908/A/11/2156118)
CD 7.20	Brightenber Hill (APP/C2708/A/09/2107843)

CD 7.21	Enifer Downs (APP/X220/A/08/2071880)
CD 7.22	Nun Wood (APP/YO435/A/10/2140401, APP/K0235/A/11/2149434 and APP/H2835/A/11/2149437)
Landscape and Visual Documents	
CD 8.1	The Landscape Institute, Institute of Environmental Management and Assessment: Guidelines for Landscape and Visual Impact Assessment, Second Edition (2002)
CD 8.2	The Landscape Institute, Institute of Environmental Management and Assessment: Guidelines for Landscape and Visual Impact Assessment, Third Edition (2013)
CD 8.3	The Countryside Agency: Landscape Character Assessment: Guidance for England and Scotland (2002)
CD 8.4	Landscape Institute: Landscape Architecture and the Challenge of Climate Change (October 2008)
CD 8.5	Landscape Institute: Photography and Photomontage in Landscape and Visual Impact Assessment, Advice Note 01/11
CD 8.6	Scottish Natural Heritage and Countryside Agency: Landscape Character Assessment Series: Topic Paper 9 Climate Change and Natural Forces – the Consequences for Landscape Character (2003)
CD 8.7	Scottish Natural Heritage: Visual Representation of Wind Farms – Good Practice Guidance (2006)
CD 8.8	Scottish Natural Heritage: Visual Representation of Wind Farms – Good Practice Guidance (July 2014)
CD 8.9	Scottish Natural Heritage: Siting and Designing Windfarms in the Landscape, Version 1 (December 2009)
CD 8.10	Scottish Natural Heritage: Siting and Designing Windfarms in the Landscape, Version 2 (May 2014)
CD 8.11	Scottish Natural Heritage: Guidance Assessing the Cumulative Impact of Onshore Wind Energy Developments, Version 3 (March 2012)
CD 8.12	Countryside Commission: Countryside Character Volume 2: North West (1999)
CD 8.13	Natural England: National Character Area profile: 7 West Cumbria Coastal Plain (May 2014)
CD 8.14	Cumbria Landscape Character Guidance and Toolkit, Parts 1 & 2 (March 2011)
CD 8.15	Lake District National Park Landscape Character Assessment and Guidelines (September 2008)
CD 8.16	Scottish Natural Heritage: Visual Representation of Wind Farms – Good Practice Guidance Version 2.1 (December 2014)
Planning Application and Appeal Documents	
CD 9.1	Planning Application and Supporting Documents [separately bound in Appeal Bundle]
CD 9.2	Report to Development Control and Regulation Committee 2/12/9011 (18 October 2013)
CD 9.3	Minutes of Development Control and Regulation Committee (18 October 2013)
CD 9.4	Report to Development Control and Regulation Committee 2/12/9011 (26 February 2014)
CD 9.5	Update to Report to the Development Control and Regulation Committee (26 February 2014)
CD 9.6	Minutes of Development Control and Regulation Committee (26

	February 2014)
CD 9.7	Notice of Refusal of Planning Consent 2/12/9011 (28 February 2014)
CD 9.8	Further Environmental Information (October 2014)
CD 9.9	Appellant's Statement of Case
CD 9.10	Council's Statement of Case
CD 9.11	Statement of Common Ground
Other Documents	
CD 10.1	Allerdale Borough Council's Planning Panel report 12 February 2013
CD 10.2	Minutes for Planning Panel meeting 12 February 2013

DOCUMENTS SUBMITTED AT THE INQUIRY

ID 1	List of appearances for the appellant
ID 2	Amended Tables 1 and 2 of Mr Woolerton's proof of evidence (LPA 2, pp 51-52)
ID 3	Extract from the LVIA undertaken for the Potato Pot scheme by the appellant in that case, submitted by the Council
ID 4	Extract from the LPA-commissioned review of the Potato Pot LVIA, submitted by the Council
ID 5	Opening submissions on behalf of the appellant
ID 6	Copy of the Council's letter dated 19 March 2015 notifying interested parties about the inquiry
ID 7	List of suggested conditions, agreed between the Council and the appellant
ID 8	Copy of the Ecology section of the ES, submitted at the request of the Inspector, to replace missing pages
ID 9	Copies of coloured A3 plans from the LCA showing Cumbria Landscape Types (Inserts 2 & 3), submitted by the appellant
ID 10	Copies of coloured A3 plans from the CIVI Map book (VI.11 and VI.15), submitted by the appellant
ID 11	Closing submissions on behalf of the Council
ID 12	Closing submissions on behalf of the appellant
ID 13	List of suggested viewpoints for the Inspector's unaccompanied site visits, agreed between the Council and the appellant
ID 14	Copy of document ID 7, updated to reflect changes agreed at the inquiry

DOCUMENTS SUBMITTED AFTER THE INQUIRY

PID 1	Letter from Allerdale Borough Council dated 20 April 2015, concerning the application of paragraph 255 of the Local Plan
PID 2	Letter from Cumbria County Council commenting on PID 1
PID 3	Letter from the appellant commenting on PID 1 and 2
PID 4	Letter from Cumbria County Council commenting on the WMS of 18 June 2015
PID 5	Letter from the appellant commenting on the WMS of 18 June 2015

APPENDIX C: SUGGESTED CONDITIONS (three turbine scheme)

Time limits, decommissioning and site restoration

- 1) The development hereby permitted shall begin not later than three years from the date of this decision. Written confirmation of the commencement of development shall be provided to the local planning authority no later than one week after the event.
- 2) Subject to conditions no. 7, 8, 9 and 21 below, the development hereby permitted shall be carried out in accordance with the approved plans numbered Figure 1.1 – Site Location and Figure 1.2 – Site Plan.
- 3) The development hereby permitted shall be removed in accordance with condition no. 4 below after a period of 25 years from the date when electricity is first exported from any of the wind turbines to the electricity grid (“First Export Date”). Written notification of the First Export Date shall be provided to the local planning authority no later than one calendar month after the event.
- 4) Not later than 12 months before the expiry of the 25 year period referred to in condition no. 3 above, a decommissioning and site restoration scheme shall be submitted to the local planning authority for its written approval. The scheme shall make provision for the removal of the wind turbines and the associated above-ground equipment and turbine foundations to a depth of 1 metre below ground level. The scheme shall also include proposals for the management and timing of the works, a traffic management plan and restoration measures. The scheme shall be implemented as approved.
- 5) If any of the wind turbines hereby permitted fail to operate for a continuous period of 9 months following the First Export Date, a scheme shall be submitted to the local planning authority for its written approval within 3 months of the end of that 9 month period for the repair or removal of the relevant turbine. The scheme shall include a proposed programme of remedial works where repairs to the relevant turbine are required, or a method statement including a timetable for the removal of the relevant turbine and the works solely associated with that turbine and for site restoration. The scheme shall be implemented as approved.

Appearance of the development

- 6) The wind turbines shall be of the same design and have 3 blades which shall rotate in the same direction and the overall height of the wind turbines shall not exceed 99 metres to the tip of the blades when the turbine is in the vertical position and the hub height of the wind turbines shall not exceed 64 metres.
- 7) No wind turbine shall be erected on site until details of the finish and colour of the turbines and any external transformer units have been submitted to and approved in writing by the local planning authority. No name, sign, symbol or logo shall be displayed on any external surfaces of the turbines or any external transformer units other than those required by law. The development shall thereafter be carried out and operated in accordance with the approved details.
- 8) The construction of the on-site temporary construction compound shall not commence until details of the external appearance, dimensions, layout and

materials for the buildings and any associated parking area and details of surface and foul water drainage from the compound have been submitted to and approved in writing by the local planning authority. The construction shall proceed in accordance with the approved details.

- 9) The switchgear control building shall not be erected on site until details of its external materials have been submitted to and approved in writing by the local planning authority. The building shall then be built in the approved materials.
- 10) All electrical cabling between the individual wind turbines and the switchgear control building shall be installed underground.
- 11) The turbines shall not carry any form of external illumination, and there shall be no permanent illumination on the site other than:
 - a) lighting required for the safety of aircraft in accordance with condition no. 17 below;
 - b) a movement sensor-operated external door light for the electricity substation; and
 - c) during the construction period, in accordance with details approved in connection with condition no. 13(e) below.
- 12) Prior to the commencement of development a Construction Traffic Management Plan ("CTMP") shall be submitted to and approved in writing by the local planning authority. The CTMP shall include proposals for the routing of construction traffic, scheduling and timing of movements, details of escorts for abnormal loads, temporary warning signs, temporary removal and replacement of highway infrastructure/street furniture and the reinstatement of any signs, hedgerows, trees and shrubs, verges or other items displaced by construction traffic. The CTMP shall be implemented as approved.
- 13) Prior to the commencement of development a Construction Method Statement ("CMS") shall be submitted to and approved in writing by the local planning authority. Thereafter the construction of the development shall be carried out in accordance with the approved CMS, subject to any variations approved in writing by the local planning authority. The CMS shall include details of the following:
 - a) the proposed storage of materials and disposal of surplus materials;
 - b) dust management;
 - c) pollution control: protection of the water environment, bunding of fuel storage areas, surface water drainage, sewage disposal and discharge of foul drainage;
 - d) a Site Waste Management Plan;
 - e) temporary site illumination during the construction period including proposed lighting levels together with the specification of any lighting;
 - f) the phasing of construction works;
 - g) surface treatments and the construction of all hard surfaces and tracks;
 - h) emergency procedures and pollution response plans;

- i) siting and details of wheel washing facilities;
- j) cleaning of site entrances, site tracks and the adjacent public highway and the sheeting of all HGVs taking spoil or construction materials to/from the site to prevent spillage or deposit of any materials on the highway;
- k) areas on site designated for the storage, loading, off-loading, parking and manoeuvring of heavy duty plant, equipment and vehicles;
- l) details and timetable for post construction restoration/reinstatement of the temporary working areas and the construction compound;
- m) working practices for protecting nearby residential dwellings, including measures to control noise and vibration arising from on-site activities shall be adopted as set out in British Standard 5228 Part 1: 2009;
- n) risk assessment and methodology for dealing with identified and potential geological and/or mining related risks;
- o) access gates, hung to open away from the public highway, no less than 10m from the carriageway edge, and incorporating visibility splays;
- p) proposed accommodation works and where necessary a programme for their subsequent removal and the reinstatement of street furniture, and verges where required; and
- q) details of a pre-construction road condition survey between the roundabout at the junction of the A595/C2054 and the site access entrance onto the C2054.

Construction hours

14) Except for the pouring of turbine foundations, which will be undertaken in accordance with the terms of the Construction Method Statement referred to in condition no. 13 above, construction work shall only take place between the hours of 0600 – 1800 hours Monday to Friday inclusive and 0600 – 1600 hours on Saturdays with no construction work on Sundays or Public Holidays. Outside these hours, works at site shall be limited to emergency works and dust suppression. The local planning authority shall be notified in writing of any emergency works within 3 working days of their occurrence.

Delivery hours

15) The delivery of any construction materials or equipment for the construction of the development, other than concrete material for turbine foundations and turbine blades, nacelle and tower, shall be restricted to the hours of 0730 – 1900 on Monday to Friday inclusive. Exceptions for deliveries outside these hours may be carried out with the prior written approval of the local planning authority.

Ecology

- 16) Vegetation shall only be removed/cleared during the period 1 March to 31 August if a suitably qualified ecologist has inspected the vegetation and confirmed in writing to the local planning authority that no nesting/breeding birds will be affected by the works. If any effects on nesting/breeding birds are identified then the suitably qualified ecologist will identify any measures required to mitigate those effects, such measures to be implemented as approved in writing by the local planning authority.

Aviation

- 17) MOD-approved infra-red warning lighting shall be installed at the highest practicable point on all turbines. Each turbine will be erected with this lighting installed and the lighting will remain operational throughout the duration of this planning permission.

Telecommunication interference

- 18) No development shall take place until a Mitigation Report (including site surveys) to address affected links, as identified by Joint Radio Company Ltd, has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved.
- 19) Prior to the commencement of the development hereby permitted a baseline television and broadband reception study in the area to be agreed with the local planning authority shall be undertaken by a qualified television engineer and submitted to the local planning authority. A scheme of works necessary to mitigate any adverse effects to domestic television and radio broadband signals in the agreed area caused by the development shall also be submitted to and approved in writing by the local planning authority. Any claim by any person for domestic television picture loss/interference or radio broadband signal loss/interference at their household within 12 months of the final commissioning of the wind turbines, shall be investigated by a qualified television engineer and the results submitted to the local planning authority. Should any impairment to the television or broadband reception be determined by the qualified engineer as attributable to the wind turbines on the basis of the baseline reception study, such impairment shall be mitigated in accordance with the mitigation scheme within 3 months of results of the investigation being submitted to the local planning authority.

Shadow flicker

- 20) Prior to the erection of any of the wind turbines hereby permitted, a written scheme shall be submitted to and approved in writing by the local planning authority setting out a protocol for the assessment of shadow flicker in the event of any complaint to the Local Planning Authority from the owner or occupier of a dwelling (defined for the purposes of this condition as a building within Use Class C3 or C4 of the Use Classes Order) which lawfully exists or had planning permission at the date of this permission. The written scheme shall include remedial measures to alleviate any shadow flicker found to be attributable to the development by the assessment protocol. Operation of the wind turbines shall take place in accordance with the approved scheme unless the local planning authority gives its prior written consent to any variations.

Micro-siting

21) The wind turbines hereby permitted shall be erected at the following grid co-ordinates:

Turbine	Easting	Northing
1	302734	525119
2	302849	524996
3	302966	524873

Notwithstanding the terms of this condition the wind turbines and other infrastructure hereby permitted may be micro-sited within 20 metres, subject to Turbine T1 being located no closer to Cumbria County Council's Highway Depot. Details of any such variations shall be submitted to and approved in writing by the local planning authority, prior to the erection of any of the turbines.

Coal Mining

22) Development shall not begin until investigation works have been undertaken by the developer to confirm coal mining conditions on site. In the event that the site investigations confirm the need for remedial works to treat areas of shallow mine workings and/or any other mitigation measures to ensure the safety and stability of the development, development shall not commence until such works have been undertaken.

Noise

23) The rating level of noise immissions from the combined effects of the wind turbines hereby permitted (including the application of any tonal penalty) when determined in accordance with the attached Guidance Notes, shall not exceed the values for the relevant integer wind speed set out in or derived from Tables 1 and 2 attached to these conditions and:

(A) Prior to the First Export Date, the wind farm operator shall submit to the local planning authority for written approval a list of proposed independent consultants who may undertake compliance measurements in accordance with this condition. Amendments to the list of approved consultants shall be made only with the prior written approval of the local planning authority.

(B) Within 21 days from receipt of a written request from the local planning authority, following a complaint to it alleging noise disturbance at a dwelling, the wind farm operator shall, at its expense, employ an independent consultant approved by the local planning authority to assess the level of noise immissions from the wind farm at the complainant's property in accordance with the procedures described in the attached Guidance Notes. The written request from the local planning authority shall set out at least the date, time and location to which the complaint relates. Within 14 days of receipt of a written request from the local planning authority made under this paragraph (B), the wind farm operator shall provide the information relevant to the complaint logged in accordance with paragraph (H) to the local planning authority in the format set out in Guidance Note 1(e).

(C) Where there is more than one property at a location specified in Tables 1 and 2 attached to this condition, the noise limits set for that location shall apply to all dwellings at that location. Where a dwelling to which a complaint is related is not identified by name or location in the Tables attached to these conditions, the wind farm operator shall submit to the local planning authority for written approval proposed noise limits selected from those listed in the Tables to be adopted at the complainant's dwelling for compliance checking purposes. The proposed noise limits are to be those limits selected from the Tables specified for a listed location which the independent consultant considers as being likely to experience the most similar background noise environment to that experienced at the complainant's dwelling. The submission of the proposed noise limits to the local planning authority shall include a written justification of the choice of the representative background noise environment provided by the independent consultant. The rating level of noise immissions resulting from the combined effects of the wind turbines when determined in accordance with the attached Guidance Notes shall not exceed the noise limits approved in writing by the local planning authority for the complainant's dwelling.

(D) Prior to the commencement of any measurements by the independent consultant to be undertaken in accordance with these conditions, the wind farm operator shall submit to the local planning authority for written approval the proposed measurement location identified in accordance with the Guidance Notes where measurements for compliance checking purposes shall be undertaken. Measurements to assess compliance with the noise limits set out in the Tables attached to these conditions or approved by the local planning authority pursuant to paragraph (C) of this condition shall be undertaken at the measurement location approved in writing by the local planning authority.

(E) Prior to the submission of the independent consultant's assessment of the rating level of noise immissions pursuant to paragraph (F) of this condition, the wind farm operator shall submit to the local planning authority for written approval a proposed assessment protocol setting out the following:

- (i) The range of meteorological and operational conditions (the range of wind speeds, wind directions, power generation and times of day) to determine the assessment of rating level of noise immissions.
- (ii) A reasoned assessment as to whether the noise giving rise to the complaint contains or is likely to contain a tonal component.

The proposed range of conditions shall be those which prevailed during times when the complainant alleges there was disturbance due to noise, having regard to the information provided in the written request from the local planning authority under paragraph (B), and such others as the independent consultant considers necessary to fully assess the noise at the complainant's property. The assessment of the rating level of noise

immissions shall be undertaken in accordance with the assessment protocol approved in writing by the local planning authority and the attached Guidance Notes.

(F) The wind farm operator shall provide to the local planning authority the independent consultant's assessment of the rating level of noise immissions undertaken in accordance with the Guidance Notes within 2 months of the date of the written request of the local planning authority made under paragraph (B) of this condition unless the time limit is extended in writing by the local planning authority. All data collected for the purposes of undertaking the compliance measurements shall be made available to the local planning authority at its request. The instrumentation used to undertake the measurements shall be calibrated in accordance with Guidance Note 1(a) and certificates of calibration shall be submitted to the local planning authority with the independent consultant's assessment of the rating level of noise immissions.

(G) Where a further assessment of the rating level of noise immissions from the wind farm is required pursuant to Guidance Note 4(c) of the attached guidance notes, the wind farm operator shall submit a copy of the further assessment within 21 days of submission of the independent consultant's assessment pursuant to paragraph (F) above unless the time limit for the submission of the further assessment has been extended in writing by the local planning authority.

(H) The wind farm operator shall continuously log power production, wind speed and wind direction, all in accordance with Guidance Note 1(d). These data shall be retained for a period of not less than 24 months. The wind farm operator shall provide this information in the format set out in Guidance Note 1(e) to the local planning authority on its request, within 14 days of receipt in writing of such a request.

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

Table 1: Between 07:00 and 23:00 hours (Noise Level in dB L_{A90}, 10-min)

Location	Standardised 10 m height Wind Speed, m/s, within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
	Noise Limit L _{A90} Decibel Levels											
Wythemoor Sough	36	37	38	38	38	38	38	39	40	43	48	54
Wythemoor Farm	39	39	39	39	39	39	39	39	39	39	39	39
Gale House	41	41	41	42	42	42	43	43	43	44	44	45

Table 2: Between 23:00 and 07:00 hours (Noise Level in dB L_{A90}, 10-min)

Location	Standardised 10 m height Wind Speed, m/s, within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
	Noise Limit L_{A90} Decibel Levels											
Wythemoor Sough	43	43	43	43	43	43	43	43	43	44	48	53
Wythemoor Head Farm	43	43	43	43	43	43	43	43	43	43	43	46
Gale House	43	43	43	43	43	43	43	43	43	44	45	46

Note to Tables 1 & 2: The geographical coordinate references set out in these tables are provided for the purpose of identifying the general location of dwellings to which a given set of noise limits applies. The standardised 10m height wind speed within the site refers to wind speed derived in accordance with the method given in the attached Guidance Notes.

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

Receptor Name	Eastings (m)	Northings (m)
Wythemoor Sough	303514	524883
Wythemoor Head Farm	302796	524311
Gale House	302846	525639

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

Guidance Notes for Noise Conditions

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

Guidance Note 1

- a) Values of the $L_{A90,10}$ minute noise statistic should be measured at the complainant's property (or an approved alternative representative location as detailed in Note 1(b)), using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This should be calibrated before and after each set of measurements, using a calibrator meeting IEC 60945:2003

“Electroacoustics – sound calibrators” Class 1PTB Type Approval (or the equivalent UK adopted standard in force at the time of the measurements) and the results shall be recorded. Measurements shall be undertaken in such a manner to enable a tonal penalty to be applied in accordance with Guidance Note 3.

- b) The microphone shall be mounted at 1.2 – 1.5 metres above ground level, fitted with a two-layer windshield or suitable equivalent approved in writing by the Planning Authority, and placed outside the complainant’s dwelling and not more than 35 metres from it. Measurements should be made in “free field” conditions. To achieve this, the microphone shall be placed at least 3.5 metres away from the building facade or any reflecting surface except the ground at the approved measurement location. In the event that the consent of the complainant for access to his or her property to undertake compliance measurements is withheld, the wind farm operator shall submit for the written approval of the Planning Authority details of the proposed alternative representative measurement location prior to the commencement of measurements and the measurements shall be undertaken at the approved alternative representative measurement location.
- c) The $L_{A90,10 \text{ minute}}$ measurements should be synchronised with measurements of the 10-minute arithmetic mean wind speed and wind direction data. Operational data should be logged in accordance with Guidance Note 1(d) and rain data logged in accordance with Note 1(f).
- d) To enable compliance with the noise conditions to be evaluated, the wind farm operator shall continuously log arithmetic mean wind speed in metres per second and wind direction in degrees from north at hub height for each turbine and arithmetic mean power generated by each turbine, all in successive 10-minute periods. Unless an alternative procedure is previously agreed in writing with the Planning Authority, this hub height wind speed, averaged across all operating wind turbines, shall be used as the basis for the analysis. All 10 minute arithmetic average mean wind speed data measured at hub height shall be ‘standardised’ to a reference height of 10 metres as described in ETSU-R-97 at page 120 using a reference roughness length of 0.05 metres. All 10-minute periods shall commence on the hour and in 10-minute increments thereafter synchronised with Greenwich Mean Time and adjusted to British Summer Time where necessary. The ‘standardised’ 10 metre height wind speed data, shall be correlated with the noise measurements determined as valid in accordance with Note 2 and the correlation shall be undertaken in the manner described in Note 2.
- e) Data provided to the Local Planning Authority in accordance with paragraphs (E) (F) (G) and (H) of the noise condition shall be provided in comma separated values in electronic format.
- f) A data logging rain gauge shall be installed in the course of the independent consultant undertaking an assessment of the levels of noise immissions. The gauge shall record over successive 10-minute periods synchronised with the periods of data recorded in accordance with Note 1(d).

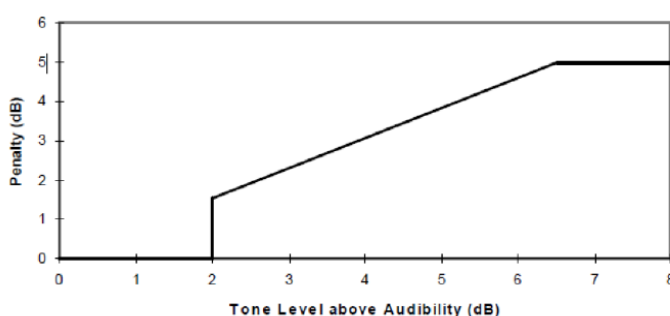
Guidance Note 2

- a) The noise measurements should be made so as to provide not less than 20 valid data points (where practicable) as defined in Note 2 paragraph(b).
- b) Valid data points are those measured during the conditions set out in the assessment protocol approved by the planning authority under paragraph (E) of the noise condition, but excluding any periods of rainfall measured in accordance with Note 1 paragraph (f).

- c) Values of the $L_{A90,10 \text{ minute}}$ noise measurements and corresponding values of the 10-minute standardised ten metre height wind speed for those data points considered valid in accordance with Guidance Note 2(b), shall be plotted on an XY chart with noise level on the Y-axis and wind speed on the X-axis. A least squares, "best fit" curve of an order deemed appropriate by the independent consultant (but which may not be higher than a fourth order) shall be fitted to the data points to define the wind farm noise level at each integer speed.

Guidance Note 3

- a) Where, in accordance with the approved assessment protocol under paragraph (E) of the noise condition, noise immissions at the location or locations where compliance measurements are being undertaken contain or are likely to contain a tonal component, a tonal penalty shall be calculated and applied using the following rating procedure.
- b) For each 10 minute interval for which $L_{A90,10 \text{ minute}}$ data have been determined as valid in accordance with Note 2 a tonal assessment shall be performed on noise immissions during 2 minutes of each 10 minute period. The 2 minute periods should be spaced at 10 minute intervals provided that uninterrupted uncorrupted data are available ("the standard procedure"). Where uncorrupted data are not available, the first available uninterrupted clean 2 minute period out of the affected overall 10 minute period shall be selected. Any such deviations from the standard procedure, as described in Section 2.1 on pages 104-109 of ETSU-R-97, shall be reported.
- c) For each of the 2 minute samples the tone level above audibility shall be calculated by comparison with the audibility criterion given in Section 2.1 on pages 104 – 109 of ETSU-R-97.
- d) The average tone level above audibility shall be calculated for each wind speed bin, each bin being 1 metre per second wide and centred on integer wind speeds. For any samples where tones are found to be below the audibility criterion or no tone is identified, a value of zero audibility shall be used.
- e) The tonal penalty is derived from the margin above audibility of the tone according to the figure below.



Guidance Note 4

- a) If a tonal penalty is to be applied in accordance with Note 3 the rating level of the turbine noise at each wind speed is the arithmetic sum of the measured noise level as determined from the best fit curve described in Note 2 and the penalty for tonal noise as derived in accordance with Note 3 at each integer wind speed within the range set out in the approved assessment protocol under paragraph (E) of the noise condition.

- b) If no tonal penalty is to be applied then the rating level of the turbine noise at each wind speed is equal to the measured noise level as determined from the best fit curve described in Note 2.
- c) If the rating level at any integer wind speed lies at or below the values set out in the Tables attached to the conditions or at or below the noise limits approved by the Local Planning Authority for a complainant's dwelling in accordance with paragraph (C) of the noise condition then no further action is necessary. In the event that the rating level is above the limit(s) set out in the Tables attached to the noise conditions or the noise limits for a complainant's dwelling approved in accordance with paragraph (C) of the noise condition, the independent consultant shall undertake a further assessment of the rating level to correct for background noise so that the rating level relates to wind turbine noise immission only.
- d) The wind farm operator shall ensure that all necessary wind turbines in the development are turned off for such period as the independent consultant requires to undertake any further noise measurements required under Guidance Note 4(c). If the number of turbines to be turned off is less than the total number of turbines on the site then this shall be agreed in advance with the Local Planning Authority. To this end, the steps in Guidance Note 2 shall be repeated with the required number of turbines shut-down in accordance with Guidance Note 4(d) in order to determine the background noise (L_3) at each integer wind speed within the range set out in the approved noise assessment protocol under paragraph (E) of this condition.
- e) The wind farm noise (L_1) at this speed shall then be calculated as follows where L_2 is the measured level with turbines running but without the addition of any tonal penalty:

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

- f) The rating level shall be re-calculated by adding arithmetically the tonal penalty (if any is applied in accordance with Note 3) to the derived wind farm noise L_1 at that integer wind speed.
- g) If the rating level after adjustment for background noise contribution and adjustment for tonal penalty (if required in accordance with Note 3 above) at any integer wind speed lies at or below the values set out in the Tables attached to the conditions or at or below the noise limits approved by the Local Planning Authority for a complainant's dwelling in accordance with paragraph (C) of the noise condition then no further action is necessary. If the rating level at any integer wind speed exceeds the values set out in the Tables attached to the conditions or the noise limits approved by the Local Planning Authority for a complainant's dwelling in accordance with paragraph (C) of the noise condition then the development fails to comply with the conditions.

APPENDIX D: SUGGESTED CONDITIONS (four turbine scheme)

Time limits, decommissioning and site restoration

1. The development hereby permitted shall begin not later than three years from the date of this decision. Written confirmation of the commencement of development shall be provided to the local planning authority no later than one week after the event.
2. Subject to conditions no. 7, 8, 9 and 21 below, the development hereby permitted shall be carried out in accordance with the approved plans numbered Figure 1.1 – Site Location and Figure 1.2 – Site Plan.
3. The development hereby permitted shall be removed in accordance with condition no. 4 below after a period of 25 years from the date when electricity is first exported from any of the wind turbines to the electricity grid (“First Export Date”). Written notification of the First Export Date shall be provided to the local planning authority no later than one calendar month after the event.
4. Not later than 12 months before the expiry of the 25 year period referred to in condition no. 3 above, a decommissioning and site restoration scheme shall be submitted to the local planning authority for its written approval. The scheme shall make provision for the removal of the wind turbines and the associated above-ground equipment and turbine foundations to a depth of 1 metre below ground level. The scheme shall also include proposals for the management and timing of the works, a traffic management plan and restoration measures. The scheme shall be implemented as approved.
5. If any of the wind turbines hereby permitted fail to operate for a continuous period of 9 months following the First Export Date, a scheme shall be submitted to the local planning authority for its written approval within 3 months of the end of that 9 month period for the repair or removal of the relevant turbine. The scheme shall include a proposed programme of remedial works where repairs to the relevant turbine are required, or a method statement including a timetable for the removal of the relevant turbine and the works solely associated with that turbine and for site restoration. The scheme shall be implemented as approved.

Appearance of the development

6. The wind turbines shall be of the same design and have 3 blades which shall rotate in the same direction and the overall height of the wind turbines shall not exceed 99 metres to the tip of the blades when the turbine is in the vertical position and the hub height of the wind turbines shall not exceed 64 metres.
7. No wind turbine shall be erected on site until details of the finish and colour of the turbines and any external transformer units have been submitted to and approved in writing by the local planning authority. No name, sign, symbol or logo shall be displayed on any external surfaces of the turbines or any external transformer units other than those required by law. The development shall thereafter be carried out and operated in accordance with the approved details.

8. The construction of the on-site temporary construction compound shall not commence until details of the external appearance, dimensions, layout and materials for the buildings and any associated parking area and details of surface and foul water drainage from the compound have been submitted to and approved in writing by the local planning authority. The construction shall proceed in accordance with the approved details.
9. The switchgear control building shall not be erected on site until details of its external materials have been submitted to and approved in writing by the local planning authority. The building shall then be built in the approved materials.
10. All electrical cabling between the individual wind turbines and the switchgear control building shall be installed underground.
11. The turbines shall not carry any form of external illumination, and there shall be no permanent illumination on the site other than:
 - i) lighting required for the safety of aircraft in accordance with condition no. 17 below;
 - ii) a movement sensor-operated external door light for the electricity substation; and
 - iii) during the construction period, in accordance with details approved in connection with condition no. 13(e) below.
12. Prior to the commencement of development a Construction Traffic Management Plan ("CTMP") shall be submitted to and approved in writing by the local planning authority. The CTMP shall include proposals for the routing of construction traffic, scheduling and timing of movements, details of escorts for abnormal loads, temporary warning signs, temporary removal and replacement of highway infrastructure/street furniture and the reinstatement of any signs, hedgerows, trees and shrubs, verges or other items displaced by construction traffic. The CTMP shall be implemented as approved.
13. Prior to the commencement of development a Construction Method Statement ("CMS") shall be submitted to and approved in writing by the local planning authority. Thereafter the construction of the development shall be carried out in accordance with the approved CMS, subject to any variations approved in writing by the local planning authority. The CMS shall include details of the following:
 - a) the proposed storage of materials and disposal of surplus materials;
 - b) dust management;
 - c) pollution control: protection of the water environment, bunding of fuel storage areas, surface water drainage, sewage disposal and discharge of foul drainage;
 - d) a Site Waste Management Plan;
 - e) temporary site illumination during the construction period including proposed lighting levels together with the specification of any lighting;
 - f) the phasing of construction works;

- g) surface treatments and the construction of all hard surfaces and tracks;
- h) emergency procedures and pollution response plans;
- i) siting and details of wheel washing facilities;
- j) cleaning of site entrances, site tracks and the adjacent public highway and the sheeting of all HGVs taking spoil or construction materials to/from the site to prevent spillage or deposit of any materials on the highway;
- k) areas on site designated for the storage, loading, off-loading, parking and manoeuvring of heavy duty plant, equipment and vehicles;
- l) details and timetable for post construction restoration/reinstatement of the temporary working areas and the construction compound;
- m) working practices for protecting nearby residential dwellings, including measures to control noise and vibration arising from on-site activities shall be adopted as set out in British Standard 5228 Part 1: 2009;
- n) risk assessment and methodology for dealing with identified and potential geological and/or mining related risks;
- o) access gates, hung to open away from the public highway, no less than 10m from the carriageway edge, and incorporating visibility splays;
- p) proposed accommodation works and where necessary a programme for their subsequent removal and the reinstatement of street furniture, and verges where required; and
- q) details of a pre-construction road condition survey between the roundabout at the junction of the A595/C2054 and the site access entrance onto the C2054.

Construction hours

14. Except for the pouring of turbine foundations, which will be undertaken in accordance with the terms of the Construction Method Statement referred to in condition no. 13 above, construction work shall only take place between the hours of 0600 – 1800 hours Monday to Friday inclusive and 0600 – 1600 hours on Saturdays with no construction work on Sundays or Public Holidays. Outside these hours, works at site shall be limited to emergency works and dust suppression. The local planning authority shall be notified in writing of any emergency works within 3 working days of their occurrence.

Delivery hours

15. The delivery of any construction materials or equipment for the construction of the development, other than concrete material for turbine foundations and turbine blades, nacelle and tower, shall be restricted to the hours of 0730 – 1900 on Monday to Friday inclusive. Exceptions for deliveries outside these hours may be carried out with the prior written approval of the local planning authority.

Ecology

16. Vegetation shall only be removed/cleared during the period 1 March to 31 August if a suitably qualified ecologist has inspected the vegetation and confirmed in writing to the local planning authority that no nesting/breeding birds will be affected by the works. If any effects on nesting/breeding birds are identified then the suitably qualified ecologist will identify any measures required to mitigate those effects, such measures to be implemented as approved in writing by the local planning authority.

Aviation

17. MOD-approved infra-red warning lighting shall be installed at the highest practicable point on all turbines. Each turbine will be erected with this lighting installed and the lighting will remain operational throughout the duration of this planning permission.

Telecommunication interference

18. No development shall take place until a Mitigation Report (including site surveys) to address affected links, as identified by Joint Radio Company Ltd, has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved.
19. Prior to the commencement of the development hereby permitted a baseline television and broadband reception study in the area to be agreed with the local planning authority shall be undertaken by a qualified television engineer and submitted to the local planning authority. A scheme of works necessary to mitigate any adverse effects to domestic television and radio broadband signals in the agreed area caused by the development shall also be submitted to and approved in writing by the local planning authority. Any claim by any person for domestic television picture loss/interference or radio broadband signal loss/interference at their household within 12 months of the final commissioning of the wind turbines, shall be investigated by a qualified television engineer and the results submitted to the local planning authority. Should any impairment to the television or broadband reception be determined by the qualified engineer as attributable to the wind turbines on the basis of the baseline reception study, such impairment shall be mitigated in accordance with the mitigation scheme within 3 months of results of the investigation being submitted to the local planning authority.

Shadow flicker

20. Prior to the erection of any of the wind turbines hereby permitted, a written scheme shall be submitted to and approved in writing by the local planning authority setting out a protocol for the assessment of shadow flicker in the event of any complaint to the Local Planning Authority from the owner or occupier of a dwelling (defined for the purposes of this condition as a building within Use Class C3 or C4 of the Use Classes Order) which lawfully exists or had planning permission at the date of this permission. The written scheme shall include remedial measures to alleviate any shadow flicker found to be attributable to the development by the assessment protocol. Operation of the wind turbines shall take place in accordance with the approved scheme unless the local planning authority gives its prior written consent to any variations.

Micro-siting

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

Turbine	Easting	Northing
1	302734	525119
2	302849	524996
3	302966	524873
4	303052	524730

Notwithstanding the terms of this condition the wind turbines and other infrastructure hereby permitted may be micro-sited within 20 metres, subject to Turbine T1 being located no closer to Cumbria County Council's Highway Depot. Details of any such variations shall be submitted to and approved in writing by the local planning authority, prior to the erection of any of the turbines.

Coal Mining

22. Development shall not begin until investigation works have been undertaken by the developer to confirm coal mining conditions on site. In the event that the site investigations confirm the need for remedial works to treat areas of shallow mine workings and/or any other mitigation measures to ensure the safety and stability of the development, development shall not commence until such works have been undertaken.

Noise

23. The rating level of noise immissions from the combined effects of the wind turbines hereby permitted (including the application of any tonal penalty) when determined in accordance with the attached Guidance Notes, shall not exceed the values for the relevant integer wind speed set out in or derived from Tables 1 and 2 attached to these conditions and:

(A) Prior to the First Export Date, the wind farm operator shall submit to the local planning authority for written approval a list of proposed independent consultants who may undertake compliance measurements in accordance with this condition. Amendments to the list of approved consultants shall be made only with the prior written approval of the local planning authority.

(B) Within 21 days from receipt of a written request from the local planning authority, following a complaint to it alleging noise disturbance at a dwelling, the wind farm operator shall, at its expense, employ an independent consultant approved by the local planning authority to assess the level of noise immissions from the wind farm at the complainant's property in accordance with the procedures described in the attached Guidance Notes. The written request from the local planning authority shall set out at least the date, time and location to which the complaint relates. Within 14 days of receipt of a written request from the local planning authority made under this paragraph (B), the wind farm operator shall provide the information relevant to the complaint logged in accordance with

paragraph (H) to the local planning authority in the format set out in Guidance Note 1(e).

(C) Where there is more than one property at a location specified in Tables 1 and 2 attached to this condition, the noise limits set for that location shall apply to all dwellings at that location. Where a dwelling to which a complaint is related is not identified by name or location in the Tables attached to these conditions, the wind farm operator shall submit to the local planning authority for written approval proposed noise limits selected from those listed in the Tables to be adopted at the complainant's dwelling for compliance checking purposes. The proposed noise limits are to be those limits selected from the Tables specified for a listed location which the independent consultant considers as being likely to experience the most similar background noise environment to that experienced at the complainant's dwelling. The submission of the proposed noise limits to the local planning authority shall include a written justification of the choice of the representative background noise environment provided by the independent consultant. The rating level of noise immissions resulting from the combined effects of the wind turbines when determined in accordance with the attached Guidance Notes shall not exceed the noise limits approved in writing by the local planning authority for the complainant's dwelling.

(D) Prior to the commencement of any measurements by the independent consultant to be undertaken in accordance with these conditions, the wind farm operator shall submit to the local planning authority for written approval the proposed measurement location identified in accordance with the Guidance Notes where measurements for compliance checking purposes shall be undertaken. Measurements to assess compliance with the noise limits set out in the Tables attached to these conditions or approved by the local planning authority pursuant to paragraph (C) of this condition shall be undertaken at the measurement location approved in writing by the local planning authority.

(E) Prior to the submission of the independent consultant's assessment of the rating level of noise immissions pursuant to paragraph (F) of this condition, the wind farm operator shall submit to the local planning authority for written approval a proposed assessment protocol setting out the following:

- (i) The range of meteorological and operational conditions (the range of wind speeds, wind directions, power generation and times of day) to determine the assessment of rating level of noise immissions.
- (ii) A reasoned assessment as to whether the noise giving rise to the complaint contains or is likely to contain a tonal component.

The proposed range of conditions shall be those which prevailed during times when the complainant alleges there was disturbance due to noise, having regard to the information provided in the written request from the local planning authority under paragraph (B), and such others as the

independent consultant considers necessary to fully assess the noise at the complainant’s property. The assessment of the rating level of noise immissions shall be undertaken in accordance with the assessment protocol approved in writing by the local planning authority and the attached Guidance Notes.

(F) The wind farm operator shall provide to the local planning authority the independent consultant’s assessment of the rating level of noise immissions undertaken in accordance with the Guidance Notes within 2 months of the date of the written request of the local planning authority made under paragraph (B) of this condition unless the time limit is extended in writing by the local planning authority. All data collected for the purposes of undertaking the compliance measurements shall be made available to the local planning authority at its request. The instrumentation used to undertake the measurements shall be calibrated in accordance with Guidance Note 1(a) and certificates of calibration shall be submitted to the local planning authority with the independent consultant’s assessment of the rating level of noise immissions.

(G) Where a further assessment of the rating level of noise immissions from the wind farm is required pursuant to Guidance Note 4(c) of the attached guidance notes, the wind farm operator shall submit a copy of the further assessment within 21 days of submission of the independent consultant’s assessment pursuant to paragraph (F) above unless the time limit for the submission of the further assessment has been extended in writing by the local planning authority.

(H) The wind farm operator shall continuously log power production, wind speed and wind direction, all in accordance with Guidance Note 1(d). These data shall be retained for a period of not less than 24 months. The wind farm operator shall provide this information in the format set out in Guidance Note 1(e) to the local planning authority on its request, within 14 days of receipt in writing of such a request.

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

Table 1: Between 07:00 and 23:00 hours (Noise Level in dB L_{A90, 10-min})

Location	Standardised 10 m height Wind Speed, m/s, within the site averaged over 10-minute periods												
	1	2	3	4	5	6	7	8	9	10	11	12	
	Noise Limit L _{A90} Decibel Levels												
Wythemoor Sough	36	37	38	38	38	38	38	39	40	43	48	54	
Wythemoor Head Farm	39	39	39	39	39	39	39	39	39	39	39	39	
Gale House	41	41	41	42	42	42	43	43	43	44	44	45	

Table 2: Between 23:00 and 07:00 hours (Noise Level in dB L_{A90, 10-min})

Location	Standardised 10 m height Wind Speed, m/s, within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
	Noise Limit L _{A90} Decibel Levels											
Wythemoor Sough	43	43	43	43	43	43	43	43	43	44	48	53
Wythemoor Head Farm	43	43	43	43	43	43	43	43	43	43	43	46
Gale House	43	43	43	43	43	43	43	43	43	44	45	46

Note to Tables 1 & 2: The geographical coordinate references set out in these tables are provided for the purpose of identifying the general location of dwellings to which a given set of noise limits applies. The standardised 10m height wind speed within the site refers to wind speed derived in accordance with the method given in the attached Guidance Notes.

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

Receptor Name	Eastings (m)	Northings (m)
Wythemoor Sough	303514	524883
Wythemoor Head Farm	302796	524311
Gale House	302846	525639

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

Guidance Notes for Noise Conditions

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

Guidance Note 1

- g) Values of the L_{A90,10 minute} noise statistic should be measured at the complainant's property (or an approved alternative representative location as detailed in Note 1(b)), using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard

in force at the time of the measurements). This should be calibrated before and after each set of measurements, using a calibrator meeting IEC 60945:2003 "Electroacoustics – sound calibrators" Class 1PTB Type Approval (or the equivalent UK adopted standard in force at the time of the measurements) and the results shall be recorded. Measurements shall be undertaken in such a manner to enable a tonal penalty to be applied in accordance with Guidance Note 3.

- h) The microphone shall be mounted at 1.2 – 1.5 metres above ground level, fitted with a two-layer windshield or suitable equivalent approved in writing by the Planning Authority, and placed outside the complainant's dwelling and not more than 35 metres from it. Measurements should be made in "free field" conditions. To achieve this, the microphone shall be placed at least 3.5 metres away from the building facade or any reflecting surface except the ground at the approved measurement location. In the event that the consent of the complainant for access to his or her property to undertake compliance measurements is withheld, the wind farm operator shall submit for the written approval of the Planning Authority details of the proposed alternative representative measurement location prior to the commencement of measurements and the measurements shall be undertaken at the approved alternative representative measurement location.
- i) The $L_{A90,10 \text{ minute}}$ measurements should be synchronised with measurements of the 10-minute arithmetic mean wind speed and wind direction data. Operational data should be logged in accordance with Guidance Note 1(d) and rain data logged in accordance with Note 1(f).
- j) To enable compliance with the noise conditions to be evaluated, the wind farm operator shall continuously log arithmetic mean wind speed in metres per second and wind direction in degrees from north at hub height for each turbine and arithmetic mean power generated by each turbine, all in successive 10-minute periods. Unless an alternative procedure is previously agreed in writing with the Planning Authority, this hub height wind speed, averaged across all operating wind turbines, shall be used as the basis for the analysis. All 10 minute arithmetic average mean wind speed data measured at hub height shall be 'standardised' to a reference height of 10 metres as described in ETSU-R-97 at page 120 using a reference roughness length of 0.05 metres. All 10-minute periods shall commence on the hour and in 10-minute increments thereafter synchronised with Greenwich Mean Time and adjusted to British Summer Time where necessary. The 'standardised' 10 metre height wind speed data, shall be correlated with the noise measurements determined as valid in accordance with Note 2 and the correlation shall be undertaken in the manner described in Note 2.
- k) Data provided to the Local Planning Authority in accordance with paragraphs (E) (F) (G) and (H) of the noise condition shall be provided in comma separated values in electronic format.
- l) A data logging rain gauge shall be installed in the course of the independent consultant undertaking an assessment of the levels of noise immissions. The gauge shall record over successive 10-minute periods synchronised with the periods of data recorded in accordance with Note 1(d).

Guidance Note 2

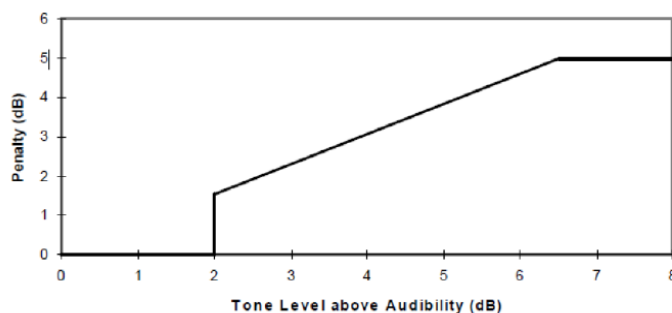
- 24. The noise measurements should be made so as to provide not less than 20 valid data points (where practicable) as defined in Note 2 paragraph(b).
- 25. Valid data points are those measured during the conditions set out in the assessment protocol approved by the planning authority under paragraph (E) of the noise

condition, but excluding any periods of rainfall measured in accordance with Note 1 paragraph (f).

26. Values of the $L_{A90,10 \text{ minute}}$ noise measurements and corresponding values of the 10-minute standardised ten metre height wind speed for those data points considered valid in accordance with Guidance Note 2(b), shall be plotted on an XY chart with noise level on the Y-axis and wind speed on the X-axis. A least squares, "best fit" curve of an order deemed appropriate by the independent consultant (but which may not be higher than a fourth order) shall be fitted to the data points to define the wind farm noise level at each integer speed.

Guidance Note 3

- f) Where, in accordance with the approved assessment protocol under paragraph (E) of the noise condition, noise immissions at the location or locations where compliance measurements are being undertaken contain or are likely to contain a tonal component, a tonal penalty shall be calculated and applied using the following rating procedure.
- g) For each 10 minute interval for which $L_{A90,10 \text{ minute}}$ data have been determined as valid in accordance with Note 2 a tonal assessment shall be performed on noise immissions during 2 minutes of each 10 minute period. The 2 minute periods should be spaced at 10 minute intervals provided that uninterrupted uncorrupted data are available ("the standard procedure"). Where uncorrupted data are not available, the first available uninterrupted clean 2 minute period out of the affected overall 10 minute period shall be selected. Any such deviations from the standard procedure, as described in Section 2.1 on pages 104-109 of ETSU-R-97, shall be reported.
- h) For each of the 2 minute samples the tone level above audibility shall be calculated by comparison with the audibility criterion given in Section 2.1 on pages 104 – 109 of ETSU-R-97.
- i) The average tone level above audibility shall be calculated for each wind speed bin, each bin being 1 metre per second wide and centred on integer wind speeds. For any samples where tones are found to be below the audibility criterion or no tone is identified, a value of zero audibility shall be used.
- j) The tonal penalty is derived from the margin above audibility of the tone according to the figure below.



Guidance Note 4

- h) If a tonal penalty is to be applied in accordance with Note 3 the rating level of the turbine noise at each wind speed is the arithmetic sum of the measured noise level as determined from the best fit curve described in Note 2 and the penalty for tonal noise

as derived in accordance with Note 3 at each integer wind speed within the range set out in the approved assessment protocol under paragraph (E) of the noise condition.

- i) If no tonal penalty is to be applied then the rating level of the turbine noise at each wind speed is equal to the measured noise level as determined from the best fit curve described in Note 2.
- j) If the rating level at any integer wind speed lies at or below the values set out in the Tables attached to the conditions or at or below the noise limits approved by the Local Planning Authority for a complainant's dwelling in accordance with paragraph (C) of the noise condition then no further action is necessary. In the event that the rating level is above the limit(s) set out in the Tables attached to the noise conditions or the noise limits for a complainant's dwelling approved in accordance with paragraph (C) of the noise condition, the independent consultant shall undertake a further assessment of the rating level to correct for background noise so that the rating level relates to wind turbine noise immission only.
- k) The wind farm operator shall ensure that all necessary wind turbines in the development are turned off for such period as the independent consultant requires to undertake any further noise measurements required under Guidance Note 4(c). If the number of turbines to be turned off is less than the total number of turbines on the site then this shall be agreed in advance with the Local Planning Authority. To this end, the steps in Guidance Note 2 shall be repeated with the required number of turbines shut-down in accordance with Guidance Note 4(d) in order to determine the background noise (L_3) at each integer wind speed within the range set out in the approved noise assessment protocol under paragraph (E) of this condition.
- l) The wind farm noise (L_1) at this speed shall then be calculated as follows where L_2 is the measured level with turbines running but without the addition of any tonal penalty:

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

- m) The rating level shall be re-calculated by adding arithmetically the tonal penalty (if any is applied in accordance with Note 3) to the derived wind farm noise L_1 at that integer wind speed.
- n) If the rating level after adjustment for background noise contribution and adjustment for tonal penalty (if required in accordance with Note 3 above) at any integer wind speed lies at or below the values set out in the Tables attached to the conditions or at or below the noise limits approved by the Local Planning Authority for a complainant's dwelling in accordance with paragraph (C) of the noise condition then no further action is necessary. If the rating level at any integer wind speed exceeds the values set out in the Tables attached to the conditions or the noise limits approved by the Local Planning Authority for a complainant's dwelling in accordance with paragraph (C) of the noise condition then the development fails to comply with the conditions.



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.