



Department for
Communities and
Local Government

Ms Gemma Tuck
Squire Patton Boggs (UK) LLP
2 Park Lane
Leeds
LS3 1ES

Our Ref: APP/C2708/A/12/2186488
Your Ref:

10 February 2016

Dear Ms Tuck,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY ENERGIEKONTOR UK LTD
AT LAND ADJACENT TO BRIGHTENBER HILL, NEAR STAINTON HALL,
CARGRAVE, SKIPTON, YORKSHIRE, BD23 3PA
APPLICATION REFERENCE 05/2012/12568**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Mike Robins, MSc BSc(Hons) MRTPI, who made a site visit on 17 June 2015 into your client's appeal against a decision of Craven District Council to refuse planning permission for three wind turbines with a maximum tip height of 100m, electricity substation, alterations to field access, construction of wind farm access tracks and temporary construction compound and off-site road widening works in accordance with application number 05/2012/12568 dated 17 April 2012.
2. Inspector Zoë Hill issued a decision in respect of the above appeal in her letter dated 3 July 2014. However, that decision letter was the subject of an application to the High Court and it was subsequently quashed by order of the Court dated 4 December 2014. The appeal therefore falls to be redetermined. On 14 October 2015, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 to Schedule 6 to, the Town and Country Planning Act 1990.

Christine Symes
Department for Communities and Local Government
3rd Floor, Fry Building
2 Marsham Street
London
SW1P 4DF

Tel: 0303 441634
Email: PCC@communities.gsi.gov.uk

Inspector's recommendation and summary of the decision

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

Procedural Matters

4. In reaching this position the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011. Like the Inspector (IR4), the Secretary of State is content that the Environmental Statement complies with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

Policy considerations

5. In deciding the application, 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 saved policies of the Craven District Local Plan (the LP) adopted in 1999. The Secretary of State considers that the development plan policies most relevant to the appeal are those identified by the Inspector at IR12.
6. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework, published by the Government in 2012 (the Framework), and the planning practice guidance published in March 2014 (the guidance). He has also taken account of the Written Ministerial Statements of June 2013 and June 2015. Given its relevance to this case, the Secretary of State attaches substantial weight to the 2015 statement as the most recent expression of government planning for onshore wind development.
7. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the appeal scheme or their settings or any features of special architectural or historic interest which they may possess.

Main issues

8. The Secretary of State considers that the main issues in this case are whether the appeal proposal complies with the development plan and those issues identified by the Inspector at IR35.

Living Conditions

9. The Secretary of State has given careful consideration to the Inspector's remarks at IR36-49 and his view that there are three properties where the occupants would be most directly affected by the proposal: Ash Tree Farm; Haugh Field Farm and New Farm (IR37).
10. For the reasons given by the Inspector (IR38-39), he agrees that the proposal would represent a very significant visual impact for the occupiers of Ash Tree Farm (IR39). The Secretary of State also concurs with the Inspector's analysis at IR40-42 and he too concludes that the proposal would represent a very significant visual impact for the occupiers of Haugh Field Farm. Like the Inspector, and for the reasons he gives at IR43 and IR47, the Secretary of State considers that the proposal would represent a significant visual impact to occupiers of New Farm although this impact would not be so severe as to render the property an unattractive place in which to live. Having taken account of the Inspector's remarks at IR44, the Secretary of State gives little weight to harm to the occupants of other dwellings in the area including Winterley House, Brocks Barn, Stainton Coates House and The Farmhouse.
11. Like the Inspector (IR48), the Secretary of State does not consider that the temporary nature of the scheme justifies a reduction in the weight to be attributed to the harm to living conditions which he has identified. He agrees with the Inspector (IR49) that whilst the revised scheme lessens the impact on Ash Tree Farm somewhat, the current proposal would nevertheless result in unacceptable harm to the living conditions of the occupiers of Ash Tree Farm and Haugh Field Farm. He further agrees with the Inspector that the proposal would conflict with Policy ENV12 of the LP in this regard (IR49).

Heritage Assets

12. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the appeal scheme or their settings or any features of special architectural or historic interest which they may possess. He has also taken account of national policy set out at paragraphs 128-134 of the Framework. In this case, he agrees with the Inspector (IR50) that the principal heritage assets to be considered are the Grade II* listed Gledstone Hall, the Grade II* listed Ingthorpe Grange and Steeling Hill Scheduled Ancient Monument (SAM).
13. The Secretary of State has given very careful consideration to the Inspector's analysis at IR51-55. For the reasons given in those paragraphs, he shares the Inspector's view (IR55) that the appeal scheme would harm the setting of Gledstone Hall and its park and garden, in particular the appreciation of the design and location. Like the Inspector (IR55), the Secretary of State considers that there would consequently be harm to the significance of these Grade II* listed assets.
14. With regard to Ingthorpe Grange, the Secretary of State concurs with the Inspector's comments and he is satisfied that the setting and significance of Ingthorpe Grange would not be harmed (IR56). He also shares the Inspector's view, for the reasons he gives, that the introduction of the turbines, while

undoubtedly altering the setting, would have limited effect in the significance of the Stealing Hill enclosure (IR57).

15. The Secretary of State agrees with the Inspector (IR58) that whilst the identified harm cannot be recorded as substantial, these are assets of the greatest importance, for which he is required to have special regard in relation to their preservation. As set out at paragraph 34 of the Framework, the Secretary of State has gone on to weigh the harm which the scheme would cause to heritage assets against the public benefits of the proposal.

Effect on the Character and Appearance of the Area

16. The Secretary of State has given careful consideration to the Inspector's comments at IR60-65 including his point that there is considerable local concern regarding the value of this landscape (IR64). For the reasons given in those paragraphs, the Secretary of State concurs with his view that there would be a very substantial change to a wind farm landscape within approximately 800m of the turbines and that, within this area, the turbines would be dominant features presenting a modern kinetic element into this rounded and pastoral landscape (IR64). In common with the Inspector (IR65), he concludes that the proposal would conflict with LP Policy ENV1 which seeks that development within the open countryside helps to maintain and enhance landscape character.
17. With regard to the scheme's visual effects on the appearance of the area, the Secretary of State agrees with the Inspector's remarks at IR66-67 including that from high points in the drumlin field the turbines would stand out as a stark new addition. However, the Secretary of State also agrees that the proposal would not lead to material harm in relation to the appearance of the National Park or Area of Outstanding Natural Beauty, or to the experience of users of these areas (IR68).
18. In common with the Inspector (IR69), the Secretary of State concludes that, overall, the visual harm locally adds to his concerns regarding conflict with LP Policy ENV1 (IR69).

Other matters

19. For the reasons given by the Inspector, the Secretary of State agrees that the effects of shadow flicker on the residents here would be limited (IR72). He also agrees with the Inspector's analysis of the scheme's impact on the Craven Country Ride and he too concludes the proposal cannot be considered as likely to result in significant harm to the operations (IR75-79).

Conditions

20. The Secretary of State has considered the suggested conditions at Annex A and the Inspector's remarks at IR88-93. He is satisfied that the suggested conditions are necessary and that they would meet the tests of paragraph 206 of the Framework. However, he does not consider that they would overcome his reasons for dismissing this appeal.

Obligation

21. The Secretary of State has taken account of the planning obligation dated 9 July 2015, national policy as set out in paragraphs 203-205 of the Framework, the guidance and the Inspector's remarks at IR6 and IR41. The Secretary of State is satisfied that the obligation meets the tests set out at paragraph 204 of the Framework.

Planning Balance

22. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. For the reasons set out in this letter, the Secretary of State concludes that the appeal proposal is not in overall accordance with the development plan. He has gone on to consider whether there are any material considerations which would overcome this conflict.
23. The Secretary of State has given careful consideration to the Inspector's remarks at IR80-87 including his comments about the scheme's compliance with the 2015 Written Ministerial Statement (IR85 and IR87). He shares the Inspector's view (IR81) that the Framework supports the balancing of benefits from renewable energy development to be considered against any harm (IR81).
24. Bearing in mind the Inspector's advice that the turbines would provide renewable energy and that an installed capacity of 7.5MW was identified (IR81) the Secretary of State attributes substantial weight to the benefits of providing renewable energy to the national grid and the consequent public benefits. Like the Inspector (IR82), the Secretary of State has gone on to consider these benefits against the harm which he has identified.
25. The Secretary of State has concluded (at paragraph 11 above) that the proposal would result in unacceptable harm to the living conditions of the occupiers of Ash Tree Farm and Haugh Field Farm. The Secretary of State has concluded (at paragraph 15 above) that the scheme would cause harm to heritage assets, albeit at a level which is less than substantial. For the reasons given by the Inspector (IR83-84), he accords considerable importance and weight to the preservation of the heritage assets. The Secretary of State has also found that the scheme would cause harm to the character and appearance of the area (paragraphs 16 and 18 above) and he attributes significant weight to this harm.
26. Taking all these matters together the Secretary of State shares the Inspector's view (IR87) that the adverse impacts of the scheme would significantly and demonstrably outweigh its benefits. Furthermore the Secretary of State has found that the scheme is in overall conflict with the development plan and he does not consider that there are material considerations of sufficient weight to justify his determining the appeal other than in accordance with the development plan.

Formal Decision

27. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for three wind turbines with a maximum tip height of 100m, electricity substation, alterations to field access, construction of wind farm access tracks and temporary construction compound and off-site road widening works in accordance with application number 05/2012/12568 dated 17 April 2012.

Right to challenge the decision

28. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within six weeks from the date of this

letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

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

Yours faithfully

Christine Symes

Christine Symes

Authorised by Secretary of State to sign in that behalf

Report to the Secretary of State for Communities and Local Government

by Mike Robins MSc BSc(Hons) MRTPI

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

Date: 5 November 2015

The Town and Country Planning Act 1990

Appeal by

Energiekontor UK Ltd

Against the decision of

Craven District Council

Site Visit on 17 June 2015

Brightenber Hill, near Stainton Hall, Cargrave, Skipton, Yorkshire

File Refs: APP/C2708/A/12/2186488

Appeal Ref: APP/C2708/A/12/2186488

Brightenber Hill, near Stainton Hall, Cargrave, Skipton, Yorkshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Energiekontor UK Ltd against the decision of Craven District Council.
- The application Ref 05/2012/12568, dated 17 April 2012, was refused by notice dated 5 September 2012.
- The development proposed is three wind turbines with a maximum tip height of 100m, electricity substation, alterations to field access, construction of wind farm access tracks and temporary construction compound and off-site road widening works.

Summary of Recommendation: The appeal be dismissed.

Procedural Matters

1. This appeal is a redetermination following the quashing of a previous decision in the High Court. That decision has been set aside, and can carry no weight in the assessment of the case.
2. An earlier decision¹, (the 2010 decision), concerning a proposal for five turbines on the site, remains a material consideration. This appeal was dismissed in March 2010. However, there have been a number of changes in policy and guidance regarding renewable energy and wind turbine applications since then. These include the revocation of the Regional Spatial Strategy for Yorkshire and Humber Region, the introduction of the National Planning Policy Framework (the Framework) and Planning Practice Guidance (PPG) and specific Written Ministerial Statements (WMS) relating to onshore wind energy developments, dated 6 June 2013 and 18 June 2015.
3. The WMS issued in June 2015 came out after the Hearing was closed and therefore parties were given the opportunity to comment on the implications for this case.
4. A Statement of Common Ground (SoCG) was submitted at the Hearing, signed by the Council and the appellant, which confirmed the Council's sole reason for refusal related to harm to the living conditions of the occupiers of Ash Tree Farm. It further confirmed that the environmental information submitted in support of the proposed development complies with the requirements of Schedule 4 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011; I see no reason to disagree. The proposal is supported by an Environmental Statement (ES)
5. In addition to the main parties, a number of interested parties made representations to the appeal. These included the Friends of Craven Landscape (FoCL), who were represented at the Hearing. This group is reported to have been formed in 2008 and represents a membership of 800 people.
6. A Unilateral Undertaking, signed and dated 9 July 2015, was submitted by the appellant under the provisions of the Town and Country Planning Act 1990. Only a draft was available at the Hearing, but a signed copy was accepted after the closure of the event. This was to address the provision of additional or

¹ APP/C2708/A/09/2107843

replacement tree screening at Haugh Field Farm, subject to any conclusions that I may reach regarding the necessity for such. I have considered this later in my decision.

7. I was able to carry out a comprehensive accompanied site visit programme. Although the weather was poor during part of this site visit programme, a reasonable level of visibility from, and towards the site was available. I confirmed with all parties present that the viewpoints had covered the areas they wished to be included, and that the visibility was sufficient for their concerns to be appreciated. I also carried out unaccompanied visits to Malhalm Cove and Sharp Moor.

The Proposal

8. The proposal involves the erection of three wind turbines. The proposed turbines would have a maximum blade tip height of 100 metres. Although specific locations are identified, an allowance is sought for micro-siting, with each turbine to have an associated transformer with underground cabling to an on-site sub-station.

Background and Policy Position

9. The turbines are proposed to be located within an undulating landform of drumlins; rounded hills with incised valley features formed during the last ice age. They would be set roughly in the centre of an area partly enclosed by the A65 to the north, the A59 to the south and the A682 to the west. Landholdings within this area are extensive, with a number of farms, either owned or tenanted, having lands which lie close to the proposed turbines. These include Ash Tree Farm, Haugh Field Farm, New Farm and the lands associated with Kelber Farm, Pot Haw Farm and the Craven Country Ride.
10. The drumlin field is surrounded by high ground to the north, east and south with the land falling away to the Ribble Valley and the River Aire to the west. The high ground to the north lies within the Yorkshire Dales National Park (NP), with the boundary approximately 3.5 kms from the site, while the Forest of Bowland Area of Outstanding Natural Beauty (AONB) lies approximately 6.5 kms to the west.
11. There are a number of heritage assets located near to the proposed turbines. These include Stealing Hill, a designated Scheduled Ancient Monument (SAM); Gledstone Hall and its registered park and garden, listed Grade II*, Ingthorpe Grange, also listed Grade II*, and a number of Grade II listed buildings in the surrounding area.
12. The development plan for the area comprises the Craven District Local Plan (the Local Plan), adopted 1999, which, although it is silent as regards renewable energy development, has saved policies relating to development within the countryside. Of these, Policy ENV1 seeks to protect the character and quality of the open countryside, and Policy ENV2 sets out requirements for development acceptable in principle under ENV1. These include that development be compatible with the character of the surrounding area and not lead to unacceptable impact on the landscape, and that rural roads can accommodate the traffic likely to be generated. Policy ENV12 addresses farm diversification setting out criteria, including that the proposal will not result in unacceptable

harm to the amenities of local residents. Policy SRC12 addresses the protection of public rights of way. Although the Council are preparing a new Local Plan, it was common ground between all parties that this is at an early stage and carries only limited weight.

13. The Framework, published by the Government in 2012, sets out a presumption in favour of sustainable development. While it acknowledges that planning law requires that applications be determined in accordance with the development plan, it represents a material consideration which must be taken into account. The Framework identifies that the provision of renewable energy infrastructure is central to sustainable development, and that local authorities should recognise the responsibility on all communities to contribute to energy generation from renewable and low carbon sources. It further states that applications should be approved if impacts are or can be made acceptable. In principle support for the provision of renewable energy is also found in National Policy Statements and the PPG.
14. However, the Framework also recognises the intrinsic character and beauty of the countryside and seeks to secure a good standard of amenity for all occupants of land and buildings. Specific policies seek to protect and enhance valued landscapes and address the significance of harm to Heritage Assets. The Framework therefore clearly sets out a need to consider the balance between the harms and the benefits arising from renewable energy proposals; an approach not found within the Local Plan, which can therefore be considered to be out-of-date in this regard. The development plan is also acknowledged to be silent on such proposals and the presumption in favour of sustainable development supports that adverse impacts should significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
15. The WMS in June 2013, stated its intent to articulate the action needed to deliver the balance expected by the Framework. Four key points were highlighted for incorporation into the national PPG: that the need for renewable energy does not automatically override environmental protections and the planning concerns of local communities; that decisions should take into account cumulative impacts; that local topography should be a factor in assessing the impact on landscapes; and that great care should be taken to ensure heritage assets are conserved in a manner appropriate to their significance, including the impact of proposals on views important to their setting.
16. A recent WMS, dated 18 June 2015, went further in requiring that wind energy developments are located in areas specifically identified as being suitable and have the backing of local communities. Transitional arrangements, which would apply in the case before me, require that where suitable sites are not identified, local authorities can find a proposal acceptable if, following consultation, they are satisfied it has addressed the planning impacts identified by affected local communities and therefore has their backing.

The Case for the Appellant

17. There remains a strong policy drive to continue to develop renewable energy, and the Yorkshire and Humber region has significant potential to increase its delivery of renewable energy sources; there is a very strong need for this development.

18. On the key matter of potential visual effects on Ash Tree farm, a detailed assessment was presented in the ES. There is an important distinction between identifying significant effects in EIA terms and in assessing whether in planning policy terms the proposed turbines would be so dominant or be overbearing to residential properties that the public interest would be served by rejecting the proposed development on such grounds. The relationships found are considered to be acceptable; living conditions would not be unacceptably affected and no residential property would experience an effect such that it would be rendered an unattractive place in which to live.
19. The proposed development would not be in accordance with the countryside policies in the Local Plan. However, this plan dates from 1999 and contains no policies of relevance against which to assess the proposed development; it is silent on the topic of renewable energy.
20. It is considered that the proposed development is in accordance with the policies of the Framework; this is a material consideration that deserves considerable weight and the presumption in favour of sustainable development applies. Other material considerations include national support for renewable sources, the local shortfall in anticipated installed capacity, the viability and availability of the site.
21. Against these it is considered that the harm identified to landscape character is acceptable, as are effects on public rights of way and the public interest test relating to residential amenity is not breached. Any harm to cultural heritage assets would not unacceptably erode their significance, and while there would be some changes to the local area, none would be unacceptable in the public interest.
22. The importance of pursuing the climate change issues to which the Government is firmly committed cannot be disputed and the proposed development has been brought forward as a direct response to national energy and planning policies. There are forceful material considerations that lend support to the proposal. The predicted adverse effects of the proposed development would not outweigh the benefits when assessed against the Framework as a whole. Furthermore, no policies in the Framework, which indicate that the proposed development should be restricted, have been identified. There are important energy policy considerations that weigh in favour of granting planning permission, accordingly, the appellant concludes that the appeal should be allowed and permission granted.
23. In response to the WMS published in June 2015, the purpose of the WMS and the revised guidance has been fulfilled. Planning impacts identified by affected local communities have been addressed in a way in which the grant of permission would have their backing. Any residual adverse impacts are or can be made acceptable and the positive impacts of the scheme identified by the affected local community, including the environmental benefits set out by the appellant, carry substantial weight in favour of the grant of planning permission.

The Case for the Council

24. The Council confirmed in their statement that subsequent to the quashing of the previous decision, the progress on the emerging Local Plan was such that very minimal weight could be given to it. They noted that a further single turbine at

West Thornber Farm had been permitted, but that this did not alter their position of objection to the scheme associated with the adverse effect on the residential amenities of the occupants of Ash Tree Farm. Notwithstanding the reasoning behind the quashing of the previous decision, the Committee, in reaching their own decision on this matter, were made aware of the presumption in favour of sustainable development, when assessed against the policies in the Framework.

25. In response to the WMS published in June 2015, the transitional arrangements set out in paragraph 33 of Chapter 5 of the PPG apply and weigh firmly against the proposed development. It was clear from the members of the community who spoke at the Hearing, the representations from the FoCL and from continued objections throughout the history of these proposals, that the development does not have the backing of the affected local community.
26. Planning impacts have not been satisfactorily addressed in that the impact on Ash Tree Farm remains so severe that the farm would become an unattractive place to live and work. In the Council's submission, this is exactly the type of situation that the WMS, as enshrined in the PPG, is aimed at avoiding.

The Case for the Friends of Craven Landscape (FOCL)

27. Since the previous decision was quashed there have been three material changes in circumstance including the change in screening at Haugh Field farm, the easing of the urgent need to meet EU renewable energy targets and the emergence of the Craven District Council Draft Local Plan, albeit this carries limited weight.
28. There was nothing in the High Court Claim filed by the appellant, or indeed in the Consent Order, that challenged the Inspector's findings of fact in the 2014 decision. Thus significant and unacceptable harm was found in respect of residential amenity, significant weight should be attached to the landscape harm and considerable weight accorded to the harm to the setting of listed buildings.
29. In terms of the planning balance, there has been a change to the screening at Haugh Field farm with the loss of one of the trees, exacerbating the harm to the occupants. The UK is on course to meet its 2020 renewable energy targets and the need for new large scale projects does not have the 'urgency' which it previously had. The benefits of the proposal have therefore reduced and the adverse impacts have increased; these therefore significantly and demonstrably outweigh the benefits of the appeal scheme.
30. In response to the WMS published in June 2015, it is clear from the level of opposition that the development does not have the backing of the local community which is affected. This opposition has been well documented since proposals were first introduced in 2008, and has not diminished over the years. Discussions at the Hearing confirm that the planning impacts have not been addressed and significant concerns remain over the adverse impacts on residential amenity, landscape harm and harm to the setting of listed buildings.

Third Parties

31. Along with a number of representations made at application stage, there were further responses made to the resumed appeal. In brief, these addressed amenity impacts, landscape impacts, including harm to the National Park, harm to listed buildings and some questioned the need for a proposal of this scale. There were two further representations in favour of the proposal, from a local mobile library service and from Professor Turton, who wished to speak at the Hearing and provided a statement. This outlined that the public interest should weigh heavily on the grounds of its contribution to the cause of sustainable development. He noted that wind turbines will modify the landscape, but that there is a need to decarbonise and the appellant's case is one that is sensitive to its local setting without massive and damaging changes to the environment and amenity.

Conditions

32. A set of draft conditions was included in appendix 2 to the appellant's statement, and were discussed at the Hearing. These have been considered and are to be attached in the event that planning permission is granted.
33. These cover commencement and decommissioning, the Construction Traffic Management Plan and Method Statement, construction hours, plans, micro-siting and detail on materials, shadow flicker, television interference, aviation, archaeology, highways, ecology and noise. The reasons for these conditions are addressed in more detail below and they are set out in Annex A to this report.

Inspector's Conclusions

34. The appeal was recovered by the Secretary of State on 14 October 2015. The reason given for the direction was because the appeal involves a significant level of opinion which was seemingly divided. The Secretary of State wished to determine the appeal himself taking account of his Written Ministerial Statement on Local Planning, made on 18 June 2015.
35. Having considered all of the submissions to this appeal, including the Environmental Statement (ES), technical reports, statements and written responses from interested parties, the main issues in this case are: the effect of the proposed turbines on the living conditions of the occupiers of nearby residential dwellings, with particular regard to visual impacts; the effect on the setting and significance of nearby heritage assets; and the effect on the character and appearance of the surrounding area.

Living Conditions

36. The appellant carried out a Visual Amenity Survey in March 2012 and this was revisited for this appeal with an updated Residential Visual Amenity Survey (RVAS) in February 2015. This assessed a significant number of properties across the area, and identified that there would be an inevitable level of change associated with the proposal, albeit the appellant considered that none would be sufficient to outweigh the benefits.
37. I note that the 2010 decision specifically found that harm from the five turbine scheme was only such as to outweigh the benefits in relation to the impact on

the occupants of Ash Tree Farm. I also note that the Inspector in that case limited his observations to the six properties he was able to visit. From my own observations and assessment of the evidence before me, I consider that there are three properties where the occupants would be most directly affected by the proposal: Ash Tree Farm; Haugh Field Farm and New Farm, the last of these would appear to have not been considered in the 2010 decision.

38. Ash Tree Farm is a small farm unit running to 149 acres, with land extending to approximately 260 metres of the nearest turbine. The farmhouse faces south-east and all principal rooms face to the front, with a small garden area also to the front and side of the building and the main farmyard area immediately to the rear. This revised proposal removed two turbines, with the separations now 829m to T3, 929m to T1 and 1192m to T2. There is no question that the proximity and spread of turbines is reduced from the scheme considered in 2010. Nonetheless, except for some hedging around the garden there is no screening and the turbines would be clearly visible on approach along the access, from the main habitable rooms and from the principal amenity area.
39. The views would now be more oblique and the spread reduced, but the rotating blades would remain a constant distraction for occupiers within the house and garden. Furthermore, much as identified in the 2010 decision, the circumstances here are that the occupiers reside and work both within the property and on lands closely associate with the proposed turbines. I consider that the proposal would represent a very significant visual impact for the occupiers of this property.
40. Haugh Field Farm is to the northwest of the site and is a small farming unit with lands that run to approximately 150m of the nearest turbine. The farmhouse faces southeast towards the three turbines with separations of 805m to T1, 1080m to T2 and 1100 to T3. The principal views out from the kitchen area and the three upstairs bedrooms are to the front, while the lounge has a dual aspect to front and rear, although that to the rear is limited somewhat by the raised garden area. There is a garden area to the north, which would gain partial screening from the house, but there is also an open amenity area directly in front of the house. Some limited screening is currently provided by a row of sycamore trees leading away from the house. However, one of these has recently fallen and there is evidence of disease and questions over the life span of the others. Farm buildings to the southwest would have open views of the turbines.
41. A low drumlin lies between the house and the proposed turbines, but clear views would be obtained of much of the mast, the hub and the full rotor sweep, and the turbines would form a dominant presence at the property and from much of the land surrounding the house. As at Ash Tree Farm, little respite would be available for the occupiers, who also work the land close to the proposed wind farm. The S106 undertaking seeks to provide additional or replacement screening associated with the existing sycamore trees. Such screening would be reliant on the occupiers providing access, but the undertaking would appear to provide a suitable mechanism to fund a scheme up to a set value by agreement with the owner and the Council. My concerns relate to the ability to provide suitable screening, in particular for views from the upstairs windows and from surrounding land.

42. Planting would have to be of relatively mature specimens and a period of additional growth would likely be needed before any significant screening for the element of ground floor views would be achieved. I am not satisfied that this represents a robust method to provide certainty of effective screening and overall I consider that the proposal would represent a very significant visual impact for the occupiers of this property.
43. Turning to New Farm, this is one of a pair of properties with Old Farm, although I was unable to visit Old Farm itself. The lands associated with New Farm extend in a north-western direction towards the proposed site and there would be open views particularly from the kitchen and upstairs bedrooms of the property. Separation to the nearest turbine, T2, would be 816m. However, an intervening drumlin limits the extent of view, albeit all three turbines would be open to views from the upper farmland. Other rooms within the dwelling and the garden area face south and would provide some respite to the occupiers. Overall I consider the proposal would represent a significant visual impact to occupiers of this property.
44. I did take views from other dwellings in the area including Winterley House, Brocks Barn, Stainton Coates House, The Farmhouse and others. For many of these, the intervening woodland forms a natural screening feature that would significantly reduce the impact of the proposal. This screening would remain effective even when the trees are not in leaf due to the density and nature of the planting and the width of the tree belt. While I accept that were the woodland to be removed the turbines would form a substantial new element in the outlook from these properties, nothing before me indicates that there is a likelihood of this occurring within the lifetime of the development. In relation to visual impact, while I do not underestimate the concerns of the local residents as regards these properties, I can give little weight to harm to the occupants of these other dwellings.
45. There was discussion at the Hearing on the appropriate methodology to assess impacts on living conditions and a number of references to previous decisions and High Court judgements, including those at Carland Cross², Enifor Downs³, Burnthouse Farm⁴, Sutton St Edmund⁵, Hill Farm⁶, Bozeat, Lavendon and Harrold⁷ and Spring Farm Ridge⁸. I am also conscious that the Local Plan, addressing farm diversification in Policy ENV12, states that proposals should not result in unacceptable harm to the amenities of local residents.
46. That a wind farm will bring visual change to surrounding properties is inevitable, and indeed the appellant's own ES and later update to RVAS concluded a significant effect on many nearby dwellings. However, such a change, even where it may be significant, is not necessarily harmful or unacceptable in

² APP/D0840/A/09/2103026

³ APP/X2220/A/08/2071880

⁴ APP/D0515/A/10/2123739

⁵ APP/D0515/A/12/2181777, APP/A2525/A/12/2184954

⁶ APP/Y0435/A/12/2186522

⁷ APP/Y0435/A/10/2140401, APP/K0235/A/11/2149434, APP/H2835/A/11/2149437

⁸ South Northamptonshire Council and Deidre Veronica Ward v SoS CLG and Broadview Energy Development Ltd [2013] EWHC 1138 (Admin)

planning terms, and I note that this would particularly apply to the other dwellings I have addressed above.

47. In relation to New Farm, I consider there would be an element of respite associated with the farmhouse and garden areas such as to render the impact significant, but not so severe as to make the property unattractive. However, at Ash Tree Farm and Haugh Field Farm I consider that the wind turbines would introduce a substantial change, the visual impact of which would be an unavoidable and dominant feature for occupants who live and work in close proximity. While my colleague in the 2010 decision differentiated between Haugh Field and Ash Tree farms in terms of the impact, I note that he too found the impacts on Haugh Field, which are most associated with the three retained turbines, to also be an ever present and intrusive feature with a significant adverse effect on residential amenity.
48. The duration of impact may be proposed to be for 25 years, but in my view this represents a considerable period for the occupiers of affected properties and I consider that the weight attributed is not diminished by the temporary nature of the proposal.
49. I have accepted that the revised scheme lessens the impact on Ash Tree Farm somewhat, but still find that the proposal would result in unacceptable harm to the living conditions of the occupiers of Ash Tree Farm and Haugh Field Farm. The proposal would therefore conflict with Policy ENV12 of the Local Plan in this regard.

Heritage Assets

50. From my observations and the evidence before me, I consider that there are three principle heritage assets to be considered in this case, Gledstone Hall, Ingthorpe Grange and Steeling Hill SAM. The wind farm lies outside of the immediate extent of these sites nonetheless, paragraph 128 of the Framework requires a proper assessment of an asset's setting, which the Framework defines as being:

The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.

51. Gledstone Hall is a substantial manor house designed by Sir Edward Lutyens and built in the 1920s and listed Grade II*. It has a surrounding parkland and garden, also registered, with a planting scheme by Gertrude Jekyll. The house is reported to be in single ownership and undergoing restoration. There are also additional, associated lodge houses, which would appear to be in separate ownership or occupation.
52. The gardens are located to the south of the house and form an intimate and private relationship with the property and are undoubtedly a feature of importance to the significance of both the house and the registered park and garden. I fully accept that their location and relationship with the house would not be materially affected by the proposed turbines.
53. To the front of the house, the existing driveway approaches from the west to a courtyard area. Here there is a circular drive with an impressive iron screen

and gates to the north and the main entrance to the Hall, with its columned and classical façade, to the south. This approach is disconnected from both the Lutyens lodge house, North Lodge, and the similarly designed East and West Lodges, which are set centrally in front of the screen and gates and are in individual ownership. There is good evidence to suggest that the original design was for a sweeping drive to enter from North Lodge and approach the house between the flanking East and West Lodges.

54. I note that in the 2010 decision, the open views to the north were not found to be a significant part of the setting but coincidental, with the focus of the house being towards the planned and landscaped gardens to the south. However, although the driveway was not completed, the open, agricultural scene framed by the flanking lodges on views from the grand entrance and reception area must, in my view, have played some part in the decision on where to locate the Hall, with Cranoe Woods forming an enclosing element to the east. Indeed, while the sweep of that intended driveway and detailing in the iron screen would have been important to express the grandeur and quality of the house to any approaching, they will have had a reciprocal role for any leaving the house.
55. The park and garden registration includes the field to the north through which the originally designed driveway would run, and a full appreciation of this area and the wider landscape is obtained from the circular drive and from the columned portico, a view which includes the screen and the listed lodges, and which would encompass the three turbines, framed on the skyline, albeit at a distance. In this view, such modern and moving elements would be uncomfortable additions to the carefully planned classical setting. While I accept that this would not be a substantial impact, I do consider that it would harm the setting of Gledstone Hall and its park and garden, in particular the appreciation of the design and location. There would consequently be harm to the significance of these Grade II* listed assets.
56. Ingthorpe Grange is well-proportioned 17th Century country house, also Grade II* listed and reported to be undergoing some restoration. It is set into sloping ground approximately 1.5kms to the southeast of the site. As a result, the turbines are unlikely to be visible from within the house or its immediate surrounds. Nonetheless, there is a public footpath which approaches and passes the house and a minor road and bridleway which approaches from the southeast and from which views may be obtained of the house in relation to distant skyline views of the tops of the turbine blades. On leaving the house and approaching the main road network, the access road may also provide some views, albeit some of this is within tree cover. In my view, such glimpsed views would not harm the setting and significance of Ingthorpe Grange.
57. Turning to Stealing Hill enclosure, a SAM, this is presumed to be from the Iron Age and is located on a drumlin near to the access road from the A65 leading to High Field farm and Haugh Field farm. I viewed this only in passing and consider that with limited public access and considerable modern additions to the north, the introduction of the turbines, while undoubtedly altering the setting, would have limited effect on the significance of the enclosure.
58. While I do not consider the harm I have identified can be recorded as substantial, these are assets of the greatest importance, for which I am required to have special regard in relation to their preservation.

59. The Framework clearly sets out the need to address such less than substation harm in a balanced manner against benefits associated with such schemes; I address this below.

Effect on the Character and Appearance of the Area

60. The site is located within the drumlin field, of which Brightenber Hill represents one of the high points. National classifications identify the area as lying within the Landscape Character Area (LCA) 33: Bowland Fringe and Pendle Hill. The undulating rolling landscape and agricultural character aligns with this characterisation, but the drumlins form a discrete element and a number of local assessments have further addressed the area. These identify the area as Type 31a: Gargrave Drumlin Field⁹ and as Semi-Enclosed Lowland¹⁰. The 2011 North Yorkshire County Council Landscape Characterisation Project (LCP), identified it as Area 32: Drumlin Valleys.
61. The landscape sensitivity of this area has been assessed in a number of reports including the AEA Technology (AEAT) Study in 2004¹¹, a Land Use Consultants (LUC) Study in 2005¹² and an AECOM review in 2012¹³. FoCL consider that these studies are not evidence based and refer me to the LCP, where a specific reference is made to the need to conserve the character of the drumlins by minimising vertical elements such as communication masts and wind farms.
62. The AECOM study reviewed these other reports, finding that the AEAT study drew on high level landscape characterisation and was not based on the latest information. It found the LCP to be of only secondary source status for renewable energy developments, as it was based on the sensitivity of landscape character and was not specific to different types of development. This study accepted that the LUC study, despite some limitations, could be used to inform both policy development and decision making. I note that FoCL highlight that the LUC study itself identifies that it should not be considered prescriptive at a site level and is intended to provide broad guidance.
63. The LUC study identifies the area as typology RCD and as having a complex valley and glacial topography. It identifies a small wind farm as 1-3 turbines of up to 100m to blade tip and, although setting out that it would be difficult to place a wind farm here without diminishing the character of the area, identifies it as having a medium-high sensitivity. Nonetheless, with much of Craven District falling within nationally designated landscapes, this is reported to be the lowest sensitivity in the area.
64. It is clear to me that there is considerable local concern regarding the value of this landscape. It has an unusual and very specific character arising from the drumlins. It is an area of strong rural character and tranquillity, relatively devoid of modern influences and the small established farmsteads represent a traditional character that has been largely unchanging for a considerable period. It is however a relatively intimate landscape, with the larger scale high moors of

⁹ A Landscape Strategy for Lancashire: Landscape Character Assessment

¹⁰ Craven District outside the Yorkshire Dales National Park and Forest of Bowland AONB: A Landscape Assessment

¹¹ Planning for Renewable Energy Targets in Yorkshire and Humber

¹² Delivering Sustainable Energy in North Yorkshire – Recommended Planning Guidance

¹³ Managing Landscape Change: Renewable and Low Carbon Energy – a Landscape Sensitivity Framework for North Yorkshire and York

the NP and broad valleys leading to the AONB being dominant in the wider area. I concur with the findings of the 2010 decision in that there would be a very substantial change to a wind farm landscape within approximately 800m of the turbines. Within this area the turbines would be dominant features presenting a modern kinetic element into this rounded and pastoral landscape. The associated noise would further erode the tranquillity of the immediate area.

65. Although I am satisfied that the impact on the character of the wider area, including that of the NP and AONB, would be limited, I consider that there would be harm to the landscape character of the local area. The proposal, would conflict with Local Plan Policy ENV1, which seeks that development within the open countryside helps to maintain and enhance landscape character.
66. Turning to visual effects on the appearance of the area, the intervening valley and hill formations means that although there may be extensive long distance views from the surrounding high ground, for many of the nearer settlements, the turbines would not be an obvious or noticeable feature. Thus, from the surrounding road network, while there are a number of discrete viewpoints, including those near to the canal on the road to Bank Newton, or shortly after Hellifield heading east on the A65, the wind farm would be only intermittently visible.
67. This does not mean that it can be considered to be an insignificant proposal and from high points in the drumlin field it would stand out as a stark new addition, of a scale that would dominate the drumlins themselves, which typically are 30-50m high. Wind farm development is likely to result in visual changes to users of the area and there is a public footpath and a bridleway that pass very close to the site while the Craven County Ride offers access to the public for horse riding. The experience of the users of these routes in particular would be fundamentally changed by the development.
68. There are other views that are publically accessible, including those within the NP, from which it would be possible to perceive the turbines. While I consider impacts to be significant within the immediate area, for views from the surrounding higher ground, I consider that it would not be dominant or overtly intrusive. This would be a relatively compact group of three turbines and, while large, they would occupy only a small part of the expansive view available to these users. I consider that the proposal would not lead to material harm in relation to the appearance of the NP or AONB, or indeed to the experience of users of these areas.
69. Nonetheless, overall, the visual harm locally adds to my concerns regarding conflict with Policy ENV1.
70. A cumulative Landscape and Visual Impact Assessment has been carried out by the appellant and considered, among others, the nearest, relatively small-scale turbine at Swindon Moor Head farm and one at West Thornber Farm, both to the west of the site. The turbine at Swindon Moor Head is a noticeable feature from a number of vantage points within the drumlin field. However, I consider that there is a limited relationship between the various individual turbines found at increasing distances from the site and no material cumulative impacts. I note that the Council reported the possible incorrect siting of a second consented turbine at West Thornber, but do not feel that this alters my conclusions on this matter.

Other matters

71. I have considered the other matters raised by local residents with regard to this proposal including noise, shadow throw and flicker, harm to the local road network and restrictions to the Craven County Ride.
72. I am satisfied that noise has been properly addressed and the use of suitable conditions could protect the interests of those living around the site. A very limited extent of show flicker has been predicted. However, I am satisfied that such effects can be properly addressed through conditions with a SCADA¹⁴ system providing operational control, over the turbines. A Shadowing Analysis¹⁵ was carried out by the appellant in 2013. This identified the potential for shadow throw to Ash Tree Farm of 115 hours per year, or 24 hours per year when corrected¹⁶ and at Haugh Field Farm of 275 hours, or 59 hours corrected, albeit this relates only to land and not the dwellings. As such I consider the effect on the residents here would be limited.
73. I note the concerns of other residents regarding the risk of shadow flicker effect on properties currently screened by trees such as Brocks Barn or Winterley House, among others. I do not underestimate their concerns, but consider that the intervening trees are unlikely to establish the circumstances under which shadow flicker could become a significant factor.
74. The construction of the turbines would necessitate the transfer of large components to the site along new access tracks and the minor alteration of some of the local roads. Particular concern was raised as regards the widening and straightening of what was referred to as Marton Road, including alterations to the stone walls, and the raising of the overhanging tree canopy. Transport matters have been comprehensively addressed in the appellant's submissions. While there would be some minor alterations, I consider that these would not result in harm through material speed increases, increases in traffic flow or severe delays, other than potentially during the short periods when a delivery is utilising the roads. These activities could be adequately addressed and managed through the imposition of suitable conditions.
75. I turn then to the Craven Country Ride. This is a facility whereby members of the public and groups can partake of rides through the surrounding farmland and pasture. Courses are marked by flags and include jumps and eventing-type obstacles in various places. The flags are regularly moved in order to preserve the ground and allow for complementary agricultural use of the land.
76. A part of the various courses will often include land within close proximity to the proposed site of the turbines, in particular T1 and T2. Considerable concern has been expressed over the impact this may have on the behaviour of horses, resulting in the potential for them to be spooked or startled on encountering the turbines or their shadows. I was referred to the British Horse Society (BHS) recommendations of 200m or 400m separations and an indication that were these to be applied as exclusion zones they would represent the loss of between approximately 40 and 90 acres of land available to the Ride.

¹⁴ Supervisory Control and Data Acquisition (SCADA)

¹⁵ Shadowing Analysis – The Energy Workshop April 2013

¹⁶ Based on yearly average of bright sunshine

77. This matter was considered in the 2010 decision, where my colleague opined that the turbines would be visible over a considerable distance prior to entering the fields with the closest association, and riders would therefore be able to judge the reaction of their mounts. In the absence of evidence that turbines have resulted in injury, it was concluded that the proposed development would not be dangerous to riders on roads and bridleways in the area. Notwithstanding this, FoCL and the manager of the Ride maintained their concerns including issues over liability should there be an accident on the site and the implications for their insurance, and therefore viability of the business.
78. The Shadowing Analysis report also considered the extent of shadowing to the field and gave some commentary on potential for impacts on horse riding. There would be shadows cast across the field nearest to the turbines, there would also be the potential for intermittent views as a result of the topography. However, while the BHS guidance recommends separation distances, it confirms that there have been no formal trials to establish a horse's response, and the evidence is anecdotal that such responses are unfavourable. There may be riders who view the turbines as unwelcome and therefore reducing the attractiveness of the Ride as a destination. However, much as with potential impacts on tourism there are others who may view wind turbines as positive additions. There is no definitive evidence put before me to suggest that there would be a significant impact on attendance.
79. On balance, I find that I concur with the 2010 decision and that the scale of the lands available to the Ride would allow for management of events and the acclimatisation of riders and horses such that the proposal cannot be considered as likely to result in significant harm to the operations.

Planning Balance

80. The active promotion of renewable energy projects and tackling the effects of climate change are key Government policies and, under the Climate Change Act of 2008, a statutory requirement. One of the core principles set out in Paragraph 17 of the Framework is the need to support the transition to a low carbon future in a changing climate, and encourage the use of renewable resources. Alongside this, the national Planning Practice Guidance addresses the need to ensure that protecting the local environment is properly considered alongside the broader issues of protecting the global environment, and that the proposal has the backing of the affected local community.
81. As set out above, the Framework supports the balancing of the benefits from such developments to be considered against any harm. The turbines would provide renewable energy, and an installed capacity of 7.5 MW was identified. I am satisfied that there would be benefits from the feed in to the national grid and consequently public benefits, in accordance with paragraph 98 of the Framework.
82. Against this, and in addition to my concerns over the impacts on living conditions for nearby occupiers of farms, I have specifically identified harm to local heritage assets and to the landscape character and appearance of the local area. The landscape harm was individually assessed as being limited to significant, albeit I accept that any wind farm will have locally significant impacts.

83. The harm to heritage assets can be considered less than substantial. However, even harm that is less than substantial must be accorded considerable importance and weight when considering the effect on the asset's setting and significance, and its preservation and conservation. There may be a sliding scale relative to the extent of the impact and the value of the asset, nonetheless, the harm I have identified, in particular to the Grade II* listed Gledstone Hall and gardens, is to an asset of importance and more than special interest. Grade II* buildings represent only around 5.5% of all listed buildings nationally. There is an overarching statutory duty on decision makers set out in Section 66 (1) of the Planning (Listed Building and Conservation Areas) Act 1990, that requires that special regard be had to the desirability of preserving a building or its setting or any features of special architectural or historic interest which it possesses. I consider this to have particular force when dealing with assets of such significance, and in the case, consider that the proposal fails to meet this test.
84. It is noted that the wind farm is intended to be removed after 25 years, leaving no apparent change to the landscape or impact on the setting, which is a consideration. However, 25 years is a long period and for many people and their relationship with this landscape or the heritage assets, that would mean that they would not live to see the turbines removed, especially if further permissions were to be granted after the 25 years had expired, albeit this would be a matter for future decision-makers.
85. The Council and FoCL consider that their planning concerns regarding this proposal have not been addressed and it therefore does not have the backing of the local community. As a result they argue the requirement set out in the 2015 WMS, and introduced into the PPG, weighs significantly against the proposal. I note that these views do not necessarily represent the universal position of the local community, and have considered some comments in support of the scheme, from Professor Turton and from the mobile library, who I understand would potentially receive some community funding. The appellant has promoted this scheme on the basis that it has fully addressed the matters highlighted in the 2010 decision, through the reduction in turbine numbers, and provided sufficient assessment to address any further specific impacts. As a result, it is argued that all impacts identified by the local community have been addressed in a way in which the grant of planning permission would have their backing.
86. The 2010 decision did not simply find harm to the living conditions of Ash Tree Farm; it actually found harm across a suite of matters. In the overall balance, when considering the benefits of a five turbine scheme, this decision concluded that this harm was collectively outweighed, whereas the harm to Ash Tree Farm was not. In the scheme before me, while many of the impacts identified previously and, in my own assessment now, remain, the benefits of a three turbine scheme would be correspondingly less, notwithstanding that I note there are currently no commercial scale wind turbines in Craven.
87. Taking all of these matters into account, I consider that the adverse impacts of granting permission would now significantly and demonstrably outweigh the benefits; the scheme would not therefore address the planning impacts identified by the local community and cannot be said to have their backing.

Conditions

88. I have considered the conditions put forward by the appellant and supported by the Council against the requirements of the national Planning Practice Guidance and the Framework. In addition to the standard timescale condition, I recommend conditions to deal with the temporary nature of the proposal and decommissioning and the situation where a wind turbine fails to operate for a significant period (2, 3, 4). Given the potential for disruption to the highway, it is necessary to apply a condition to ensure that development is carried out in accordance with the submitted Construction Traffic Management Plan (5), and to address potential environmental impacts and disturbance to local residents, in accordance with a Construction Method Statement and specified hours of working (6, 7).
89. Otherwise than as set out in this decision and conditions, for the avoidance of doubt and in the interests of proper planning, it is necessary that the development shall be carried out in accordance with the approved plan (8).
90. To protect the character and appearance of the area a condition is recommended to specify the maximum blade tip height, colours or finishes for the wind turbines and design of the substations (9, 10, 11). Similarly, conditions are necessary to ensure that access tracks are properly laid out and cabling is installed underground (12, 13). Allowing for micro-siting, the location of the turbines and their relationship to surrounding residential development needs to be fixed and a condition is recommended to achieve that (14).
91. There is the potential for shadow flicker to affect the living conditions of local residents or television reception interference and any resulting adverse impacts need to be controlled by conditions (15, 16). For reasons of air safety, it is reasonable to apply a condition specifying the installation of warning lights to each wind turbine (17). A written scheme to address archaeology is necessary and a condition is recommended (18).
92. In the interests of highway safety, it is necessary to address construction of and the use of accesses onto and within the site (19, 20, 21). To address nature conservation matters and to deliver the ecological measures set out in the ES, a condition to secure a habitat enhancement scheme is recommended (22).
93. Similarly, a condition is necessary to control noise from the wind turbines. Two alternative conditions were proposed, identical other than in relation to the dwellings used as a reference for Ash Tree farm. In light of their relatively isolated locations, away from public roads, I would recommend that Haugh Field farm is used as that reference. Otherwise, the comprehensive condition would ensure noise levels are retained at an appropriate level (23). Where necessary and in the interests of clarity and precision I have altered the conditions to better reflect the relevant guidance.

Recommendation

94. For the reasons given above and having regard to all other matters raised, I therefore recommend that the appeal should be dismissed.

Mike Robins

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

David Hardy of Counsel	Squire Patton Boggs
Ken Halliday BSc MPHIL CMLI	Landscape Consultant – Stephenson-Halliday
Olly Buck	Energy Consultant – Jones Lang LaSalle Ltd
Justin Reid	Appellant Energiekontor UK Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Estelle Dehon of Counsel	Instructed by Craven District Council
Neville Watson	Planning Officer – Craven District Council
Andrea Muscroft	Planning Officer – Craven District Council
Lisa Lord	Solicitor – Craven District Council

INTERESTED PERSONS:

Ian Ponter of Counsel	For Friends of Craven Landscape
John Henderson	Friends of Craven Landscape
Stephanie Emmett	Friends of Craven Landscape
Chris Emmett	Friends of Craven Landscape
Mr and Mrs Coates	Local residents
Mr and Mrs Beresford	Local residents
Mrs E Foch	Local resident
Peter Bywell	Local resident
Andrew Booth	Local resident
Annie Scrafton	Local resident
Toby Stevens	Local resident
Trevor Pickles	Local resident
David Coates	Craven Country Ride
Cllr Sutcliffe	District Councillor - Craven District Council
Cllr Mulligan	District Councillor - Craven District Council
Cllr Myers	District Councillor - Craven District Council
Catherine Downs	Bank Newton Parish Council
Charlie Yorke	Ribble Banks Parish Council

DOCUMENTS

- 1 Council Notification letter
- 2 Council Statement – Cumulative Impacts
- 3 Local farm ownership map
- 4 High Court Judgement - R (Forge Field Society and others) v. Sevenoaks DC [2014] EWHC 1895 (Admin)
- 5 Map of the Craven Country Ride, proposed exclusion zones
- 6 Appellant's submissions – cultural heritage and residential amenity

Annex A: SUGGESTED CONDITIONS

- 1) The development hereby permitted shall be commenced before the expiration of three years from the date of this permission. Written confirmation of the commencement of development shall be provided to the Local Planning Authority no later than 14 days after the event.
- 2) The development hereby permitted shall be removed in accordance with condition 3 below after a period of 25 years from the date when electricity is first exported from any of the wind turbines to the electricity grid ("First Export Date"). Written notification of the First Export Date shall be given to the Local Planning Authority no later than 28 days after the event.
- 3) Not later than 3 months before the end of this permission, a decommissioning and site restoration scheme shall be submitted for the written approval of the Local Planning Authority. The scheme shall make provision for the removal of the wind turbines and associated above ground works approved under this permission and for the removal of the wind turbine foundation to a depth of at least 1 metre below the ground. The scheme shall also include the management and timing of any works and a traffic management plan to address likely traffic impact issues during the decommissioning period, location of material laydown areas, an environmental management plan to include details of measures to be taken during the decommissioning period to protect wildlife and habitats and details of site restoration measures. The approved scheme shall be fully implemented within 18 months of the expiry of this permission.
- 4) If any wind turbine hereby permitted ceases to export electricity to the grid for a continuous period of 12 months, unless otherwise agreed in writing with the Local Planning Authority, then a scheme shall be submitted to the Local Planning Authority for its written approval within 3 months of the end of that 12 month period for the repair or removal of that wind turbine. The scheme shall include either a programme of remedial works where repairs to the relevant wind turbine are required, or a programme for removal of the relevant wind turbine and associated above ground works approved under this permission and the removal of the wind turbine foundation to a depth of at least 1 metre below ground and for site restoration measures following the removal of the relevant wind turbine. The scheme shall thereafter be implemented in accordance with the approved details and timetable.
- 5) No development shall commence until a Construction Traffic Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Construction Traffic Management Plan shall include proposals for the routing of construction traffic, scheduling and timing of movements, the management of junctions to and crossings of the public highway and other public rights of way, details of escorts for abnormal loads, temporary warning signs, temporary removal and replacement of highway infrastructure/street furniture, reinstatement of any signs, verges or other items displaced by construction traffic, and banksman/escort details. The approved Construction Traffic Management Plan including any agreed improvements or works to accommodate construction traffic where required along the route, shall be carried out as approved in writing by the Local Planning Authority.

- 6) No development shall commence until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the construction of the development and pre-construction reinstatement shall only be carried out in accordance with the approved Statement, subject to any variations approved in writing by the Local Planning Authority. The Construction Method Statement shall include:
 - a) Details of the temporary site compound including temporary structures/buildings, fencing, parking and storage provision to be used in connection with the construction of the development;
 - b) Details of the proposed storage of materials and disposal of surplus materials;
 - c) Dust management;
 - d) Pollution control: protection of the water environment, bunding of fuel storage areas, surface water drainage, sewage disposal and discharge of foul drainage;
 - e) Temporary site illumination during the construction period including proposed lighting levels together with the specification of any lighting;
 - f) Details of the phasing of construction works;
 - g) Details of surface treatments and the construction of all hard surfaces;
 - h) Details of 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) A site environmental management plan to include details of measures to be taken during the construction period to protect wildlife and habitats;
 - l) Areas on site designated for the storage, loading, off-loading, parking and manoeuvring of heavy duty plant, equipment and vehicles;
 - m) Details and a timetable for post construction restoration/reinstatement of the temporary working areas and the construction compound; and
 - n) Working practices for protecting nearby residential dwellings, including measures to control noise and vibration arising from on-site activities shall be adopted as set out in British Standard 5228 Part 1: 2009.
- 7) Construction work shall only take place between the hours of 0700 – 1900 hours Monday to Friday inclusive and 0700 – 1300 hours on Saturdays with no such work on a Sunday or a Public Holiday. Exceptions for work outside these hours including wind turbine erection because of weather dependence may be carried out with the prior written approval of the Local Planning Authority. Emergency works may be carried out at any time provided that the operator retrospectively notifies the Local Planning Authority in writing of the emergency and the works are undertaken within 24 hours.
- 8) The development hereby permitted shall be carried out in accordance with the approved plan, entitled "Site Layout", and submitted to the Local Planning Authority on 17 April 2012.
- 9) The blades of all wind turbines shall rotate in the same direction. The overall height of the wind turbines shall not exceed 100m to the tip of the blades when

the turbine is in the vertical position as measured from natural ground level immediately adjacent to the turbine base.

- 10) No wind turbine shall be erected until details of the colour and finish of the towers, nacelles and blades and any external transformer units have been submitted to and approved in writing by the Local Planning Authority. No name, sign, or logo shall be displayed on any external surfaces of the wind turbines or any external transformer units other than those required to meet statutory health and safety requirements. The approved colour and finish of the wind turbines and any external transformer units shall not be changed without the prior consent in writing of the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 11) Prior to commencement of the construction of the substation building, details of the design and the external appearance, dimensions and materials for the building and any associated compound or parking area and details of surface and foul water drainage from the substation building shall be submitted to and approved in writing by the Local Planning Authority. The development of the substation building and any associated compound or parking area shall be carried out in accordance with the approved details.
- 12) No development shall commence until details of all access tracks, including details of their location, construction and surface materials, have been submitted to and approved in writing by the Local Planning Authority. The tracks shall be laid out in accordance with the approved details.
- 13) All electrical cabling between the individual wind turbines and between the turbines and the on-site substation building shall be installed underground.
- 14) The turbines hereby permitted shall be erected at the following grid co-ordinates:

T1 388172 453771

T2 388485 453627

T3 388135 453429

Notwithstanding the terms of this condition, the wind turbines and associated crane pads (subject to the restrictions below) may be micro-sited within 25 metres. All other elements of on-site infrastructure may be micro-sited within 14.5 metres and the consequential realignment of the access tracks between and to the wind turbines following micro-siting of the wind turbines is permitted. A plan showing the position of the wind turbines and tracks established on the site shall be submitted to the Local Planning Authority within 28 days of the First Export Date.

The following restrictions apply in relation to this condition:

- T1 and T2 shall not be micro-sited in any direction so that these turbines shall be taken closer to the property known as Haugh Field Farm.
- T1 and T3 shall not be micro-sited in any direction so that these turbines shall be taken closer to the property known as Ash Tree Farm.
- T2 shall not be micro-sited in any direction so that the turbine shall be taken closer to the group of properties at Little Stainton known as New Farm, Old Farm, Old Farm Cottage and Old Farm Barn.

- T1 and T2 shall not be micro-sited in any direction so that these turbines shall be taken closer to the Henderson Estate.
- 15) Prior to the construction of the final wind turbine, a written scheme shall be submitted to and approved in writing by the Local Planning Authority setting out a protocol for the alleviation 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 attributable to the development. Operation of the turbines shall take place in accordance with the approved protocol.
 - 16) Prior to the First Export Date a scheme providing for a baseline survey and the investigation and alleviation of any electro-magnetic interference to terrestrial television caused by the operation of wind the turbines shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall provide for the investigation by a qualified independent television engineer of any complaint of interference with television reception at a lawfully occupied dwelling (defined for the purposes of this condition as a building within Use Class C3 and C4 of the Use Classes Order) which lawfully exists or had planning permission at the date of this permission, where such complaint is notified to the developer by the Local Planning Authority within 12 months of the First Export Date. Where impairment is determined by the qualified television engineer to be attributable to the development, mitigation works shall be carried out in accordance with the scheme which has been approved in writing by the Local Planning Authority.
 - 17) The developer shall install MOD-approved infra-red warning lighting 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 consent.
 - 18) No development shall commence until the wind farm operator has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority. This written scheme shall include the following components: (i) an archaeological evaluation to be undertaken in accordance with the agreed written scheme of investigation; (ii) an archaeological recording programme the scope of which will be dependant upon the results of the evaluation and will be in accordance with the agreed written scheme of investigation.
 - 19) Other than for the purposes of creating the temporary access, no vehicles shall be allowed onto the construction site. Once created no vehicles shall access the site except via the approved temporary access as shown on drawing reference "Site Plan". The access shall be constructed in accordance with details approved in writing by the Local Planning Authority for a minimum distance of 10 metres into the site. Any damage to the existing adopted highway occurring during use of the access until the completion of all the permanent works shall be repaired immediately. Before the development is first brought into use the highway verge/footway shall be fully reinstated in accordance with the scheme approved in writing by the Local Planning Authority.

- 20) There shall be no excavation or other groundworks, except for investigative works, or the depositing of material on the site in connection with the construction of the access road or building(s) or other works hereby permitted until full details of the following have been submitted to and approved in writing by the Local Planning Authority:
- a) tactile paving;
 - b) vehicular, cycle, and pedestrian accesses;
 - c) vehicular and cycle parking;
 - d) vehicular turning arrangements;
 - e) manoeuvring arrangements; and
 - f) loading and unloading arrangements.
- 21) Notwithstanding the provisions of any Town and Country Planning General Permitted or Special Development Order for the time being in force, the areas shown on drawing reference "Site Plan" for parking spaces, turning areas and access shall be kept available for their intended purposes at all times.
- 22) No development shall commence until a Habitat Enhancement Scheme has been submitted for the written approval of the Local Planning Authority. The scheme shall include but not be limited to a programme for and the provision of the measures referred to in Section 6.8 of the Environmental Statement (Volume 1: ES Assessments) dated March 2012. The scheme shall be implemented as approved in writing by the Local Planning Authority.
- 23) The rating level of noise imissions from the combined effects of the wind turbines(including the application of any tonal penalty), when determined in accordance with the attached Guidance Notes, shall not exceed the values for the relevant integer wind speed set out in Tables 1 and 2 attached to 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 of the Local Planning Authority, following a reasonable 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 imissions 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 that the complaint relates to. Within 14 days of receipt of the written request of the Local Planning Authority made under this paragraph (B), the 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 imissions 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 imissions, 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) under which the rating level of noise imissions is to be determined.
- (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 of the Local Planning Authority under paragraph (B), and such others as the independent consultant considers likely to result in a breach of the noise limits. The assessment of the rating level of noise imissions shall be undertaken in accordance with the assessment protocol approved in writing by the Local Planning Authority.

(F) The wind farm operator shall provide to the Local Planning Authority with the independent consultant's assessment of the rating level of noise imissions undertaken in accordance with the Guidance Notes within 2 months of the date of the written request of the Local Planning Authority made under paragraph (B) of this condition unless the time limit is extended in writing by the Local Planning Authority. The assessment shall

include all data collected for the purposes of undertaking the compliance measurements, such data to be provided in the format set out in Guidance Note 1(e) of the Guidance Notes. The instrumentation used to undertake the measurements shall be calibrated in accordance with Guidance Note 1(a) and certificates of calibration shall be submitted to the Local Planning Authority with the independent consultant's assessment of the rating level of noise imissions.

(G) Where a further assessment of the rating level of noise imissions 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 nacelle wind speed, nacelle orientation, power generation and nacelle wind direction for each turbine in accordance with this consent, all in accordance with Guidance Note 1(d) of the attached Guidance Notes. The data from each wind turbine shall be retained for a period of not less than 12 months. The wind farm operator shall provide this information in the format set out in Guidance Note 1(e) of the attached Guidance Notes to the Local Planning Authority on its request within 14 days of receipt in writing of such a request.

For the purposes of this condition, a "dwelling" is a building within Use Class C1, C3 or C4 of the Use Classes Order which lawfully exists or had planning permission at the date of this permission.

Table 1 - Between 23:00 and 07:00 - Noise level dB LA90, 10-minute

Property Easting, Northing	Standardised wind speed at 10 metres height (m/s) within the site averaged over 10-minute periods									
	3	4	5	6	7	8	9	10	11	12
	LA90 Decibel Levels									
Ash Tree Farm (387306, 453439)	43.0	43.0	43.0	43.0	43.0	43.0	43.0	46.9	53.2	61.1
Gledstone Hall (388622, 451268)	43.0	43.0	43.0	43.0	43.0	43.0	43.0	44.9	49.8	55.2
Haugh Field Farm (387836, 454507)	43.0	43.0	43.0	43.0	43.0	43.0	43.0	46.9	53.2	61.1
Horton Pasture (386750, 451701)	43.0	43.0	43.0	43.0	43.0	43.0	43.9	49.1	55.0	61.7
Ingthorpe Grange (389261, 452037)	43.0	43.0	43.0	43.0	43.0	43.0	43.0	44.9	49.8	55.2
Kelber (388756, 454725)	43.0	43.0	43.0	43.0	43.0	43.0	43.0	46.9	53.2	61.1
Little Stainton - New Farm (389112, 453106)	43.0	43.0	43.0	43.0	43.0	43.0	43.0	44.9	49.8	55.2
Little Stainton - Old Farm (389134, 453098)	43.0	43.0	43.0	43.0	43.0	43.0	43.0	44.9	49.8	55.2
Little Stainton - Barn Conversion (389141, 453079)	43.0	43.0	43.0	43.0	43.0	43.0	43.0	44.9	49.8	55.2
Little Stainton - Cottage (389260, 453120)	43.0	43.0	43.0	43.0	43.0	43.0	43.0	44.9	49.8	55.2
Lower Paradise (386362, 450917)	43.0	43.0	43.0	43.0	43.0	43.0	43.9	49.1	55.0	61.7
North Lodge (388488, 451363)	43.0	43.0	43.0	43.0	43.0	46.9	43.9	49.1	55.0	61.7
Pasture House (387335, 450825)	43.0	43.0	43.0	43.0	43.0	46.9	43.9	49.1	55.0	61.7

Stainton Cotes (389150, 453980)	43.0	43.0	43.0	43.0	43.0	46.9	43.0	46.9	53.2	61.1
Swinden Moor Head (387057, 453158)	43.0	43.0	43.0	43.0	43.0	46.9	51.5	55.6	58.9	61.1
Marton Scar (388395, 451403)	43.0	43.0	43.0	43.0	43.0	46.9	43.9	49.1	55.0	61.7
Skelda House (388106, 451176)	43.0	43.0	43.0	43.0	43.0	46.9	43.9	49.1	55.0	61.7
Stainton Hall (388684, 452778)	43.0	43.0	43.0	43.0	43.0	46.9	45.0	45.0	49.8	55.2
Stainton House (388651, 452318)	43.0	43.0	43.0	43.0	43.0	46.9	43.0	44.9	49.8	55.2

Table 2 - Between 07:00 and 23:00 - Noise level dB LA90, 10-minute

Property Easting, Northing	Standardised wind speed at 10 metres height (m/s) within the site averaged over 10-minute periods									
	3	4	5	6	7	8	9	10	11	12
	LA90 Decibel Levels									
Ash Tree Farm (387306, 453439)	35.0	35.0	35.0	35.0	37.0	40.2	44.1	48.7	54.1	60.1
Gledstone Hall (388622, 451268)	35.0	35.0	35.0	35.0	36.2	39.0	42.4	46.2	50.5	55.3
Haugh Field Farm (387836, 454507)	35.0	35.0	35.0	35.0	37.0	40.2	44.1	48.7	54.1	60.1
Horton Pasture (386750, 451701)	35.0	35.0	35.0	35.2	37.9	41.1	44.5	48.4	52.5	56.7
Ingthorpe Grange (389261, 452037)	35.0	35.0	35.0	35.0	36.2	39.0	42.4	46.2	50.5	55.3
Kelber (388756, 454725)	35.0	35.0	35.0	35.0	37.0	40.2	44.1	48.7	54.1	60.1
Little Stainton - New Farm (389112, 453106)	35.0	35.0	35.0	35.0	36.2	39.0	42.4	46.2	50.5	55.3
Little Stainton - Old Farm (389134, 453098)	35.0	35.0	35.0	35.0	36.2	39.0	42.4	46.2	50.5	55.3
Little Stainton - Barn Conversion (389141, 453079)	35.0	35.0	35.0	35.0	36.2	39.0	42.4	46.2	50.5	55.3
Little Stainton - Cottage (389260, 453120)	35.0	35.0	35.0	35.0	36.2	39.0	42.4	46.2	50.5	55.3
Lower Paradise (386362, 450917)	35.0	35.0	35.0	35.2	37.9	41.1	44.6	48.4	52.5	56.7
North Lodge (388488, 451363)	35.0	35.0	35.0	35.2	37.9	41.1	44.6	48.4	52.5	56.7
Pasture House (387335, 450825)	35.0	35.0	35.0	35.2	37.9	41.1	44.6	48.4	52.5	56.7
Stainton Cotes (389150, 453980)	35.0	35.0	35.0	35.0	37.0	40.2	44.1	48.7	54.1	60.1
Swinden Moor Head (387057, 453158)	35.0	35.0	35.8	39.2	43.1	47.4	51.7	55.8	59.7	63.0
Marton Scar (388395, 451403)	35.0	35.0	35.0	35.2	37.9	41.1	44.6	48.4	52.5	56.7
Skelda House (388106, 451176)	35.0	35.0	35.0	35.2	37.9	41.1	44.5	48.4	52.5	56.7
Stainton Hall (388684, 452778)	45.0	45.0	45.0	45.0	45.0	45.0	45.0	46.2	50.5	55.3
Stainton House (388651, 452318)	35.0	35.0	35.0	35.0	36.2	39.0	42.4	46.2	50.5	55.3

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

Guidance Notes for Noise Condition

These notes are to be read with and form part of the noise condition. They further explain the condition and specify the methods to be employed in the assessment of complaints about noise imissions 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).

Note 1

(a) Values of the $LA_{90, 10 \text{ minute}}$ 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 1 with PTB Type Approval (or the equivalent UK adopted standard in force at the time of the measurements) and the results shall be recorded. Measurements shall be undertaken in such a manner to enable a tonal penalty to be applied in accordance with Guidance Note 3.

(b) The microphone shall be mounted at 1.2 - 1.5 metres above ground level, fitted with a two-layer windshield or suitable equivalent approved in writing by the Local Planning Authority, and placed outside the complainant's dwelling and be 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 Company shall submit for the written approval of the Local Planning Authority details of the proposed alternative representative measurement location prior to the commencement of measurements and the measurements shall be undertaken at the approved alternative representative measurement location.

(c) The $LA_{90, 10 \text{ minute}}$ measurements should be synchronised with measurements of the 10-minute arithmetic mean wind speed and wind direction data and with operational data logged in accordance with Guidance Note 1(d) and rain data logged in accordance with Note 1(f).

(d) To enable compliance with the conditions to be evaluated, the Company shall continuously log arithmetic mean nacelle wind speed (duly corrected for the presence of the rotating blades) arithmetic mean nacelle orientation, nacelle wind direction and arithmetic mean power generated during each successive 10-minute period for each wind turbine on the site. The hub height wind speeds recorded from the nacelle anemometers or as calculated from the power output of each turbine shall be supplemented by standardised ten metre height wind speed data calculated for each 10-minute period from those measured at hub height assuming a reference roughness length of 0.05 metres and using the equation given on page 120 of ETSU-R-97. All 10-minute periods shall commence on the hour and in 10-minute increments thereafter synchronised with Greenwich Mean Time and adjusted to British Summer Time where necessary. Standardised 10 metre height wind speed data shall be correlated with the noise measurements determined as valid in accordance with Note 2(b), such correlation to be undertaken in the manner described in Note 2(c).

(e) Data provided to the Local Planning Authority in accordance with paragraphs (E) (F) (G) and (H) of the noise condition shall be provided in comma separated values in electronic format.

(f) A data logging rain gauge shall be installed within 3m of any sound level meter installed in the course of the independent consultant undertaking an assessment of the level of noise imissions. The gauge shall record over successive 10-minute periods synchronised with the periods of data recorded in accordance with Note 1(d).

Note 2

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

(b) Valid data points are those measured during the conditions set out in the assessment protocol approved by the Local Planning Authority under paragraph (E) of the noise condition but excluding any periods of rainfall measured in accordance with Note 1(f).

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

Note 3

(a) Where, in accordance with the approved assessment protocol under paragraph (E) of the noise condition, noise imissions 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.

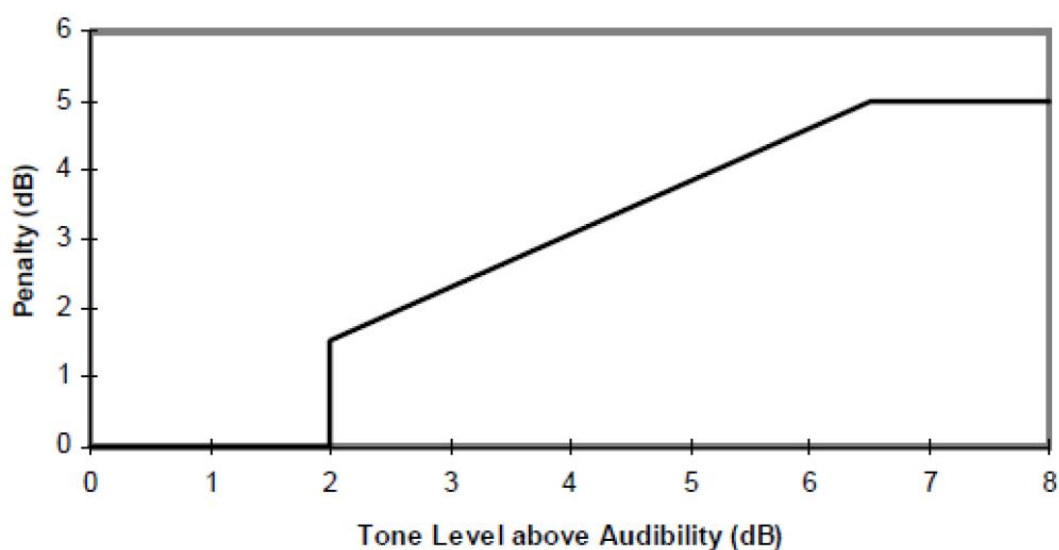
(b) For each 10-minute interval for which $L_{A90, 10 \text{ minute}}$ data have been determined as valid in accordance with Note 2, a tonal assessment shall be performed on noise imissions during 2-minutes of each 10-minute period. The 2-minute periods should be spaced at 10-minute intervals provided 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 shall be reported.

(c) For each of the 2-minute samples the tone level above audibility shall be calculated by comparison with the audibility criterion given in Section 2.1 on pages 104 -109 of ETSU-R-97.

(d) The tone level above audibility shall be plotted against wind speed for each of the 2-minute samples. Samples for which the tones were below the audibility criterion or no tone was identified, a value of zero audibility shall be substituted.

(e) A least squares "best fit" linear regression shall then be performed to establish the average tone level above audibility for each integer wind speed derived from the value of the "best fit" line fitted to values. If there is no apparent trend with wind speed then a simple arithmetic mean shall be used. This process shall be repeated for each integer wind speed for which there is an assessment of overall levels in Note 2.

(f) The tonal penalty is derived from the margin above audibility of the tone according to the figure below derived from the average tone level above audibility for each integer wind speed.

**Note 4**

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

(b) If no tonal penalty is to be applied then the rating level of the turbine noise at each wind speed is equal to the measured noise level as determined from the best fit curve described in Note 2.

(c) If the rating level at any integer wind speed lies at or below the values set out in the Tables attached to the conditions or at or below the noise limits approved by the Local Planning Authority for a complainant's dwelling in accordance with paragraph (C) of the noise condition then no further action is necessary. In the event that the rating level is above the limit(s) set out in the Tables attached to the noise conditions or the noise limits for a complainant's dwelling approved in accordance with paragraph (C) of the noise condition, the independent consultant shall undertake a further assessment of the rating level to correct for background noise so that the rating level relates to wind turbine noise immission only.

(d) The wind farm operator shall ensure that all the wind turbines in the development are turned off for such period as the independent consultant requires to undertake the further assessment. The further assessment shall be undertaken in accordance with the following steps:

(i) Repeating the steps in Note 2, with the wind farm switched off, and determining the background noise (L3) at each integer wind speed within the range set out in the approved noise assessment protocol under paragraph (E) of this condition.

(ii) The wind farm noise (L1) at this speed shall then be calculated as follows where L2 is the measured level with turbines running but without the addition of any tonal penalty:

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

(iii) The rating level shall be re-calculated by adding the tonal penalty (if any is applied in accordance with Note 3) to the derived wind farm noise L1 at that integer wind speed.

(iv) If the rating level after adjustment for background noise contribution and adjustment for tonal penalty (if required in accordance with note (iii) above) at any integer wind speed lies at or below the values set out in the Tables attached to the conditions or at or below the noise limits approved by the Local Planning Authority for a complainant's dwelling in accordance with paragraph (C) of the noise condition then no further action is necessary. If the rating level at any integer wind speed exceeds the values set out in the Tables attached to the conditions or the noise limits approved by the Local Planning Authority for a complainant's dwelling in accordance with paragraph (C) of the noise condition then the development fails to comply with the conditions.



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.