



Appeal Decision

Inquiry opened on 16 November 2011

Site visits made on 21 November and 8 December 2011 and 10 January 2012

by Paul Griffiths BSc(Hons) BArch IHBC

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

Decision date: 12 March 2012

Appeal Ref: APP/G2815/A/11/2156757

Area North of Catshead Woods, Brigstock Road, Sudborough, Northants.

- 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 Barnwell Manor Wind Energy Ltd against the decision of East Northamptonshire District Council.
 - The application Ref.EN/10/00068/FUL, dated 15 January 2010, was refused by notice dated 24 January 2011.
 - The development proposed was described as the development of a wind farm comprising 5 wind turbine generators, sub-station, access tracks and ancillary development.
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Preliminary Matters

1. The Inquiry sat between 16 and 18, and 22 and 25 November, and on 9 December 2011. The Inquiry was closed on 20 December 2011.
2. I carried out an unaccompanied site visit to Lyveden New Bield and to the village of Brigstock on 21 November 2011 for the purposes of familiarisation. Accompanied site visits to Lyveden New Bield and its surroundings, Fermyn Woods Country Park and some of the footpaths within it and leading towards Lyveden New Bield, the appeal site itself, Brigstock and the area around the Church of St Andrew in particular, and Drayton House, took place on 8 December 2011.
3. On 10 January 2012, I carried out a series of unaccompanied site visits taking in Lyveden New Bield and Brigstock once again, and the viewpoints, walking, and driving routes highlighted by the parties in the Site Visit Itinerary, presented at the Inquiry. I also visited Lowick and Church of St Peter. A blimp was flown by SBMWF (Stop Barnwell Manor Wind Farm) on the day of my unaccompanied site visits. Details of the flight were provided by SBMWF the following day and circulated. While I accept the limitations inherent in the use of a blimp, it did provide a useful reference point.
4. In the course of lodging the appeal, the appellant decided to remove one of the wind turbines (T4) from the proposal. I outlined in the lead-up to, and at, the Inquiry, my view that no prejudice would be caused by the change and no party to the Inquiry took a contrary view. On that basis, I have dealt with the appeal on the basis that the development proposed is a wind farm comprising of 4 wind turbine generators, sub-station, access road, 80 metre anemometer mast, underground cabling and temporary construction facilities. The revised layout is shown on figure FEI 2: Site Layout and Application Boundary in the August 2011 Further Environmental Information (FEI).

5. The proposal is EIA development for the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. The originating application was accompanied by an Environmental Statement (ES) that was subsequently expanded upon through FEI, submitted in July 2010, following a request from the Council under Regulation 19. The revision to the original scheme (deleting T4) triggered a need for another tranche of FEI, dated August 2011.
6. While some comments were made about the assessment of the impact of the proposal on the landscape (that I deal with below), neither the Council nor SBMWF have suggested that the ES and FEI do not meet the needs of the Regulations. I accord with that view and have taken the information contained within the ES and the FEI into account in determining the appeal.
7. The originating application was refused for five reasons. As set out in the Statement of Common Ground (SoCG), the Council withdrew the reasons for refusal relating to bats and archaeology. Concerns about the impact on bats (and ecology more widely) were raised by interested persons and I deal with those, and archaeology, below.

Decision

8. The appeal is allowed and planning permission is granted for a wind farm comprising of 4 wind turbine generators, sub-station, access road, 80 metre anemometer mast, underground cabling and temporary construction facilities at Area North of Catshead Woods, Brigstock Road, Sudborough, Northants., in accordance with the terms of the application, Ref.EN/10/00068/FUL, dated 15 January 2010, subject to the conditions set out in Annex A.

Main Issue

9. This is whether any benefits of the proposal are sufficient to outweigh any harm caused to the setting of heritage assets, the character and appearance of the surrounding landscape, the enjoyment of the area and the many rights of way within it, by walkers, cyclists and horse riders, ecology, and other matters.

Reasons

Any Benefits

10. The wind farm would comprise four wind turbines with a rated capacity of up to 2.5 MW. The turbines would have a hub height of up to 85 metres and a rotor diameter of about 93 metres. The maximum height would be 126.5 metres.
11. Some concerns were raised about the capacity factor of the scheme, based around the perception that the area is not especially windy. However, that is not borne out by the appellant's analysis. I fail to see why a developer would be prepared to make the significant investment required to gain permission for, or indeed seek to implement, the wind farm if it was not going to operate in an efficient or cost-effective manner. In that context, it is reasonable to assess the potential capacity of the wind farm as up to 10 MW
12. Key principle (iv) of Planning Policy Statement 22: *Renewable Energy* (PPS22) states that the wider environmental and economic benefits of all proposals for renewable energy projects, whatever their scale, are material considerations that should be given significant weight in determining whether proposals should be granted planning permission.

13. Although the Localism Bill has now received Royal Assent, the development plan still includes the East Midlands Regional Plan (EMRP). EMRP Policy 40 says that in establishing criteria for onshore wind energy, amongst other things, the contribution to national and international environmental objectives on climate change and the regional renewables target, should be given particular consideration. EMRP Policy 40 refers to Appendix 5 that sets regional targets for the production of renewable energy. The 2010 target for onshore wind was 122 MW, rising to 175 MW in 2020. The figures put forward by the appellants show that as of July 2011, there was 125 MW of onshore wind operational, and about 138 MW with permission, in the region. Even without accounting for increases since July 2011, together they far exceed the 2020 target of 175 MW.
14. However, and more importantly, the 2010 target for all renewable energy technologies was 324 MW, rising to 3671 MW in 2020. In relation to the latter target, the EMRP envisaged that 3253 MW would be secured through micro-generation wind and photo-voltaics. That appears unduly optimistic and the East Midlands Regional Assembly Report confirms that deployment of domestic scale renewable technologies has been extremely slow. As a consequence, it seems obvious that the 2020 target will only be met, or even meaningfully approached, if more established commercial renewable technologies, like onshore wind generation, are brought forward quickly.
15. On top of that, the 2020 target was based on securing 20% of the region's electricity consumption by 2020 from renewable sources. The Government's Renewable Energy Strategy has raised the expectation to 30% and this has been reiterated in a succession of subsequent policy statements. In that context, the 2020 target, that already seems very exacting, is clearly not going to be sufficient to secure Government expectations now or in future.
16. Against that overall background, the contribution of up to 10 MW from the development would make a relatively small, but tangible contribution to meeting the 2020 regional target for renewable energy and the wider UK national requirement. It would improve the diversity and security of energy supply regionally and nationally. As Government policy in PPS22 clearly sets out, these considerations attract significant weight in favour of the proposal.

The Impact on the setting of Heritage Assets

17. An assessment of the impact of the proposal on the heritage assets referred to must be made against the background of a series of statutory and policy documents. First, Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 sets out that in considering whether to grant planning permission for development which affects a listed building, or its setting, the decision-maker shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
18. EMRP Policy 26 seeks to ensure the protection, appropriate management and enhancement of the Region's cultural heritage through the application of a series of principles. Of relevance, the Region's internationally and nationally designated historic assets should receive the highest level of protection; damage to historic assets or their settings should be avoided wherever and as far as possible, recognising that such assets are usually irreplaceable; and unavoidable damage must be minimised and clearly justified by a need for development in the location which outweighs the damage that would result.

19. EMRP Policy 27 sets regional priorities for the historic environment. In particular, it calls for the historic environment to be understood, conserved and enhanced, in recognition of its own intrinsic value, and its contribution to the Region's quality of life. EMRP Policy 40 requires local planning authorities to give particular consideration to historic assets and their settings in establishing criteria for onshore wind energy. Criterion (o) of Policy 13 of the North Northamptonshire Core Spatial Strategy (CSS) requires proposals to conserve and enhance the historic landscape, and designated built environment assets, and their settings.
20. Government advice in Planning Policy Statement 5: *Planning for the Historic Environment* (PPS5) is supplemented by the PPS5: *Planning for the Historic Environment: Historic Environment Planning Practice Guide*. The approach of PPS5 to the setting of heritage assets formed the basis for much debate at the Inquiry. Annex 2 to PPS5 defines setting as the surroundings in which a heritage asset is experienced. It goes on to say that its extent is not fixed and may change as the asset and its surroundings evolve and that elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that asset, or may be neutral.
21. This is developed in the English Heritage (EH) guidance on '*The Setting of Heritage Assets*'. The PPS5 definition is repeated but the guidance goes on, in paragraph 2.2, to say that from the PPS5 definition, it can be understood that setting embraces all of the surroundings (land, sea, structures, features and skyline) from which the asset can be experienced or that can be experienced from or within the asset and that setting does not have a fixed boundary and cannot be definitively and permanently described as a spatially bounded area or as lying within a set distance of a heritage asset. Of particular relevance, the guidance notes that the construction of a distant but high building may extend what might previously have been understood to comprise setting.
22. The Council, SBMWF, EH and others raised concern about the impact of the proposal on the setting of a wide range of heritage assets. On my analysis, the wind farm would be visible from, and/or in juxtaposition with, all of them. Inter-visibility of this kind must affect the way in which a heritage asset is experienced. I recognise that the conclusion has wide implications, not least for the application of Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, but, applying the definition in PPS5, amplified by the EH guidance, the proposed wind farm would fall within and affect the setting of all the heritage assets identified.
23. That conclusion leads on to PPS5 Policies HE9 and HE10. Both apply additional policy principles. I read that as meaning they are additional to PPS5 Policy HE7 that sets out policy principles guiding the determination of applications relating to all heritage assets.
24. PPS5 HE7.1 sets out that a decision-maker should seek to identify and assess the particular significance of any element of the historic environment that may be affected by the relevant proposal (including by development affecting the setting of a heritage asset). Significance is defined in Annex 2 to PPS5 as the value of a heritage asset to this and future generations because of its heritage interest. HE7.2 adds that in considering the impact of a proposal on any heritage asset, the particular nature of the significance of the heritage asset and the value that it holds for this and future generations, should be taken into account.

25. PPS5 HE9.1 notes that significance can be harmed or lost through alteration or destruction of the (designated) heritage asset or development within its setting; that substantial harm to or loss of a Grade II listed building, park or garden should be exceptional; and substantial harm to or loss of designated heritage assets of the highest significance should be wholly exceptional.
26. Overall, PPS5 Policy HE9 discerns between proposals that would lead to substantial harm to, or total loss of significance of, a designated heritage asset and proposals that would have a harmful impact that is less than substantial. In relation to the former, HE9.2 suggests that consent (and I take that word to be interchangeable with permission) should be refused unless it can be demonstrated that, of relevance, the substantial harm or total loss of significance is necessary in order to deliver substantial public benefits that outweigh the harm or loss. In terms of the latter, HE9.4 requires the public benefit of the proposal to be weighed against the harm, recognising that the greater the harm to the significance of the heritage asset, the greater the justification required. In considering proposals that cause harm to the setting of designated heritage assets, PPS5 HE10.1, put simply, requires that harm to be weighed against any wider benefits – the greater the negative impact, the greater the benefit required to justify approval.
27. There is a significant degree of crossover between Policies HE9 and HE10. It could be argued that if Policy HE9 is intended to apply to development proposals that affect the setting of designated heritage assets, then Policy HE10 is superfluous. However, whatever the extent of the harm that might be found to the setting of designated heritage assets, the approach is broadly the same whether Policy HE9 or HE10 is applied. Save for the test of necessity in HE9.2 (if there is substantial harm or total loss of significance), there is a need to weigh any benefits against any harm that would be caused. In that context, little is to be gained from an either/or debate; the practical route forward is to apply both. Having regard to PPS5 HE7.2, the starting point for assessment of the impact of a proposal on a heritage asset, or its setting, is the significance of the heritage asset affected. The definition in Annex 2 to PPS5 notes that heritage interest may be archaeological, architectural, artistic or historic.
28. Starting with the more distant heritage assets identified, Titchmarsh lies approximately 7 kilometres to the south-east of the appeal site. From the road that heads north-west towards the A605, there are panoramic views over the Nene valley, towards the appeal site, that take in the Church of All Saints and the Church of St Peter, in Aldwinckle (both Grade I listed buildings) and the Church of St Michael and All Angels in Wadenhoe (Grade II*).
29. Along with Wadenhoe House (Grade II) and the Wadenhoe Conservation Area, the Church of St Michael and All Angels (Grade II*) would also be visible with the proposed wind turbines in the background from points to the east-south-east of Wadenhoe, particularly when emerging from the churchyard at Achurch and the Nene Way public footpath. These listed buildings and the conservation area are designated heritage assets of national significance, clearly.
30. The wind turbines proposed would be an obvious and, at times, moving presence alongside the designated heritage assets in the views highlighted. However, any reasonable observer would understand the differing functions of a wind turbine and a church or a country house or a settlement and that the latter have a much greater archaeological, architectural, artistic or historic significance in themselves and as landmarks.

31. Coupled with the relatively significant degree of separation involved, this means that the presence of the wind turbines in these views would not erode from an understanding or appreciation of the significance of the designated heritage assets at all. As such the proposed wind turbines would have no harmful impact on their settings. For the same reasons, I reach a similar conclusion in respect of the effect on the settings of the Church of St Mary in Lower Benefield (Grade II*) and the Lower Benefield Conservation Area.
32. Drayton House is a large country house, with parts dating back to the 14th Century, set within a designed landscape. It is a Grade I listed building and the grounds are included on the English Heritage Register of Parks and Gardens of Special Historic Interest at Grade I. The complex contains a further Grade I listed building, six Grade II* listed buildings, and eleven Grade II listed buildings. Individually, and as a group, this collection of designated heritage assets are of national importance, and the highest order of significance, especially in terms of their architectural and historic interest.
33. Though I was not able to access the interior of Drayton House, it is accepted that views of the wind turbines proposed would be available from the interior, in particular from the long gallery. The parkland comprises primarily grazed pasture with avenues of mature trees as key features. I saw that the wind turbines would be visible from a number of points within the grounds particularly around the north-east and north-west boundaries. The key position highlighted is at the end of an avenue of lime trees that radiates from the house in a north-easterly direction.
34. The complex of designated heritage assets centred around Drayton House is situated between 4 and 5 kilometres to the south of the appeal site. With that degree of separation, while the proposed wind turbines would be readily visible, at times turning, from important elements within the group, and fall within its setting, they would not greatly constrict an understanding of, or act as a major distraction from, the significance of the group. As such, they would have but a slight harmful impact on its setting.
35. A significant part of Lowick, a village to the north-east of Drayton House, makes up the Lowick Conservation Area. Within the conservation area is the Church of St Peter, a Grade I listed building. The church has a distinctive tower crowned with tall pinnacles and an octagonal lantern and is of the highest order of significance, nationally. From the southern end of the village and further south, there are places where the conservation area, with the church within it will form the foreground with the proposed wind turbines, sometimes turning, visible beyond. There are locations where the wind turbines proposed would be seen directly behind and rising above the church tower.
36. Again though, any reasonable observer would not be confused by the juxtaposition and would recognise the settlement and the church as features of historic, architectural and cultural significance, and the wind turbines as modern, large-scale, functional impositions designed to capture energy from the wind. There would be no confusion about the origins, or purpose of either, or both. The presence of the wind turbines would be something of a distraction but would not detract to any great extent from an understanding or appreciation of the significance of these heritage assets. As such, the harmful impact on the setting of the Lowick Conservation Area, and the Church of St Peter within it, would be much less than substantial.

37. Aldwincle Lodge and its associated Barn and Cartshed Range (both Grade II listed buildings) form part of a group with more modern farm buildings almost 3 kilometres to the south-east of the appeal site. These are heritage assets of national interest for their architectural and historic significance. From various locations they would be visible in tandem with the wind turbines proposed. However, there would be sufficient separation to ensure that the wind turbines did not dominate those views to the extent that the ability of an observer to understand the significance of the listed buildings would be seriously undermined. As such the harmful impact on the setting of Aldwincle Lodge and its associated Barn and Cartshed Range would not approach substantial.
38. Much of the village of Brigstock is contained within the Brigstock Conservation Area. Within the conservation area is the Church of St Andrew (listed Grade I) and the nearby Manor House (listed Grade II*), a number of other listed buildings on Stable Hill, Hall Hill and Church Street, and the Market Cross, a Scheduled Ancient Monument (SAM).
39. The wind turbines proposed would be visible from various points within the conservation area. In particular, they would be framed in views out of the conservation area from High Street along Stable Hill, and along Hall Hill from alongside the Market Cross on Church Street. Their presence would act as a distraction, especially when moving, but given the degree of separation, the array would not dominate those outward views and the wind turbines would not appear as part of the fabric of the village. While the distracting influence would harm the setting of the conservation area and the setting of the listed buildings on Stable Hill, Hall Hill and Church Street and the Market Cross SAM, to a degree, for the reasons set out, that harm would be less than substantial.
40. There are important views of St Andrew's Church and the Manor House from Park Walk and Bridge Street across a paddock, highlighted in the Brigstock Conservation Area Character Appraisal. Policy EN20 of the East Northamptonshire District Local Plan (LP) sets out to inhibit development that would adversely affect open land of particular significance to the form and character of a town or village especially where it contributes to the setting of a listed building or the character of a conservation area. The paddock is identified as such a piece of open land on the Council's Proposals Map. However, the wind turbines at issue would not be in the paddock so they would have no direct effect upon it. I see no divergence from the requirements of LP Policy EN20, therefore.
41. Nevertheless, the presence of the wind turbines as a backdrop to views across the paddock from Park Walk and Bridge Street towards St Andrew's Church and the Manor House would have an impact on their settings and on views out of the conservation area. There is no doubt that St Andrew's Church is of the highest order of significance in archaeological, architectural, artistic, historic and communal terms, especially. The Manor House is of national importance too and views of its relationship with St Andrew's Church are a particularly valuable facet of the character and appearance of the conservation area.
42. The presence of the wind turbines as a backdrop to views across the paddock would distract the eye, particularly when moving. However, the degree of separation would be such that the wind turbines would not appear a great deal higher than the church spire. St Andrew's Church and the Manor House would not be overpowered or dominated and they would remain the primary focus, in the foreground of the views across the paddock.

43. On that basis, while the distracting presence of the wind turbines would cause some harm to the setting of St Andrew's Church and the Manor House, and to views out of the conservation area, that harm would be less than substantial.
44. The site of Lyveden New Bield is owned and managed by the National Trust (NT) and is made up of the remains of a relatively large, formal landscape, with various earthworks and moats, and a roofless garden lodge known as the New Bield, all dating from towards the end of the 16th Century. There is also a later cottage on the site. The site is covered by a range of heritage designations. Lyveden New Bield (the garden lodge) is a Grade I listed building. Lyveden New Bield (the remains of the formal landscape) is included on the English Heritage Register of Parks and Gardens of Special Historic Interest at Grade I. Lyveden New Bield (the garden lodge and part of the remains of the formal landscape) is a SAM. Lyveden Cottage is a Grade II listed building. Adjacent to the site of Lyveden New Bield, and outside the ownership of the National Trust, is Lyveden Old Bield and its attached outbuildings (formerly known as Lyveden Manor) a Grade I listed building. Along with its grounds, this formed part of the original formal landscape.
45. The intentions of Sir Thomas Tresham that lay behind the design of the formal landscape, and the processional route through it, are well documented, especially in the NT's Conservation Management Plan. It is not necessary to repeat all that. Suffice to say that the appellant's cultural heritage witness was content to acknowledge the group as probably the finest surviving example of an Elizabethan Garden, and that as a group, the heritage asset at Lyveden New Bield has a cultural value of national, if not international significance. I agree; this group of designated heritage assets has archaeological, architectural, artistic and historic significance of the highest magnitude.
46. There was much discussion at the Inquiry about the setting of the group as heritage assets. References to the concept of 'immediate setting' are not helpful because advice in PPS5 and from EH is clear. The wind turbines proposed would be visible from all around the site, to varying degrees, because of the presence of trees. Their visible presence would have a clear influence on the surroundings in which the heritage assets are experienced and as such they would fall within, and affect, the setting of the group. Bearing in mind PPS5 Policy HE7, the central question is the extent to which that visible presence would affect the significance of the heritage assets concerned.
47. While records of Sir Thomas Tresham's intentions for the site are relatively, and unusually, copious, it is not altogether clear to what extent the gardens and the garden lodge were completed and whether the designer considered views out of the garden to be of any particular significance. As a consequence, notwithstanding planting programmes that the National Trust have undertaken in recent times, the experience of Lyveden New Bield as a place, and as a planned landscape, with earthworks, moats and buildings within it, today, requires imagination and interpretation.
48. At the times of my visits, there were limited numbers of visitors and few vehicles entering and leaving the site. I can imagine that at busy times, the situation might be somewhat different but the relative absence of man-made features in views across and out of the gardens compartments, from the prospect mounds especially, and from within the garden lodge, give the place a sense of isolation that makes the use of one's imagination to interpret Sir Thomas Tresham's design intentions somewhat easier.

49. The visible, and sometimes moving, presence of the proposed wind turbine array would introduce a man-made feature, of significant scale, into the experience of the place. The array would act as a distraction that would make it more difficult to understand the place, and the intentions underpinning its design. That would cause harm to the setting of the group of designated heritage assets within it.
50. However, while the array would be readily visible as a backdrop to the garden lodge in some directional views, from the garden lodge itself in views towards it, and from the prospect mounds, from within the moated orchard, and various other places around the site, at a separation distance of between 1 and 2 kilometres, the turbines would not be so close, or fill the field of view to the extent, that they would dominate the outlook from the site. Moreover, the turbine array would not intrude on any obviously intended, planned view out of the garden, or from the garden lodge (which has windows all around its cruciform perimeter). Any reasonable observer would know that the turbine array was a modern addition to the landscape, separate from the planned historic landscape, or building they were within, or considering, or interpreting.
51. On that basis, the presence of the wind turbine array would not be so distracting that it would prevent or make unduly difficult, an understanding, appreciation or interpretation of the significance of the elements that make up Lyveden New Bield and Lyveden Old Bield, or their relationship to each other. As a consequence, the effect on the setting of these designated heritage assets, while clearly detrimental, would not reach the level of substantial harm.
52. Moving away from considering designated heritage assets individually, as set out in Government advice in paragraph 2.7.17 of the Government's National Policy Statement for Renewable Energy Infrastructure (EN-3), reversibility is likely to be an important consideration in assessing impacts of onshore wind farms (albeit larger ones) on the setting of heritage assets. This is also acknowledged by EH in 'Wind Energy and the Historic Environment'.
53. The proposal is intended to endure for 25 years. Concern has been raised that the planning permission might be renewed or that the wind turbines might be replaced within the period of permission sought. However, both those scenarios would, in all likelihood, necessitate further planning applications that would need to be judged, on their merits, at the time. As far as the proposal before me is concerned, once the 25 year period has elapsed the wind turbines and ancillary infrastructure will be removed and the harmful impact on the settings of the designated heritage assets identified would disappear.
54. Obviously, 25 years is a long time in relation to the human lifespan, spanning, roughly, a generation, but in terms of the age of the designated heritage assets affected, and the period that they can reasonably be expected to endure, it is relatively insignificant. As set out, harm would be caused to the setting of a number of designated heritage assets. However, that the harm would not be permanent must reduce the degree of harm that would be caused, overall.
55. On top of that, the appellant has proposed to further mitigate the impact of the proposal by undertaking a LiDAR (Light Distance and Ranging) survey of the affected areas. Ready access to the results of that survey will improve the visitor experience of the environs of the wind farm and offset the harmful impact on the setting of the designated heritage assets identified, to a limited, but tangible degree.

56. In terms of archaeology, trial trenches have shown that there would be no significant impact on-site, hence the Council's withdrawal of their original, archaeology based reason for refusal.
57. To summarise, the proposal would cause harm to the setting of a range of designated heritage assets. At its worst, that harm would not reach the level of substantial. Nevertheless, that there would be some harm means that the proposal does not accord with EMRP Policies 26 and 27 or CSS Policy 13 criterion (o). It is relevant to note that, subject to suitable conditions, the harm would disappear once the 25 year period of the planning permission expires. Moreover, the LiDAR survey would provide a small benefit in terms of recording. All that needs to be fed into the balancing exercise implicit in Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and explicit in PPS5 Policies HE9.4 and HE10.1. I return to that below.

The Impact on the Landscape

58. It is important, first of all, to address the concept of valency. While there was no sustained suggestion that the ES did not meet the requirements of the relevant regulations, the Council and SBMWF took issue with the approach of the ES, and the evidence of the appellant's landscape witness, because, having identified significant landscape, neither went on to assess whether those impacts are beneficial, neutral or adverse. The reason for the approach taken by the appellant, is, put simply, because research has shown that people have varying responses to the presence of wind turbines in the landscape.
59. The Council and SBMWF are correct not to allow this criticism of the ES and the appellant's landscape evidence, to lead to a suggestion that the ES does not meet the needs of the relevant regulations. In simple terms, an ES needs to contain sufficient information to enable the decision-maker to identify and weigh the environmental impacts of a particular proposal. The failure to address the question of whether landscape impacts are beneficial, neutral or adverse has not prevented the Council, SBMWF, or anyone else, from forming their own conclusions. Neither has it curtailed me in any way. I would observe, however, that while people might well respond to the presence of wind turbines in a landscape in various ways, that is of little assistance to a decision-maker in reaching an objective conclusion in terms of landscape impact.
60. Planning Policy Statement 7: *Sustainable Development in Rural Areas* (PPS7) sets out that the quality and character of the wider countryside should be protected and, where possible, enhanced. EMRP Policy 40 suggests that in establishing criteria for onshore wind energy, particular consideration should be given to the landscape, the number and size of turbines proposed, and their cumulative impact. EMRP Policy 31 requires natural and heritage landscapes to be protected and enhanced as does criterion (o) of CSS Policy 13. CSS Policy 13 Criterion (h) requires high standards of design and criterion (i) the creation of a strong sense of place.
61. Contrary to some views put forward at the Inquiry, the site is not part of a designated Area of Outstanding Natural Beauty. As set out in the SoCG, it lies within National Character Area 92: Rockingham Forest and Regional Landscape Character Type 10(a): Forest Hills and Ridges. On a more local level, it lies within Landscape Character Area 7c: Rockingham Plateau. Landscape Character Areas 12d: Harper's Brook and 7a: Geddington Chase are also relevant to any consideration of local landscape impacts.

62. From the national, regional and local descriptions of the landscape, and from what I gleaned from my site visits, it is plain that the site and much of the area around it has an undisturbed, deeply rural quality with extensive woodlands as prominent features on the skyline, offering some enclosure. The landform is undulating with broad elevated plateaux and ridges. In the valleys, there is a more intimate character. In longer distance views, there is a sense of exposure and openness with the containing framework of woodland creating a large scale yet simple rural landscape. There are strong historical associations with what was once a Royal Hunting Forest and literary ones too.
63. The wind turbines would be located to the south of Fermyn Woods in a field, bounded and criss-crossed by public rights of way. In close up views from within the appeal site itself, and the variety of closer approaches to it, the wind turbines would have a massive height and scale. Along with the anemometer mast and the associated infrastructure, they would represent enormous, man-made impositions on the landscape that would fundamentally change the nature of the immediate surroundings from something deeply rural and agricultural to a wind farm environment.
64. Obviously, the impact of the wind farm would reduce with separation distance and there would be points where visibility would be constrained or blocked out by the presence of woodland. However, the various viewpoints in the ES and elsewhere show, and my site visits confirmed, that situated on top of a raised plateau, the wind turbines would be prominent, man-made, vertical and moving, features in the landscape, visible against the sky and, often, over the top of the different woodlands that are such a feature of the surrounding landscape. While the wind farm at Burton Latimer is visible from the appeal site itself, and from various points in the surroundings, it is a relatively significant distance away. Its presence would not prevent the wind turbines proposed appearing as alien and incongruous features in the landscape, especially one with such historic and literary associations.
65. The approach set out in PPS7, the EMRP (Policy 31 in particular) and CSS Policy 13 criterion (o) is that landscape character should be protected and enhanced. The appellant's landscape witness was prepared to accept that the impact of the wind farm on the landscape would be adverse, on a precautionary basis. However, I would go much further. If landscapes are to be protected for their intrinsic value, as policy nationally and locally suggests, then the magnitude of change inherent in the imposition of a wind farm on a landscape such as the appeal site, and its wider surroundings, must be harmful. The central question is to what degree it would be harmful.
66. In close up views, the scale of the wind turbines and the associated infrastructure would be inescapable. However, they would sit within a large, exposed, open field, designed for modern agricultural practice, with wide outward views over the landscape, to the horizon, or of the sky, over the top of trees. While there are areas in the vicinity where the landscape is more intimate, most often, in longer distance views, the turbines would be seen in the context of an open, grand-scale landscape, with a prominent sky and many long-distance views across it. Moreover, and notwithstanding their scale and kinetic nature, wind turbines are simple structures that can, properly designed and well-proportioned, achieve a degree of intrinsic elegance. At various times the turbines will be moving but not so quickly or in a fashion, that would disturb the tranquillity of the landscape to an unsettling extent.

67. As set out, the imposition of a wind farm on a landscape of the nature of the appeal site and its surroundings would harm its intrinsic character and its appearance. However, as a consequence of the factors outlined, the degree of harm would be ameliorated to a significant degree. There would be no harmful cumulative impact. The proposal is intended to endure for a period of 25 years and is reversible. Government advice in paragraph 2.7.17 of EN-3 is that reversibility is likely to be an important consideration in assessing impacts of onshore wind farms (albeit larger ones) on the landscape. There would be some harm to the landscape and 25 years is a long time in human terms, if not in terms of how landscapes evolve. However, the fact that the harm would be transient must lessen its impact, overall.
68. To summarise, the proposal would harm the character and appearance of the surrounding landscape. However, the degree of harm would be ameliorated by the nature of the landscape, the design of the wind turbines, and by the fact that the proposal is both temporary and reversible. Nevertheless, the proposed development would fall contrary to general advice in PPS7, EMRP Policy 31 and CSS policy 13 criteria (o), (h) and (i). That conclusion needs to be considered as part of the overall balance that I deal with below.

The Enjoyment of the Area

69. The appeal site is crossed by, and lies within a wide area rich in, public rights of way, including the Lyveden Way and the Brigstock & Fermyn Woods countryside leafleted walk. I have no good reason to doubt that these rights of way are well used by walkers and cyclists, and, given the significant number of riding establishments in the vicinity, including some that provide opportunities for disabled people, riders and their mounts. Fermyn Woods Country Park, lies to the north-west of the appeal site and clearly attracts lots of visitors to its promoted routes, with its car park, café and well appointed playground. Many visit the area too to observe the Purple Emperor butterfly.
70. Notwithstanding any arrangements for micro-siting, as proposed, two of the wind turbines (T1 and T3) would lie within topple over distance of public rights of way. Along with another of the wind turbines (T2), they would also be situated within the 200 metres exclusion zone recommended by the British Horse Society (BHS). This, it is said, means that the development does not comply with advice in Planning for Renewable Energy: A Companion Guide to PPS22 or the approach of CSS Policy 13 criterion (n) that requires proposals to avoid adverse impacts on the highway network or prejudice to highway safety.
71. In relation to topple over distance, paragraph 57 of the Companion Guide to PPS22 notes that there is no statutory separation between a wind turbine and a public right of way and goes on to suggest that, often, fall over distance is considered an acceptable separation, and the minimum distance is often taken to be that the turbine blades should not oversail a public right of way. The blades of one turbine (T1) would be close, but none of the turbine blades would oversail a public right of way. The Companion Guide to PPS22 notes in paragraph 53 that a wind turbine erected in accordance with best engineering practice should be a stable structure. My attention was drawn to recent incidents involving the collapse of a wind turbine and a conflagration involving another but the Companion Guide to PPS22 does not suggest that erecting a wind turbine within topple over distance of a public right of way is dangerous or otherwise unacceptable.

72. In relation to the BHS exclusion zone of 200 metres, paragraph 56 of the Companion Guide to PPS22 notes that this could be deemed desirable but it is not a statutory requirement. Horses can be feisty creatures and I have no doubt that some might be frightened by wind turbines. However, they can be frightened by many things and any responsible rider, or supervisor of others riding, would be aware of that. It is a fundamental plank of much of the evidence that the wind turbines would be widely visible in the landscape. They clearly would and for that reason, on many approaches to the wind farm, riders and their mounts would be well aware of their presence from some distance away. That would reduce the capacity for surprise and, in general terms, it would mean that the failure to accord with the exclusion zone suggested by the BHS would not lead to any significant danger for riders and their mounts.
73. However, there are places, three in particular highlighted by the Council, where riders and their mounts would emerge from the enclosure of Fermyn Wood and Lady Wood into the open, to be confronted by the wind turbines in close proximity. That, I accept, could lead to horses being frightened endangering themselves, their riders and other users of the rights of way. In response, the appellant has, through a Unilateral Undertaking (UU), made provisions for alternative routes to be provided along new, permissive bridleways for the operational life of the proposal. If followed, these alternative routes would avoid the situation where a rider and their mount were confronted by the sudden appearance of a wind turbine close up.
74. I recognise that some of the alternative routes might not be ideal and that requiring riders to change from their preferred riding routes could be seen, by some, as an unreasonable imposition. However, Government policy is broadly in favour of renewable energy schemes and it is difficult to see how onshore wind can be harvested to the extent envisaged in Government policy without some disruption to riders, and others, using rights of way, who prefer to avoid getting too close to wind turbines. In that context, the suggestion, in this case, that those who are concerned for their safety use an alternative route, does not strike me as unreasonable.
75. Taking all those points together, I see no departure from advice in the Companion Guide to PPS22 or the requirements of CSS Policy 13 criterion (n).
76. The impact of the proposal on the enjoyment of visitors to the Country Park and the area in general has some linkage to the effect on the setting of designated heritage assets and the landscape. For many of those who have objected to the proposal in writing or at the Inquiry, I do not doubt that the presence of the wind farm would reduce their enjoyment, perhaps to the extent that they would no longer wish to visit. However, it is well recorded that people have different attitudes to wind farms and there might be some people drawn to the area by its presence and the opportunity to see it close up.
77. As set out above, the harmful impact on the setting of designated heritage assets would be less than substantial, and on the landscape, ameliorated in various ways. In that context, the wind farm would not be so damaging to its surroundings that a reasonable person would be put off the area. Much of the observation of the Purple Emperor takes place in the woodlands where the wind turbines would be largely screened from view. The wind turbines would not be so close to the café and the playground in the Country Park that their visual impact would make those facilities unattractive or uncomfortable to use.

78. On that overall basis, I see no good reason to suspect that the wind farm proposed would significantly reduce the value of the visitor experience or lead to a significant drop in the number of visitors to the area, whether to appreciate the designated heritage assets, or to see the Purple Emperor butterfly, or any of the myriad of other opportunities the area presents, with the economic consequences that would entail. I see no divergence from CSS Policy 13 criteria (f) and (j) that seeks to protect community facilities and promote opportunities for people to be active.

Ecology

79. EMRP Policy 40 says that in establishing criteria for onshore wind energy, particular consideration should be given to the natural environment, including biodiversity. Policy 29 seeks biodiversity enhancement given past declines. Some concern was raised at the Inquiry about the potential impact on bats because of perceived shortfalls in the survey methods having regard to Natural England Technical Information Note TIN051: *Bats and Onshore Wind Turbines* and the recently published Bat Conservation Trust's (BCT) *Bat Surveys – Good Practice Guidelines 2nd Edition: Surveying for Onshore Wind Farms*.

80. The thrust of this guidance is that it should be applied in a proportionate manner having regard to the area of habitat affected and the likely direct impact on bats. Of course the surveys could have been more comprehensive but that criticism could be applied to almost any such survey. The most important point is whether, as implemented, sufficient information was gleaned to allow a properly informed assessment of the potential impact of the proposal on bats. Having considered the evidence carefully, I agree with the appellant that it was proportionate and provides a robust basis upon which to base an assessment. There is no good reason to believe that the proposal would have any significant impact on the local bat population.

81. Natural England does not object to the proposal in relation to the potential impact on bats subject to a series of mitigation and enhancement measures and post-construction monitoring surveys. These are included within the completed UU. Similarly, Natural England raised no objection in relation to the potential impact on Red Kites subject to provisions for post-construction monitoring. Again, this is dealt with in the UU. There is no suggestion that the proposal would have a significant impact on the Purple Emperor butterfly population or any other species, protected or otherwise. In that overall context, the proposal complies with the requirements of EMRP Policy 29.

Other Matters

82. Some concern has been expressed about the use of neodymium in the manufacture of the wind turbines. It is not clear that it would be, but in any event, if its use is a problem, it is a matter for Government to address in a wider sense, not for me in the context of a specific wind farm proposal.

83. I cannot fail to be aware of the significant body of local opinion, supported by Councillors, and the local Member of Parliament, that is strongly against the proposal, because of its undoubted impact. I have taken that opposition into account, and addressed the reasons behind it. This opposition does, however, need to be seen in the context of the clear support for renewable energy projects from the Government, clearly articulated in PPS22 and elsewhere in various policy documents, not least the Renewable Energy Strategy.

The Balancing Exercise

84. There would be no significant adverse impact on users of public rights of way whether walkers, cyclists or riders and no appreciable devaluation of the visitor experience to the area and the attractions it contains. There would be no harm in ecological terms and in some respects, there would be enhancement. On that basis, there would be compliance with CSS Policy 13 criterion (f), (j) and (n) and EMRP Policy 29.
85. The proposal would harm the setting of a number of designated heritage assets. However, the harm would in all cases be less than substantial and reduced by its temporary nature and reversibility. The proposal would also cause harm to the landscape but this would be ameliorated by a number of factors. Read in isolation though, all this means that the proposal would fail to accord with EMRP Policies 26, 27 and 31 and CSS Policy 13 criteria (o), (h) and (i). On the other hand, having regard to advice in PPS22, the benefits that would accrue from the wind farm in the 25 year period of its operation attract significant weight in favour of the proposal. The 10 MW that it could provide would contribute towards the 2020 regional target for renewable energy, as required by EMRP Policy 40 and Appendix 5, and the wider UK national requirement.
86. PPS5 Policies HE9.4 and HE10.1 require the identified harm to the setting of designated heritage assets to be balanced against the benefits that the proposal would provide. Application of the development plan as a whole would also require that harm, and the harm to the landscape, to be weighed against the benefits. Key principle (i) of PPS22 says that renewable energy developments should be capable of being accommodated throughout England in locations where the technology is viable and environmental, economic, and social impacts can be addressed satisfactorily. I take that as a clear expression that the threshold of acceptability for a proposal like the one at issue in this appeal is not such that all harm must be avoided. In my view, the significant benefits of the proposal in terms of the energy it would produce from a renewable source outweigh the less than substantial harm it would cause to the setting of designated heritage assets and the wider landscape.

Conditions and the Obligation

87. I have considered the suggested conditions in the light of advice in Circular 11/95: *The Use of Conditions in Planning Permissions*. In terms of the commencement condition, given the likely lead-in time for wind turbine procurement and the number of pre-commencement conditions that need to be addressed, it is reasonable to extend the normal three year period to five. To facilitate any subsequent application for a minor material amendment, it is necessary to apply a condition specifying the approved plans. I have not included in the condition those submitted for illustrative purposes.
88. The originating application was made on the basis that any planning permission would endure for a period of twenty five years. That temporary nature needs to be secured through a condition as does a scheme for decommissioning and site restoration after cessation. I see no reason to include specific provision in the condition for the foundations to be removed to a depth to allow reversion of the land to arable farming. If the details brought forward do not include foundation removal to a depth satisfactory to the Council, then it need not approve the scheme as promulgated.

89. A condition is necessary to deal with the situation where, for whatever reason, one or more of the wind turbines fail to produce electricity. The Council suggests, in essence, that if a turbine fails to produce electricity for a continuous period of 6 months then it should be removed. I find that unreasonably onerous. There are all sorts of reasons why that situation might arise, for example there may be a technical issues requiring repairs or replacement of parts. To require the turbine to be removed in such a situation would negate the benefit it would provide, in terms of renewable energy production, after any repairs. In that context, I prefer the alternative condition put forward by the appellant that refers to a period of inactivity of 12 months and allows greater flexibility.
90. Given the logistic challenges inherent in the delivery of components of the proposal to the site, a condition requiring the submission of a Construction Traffic Management Plan needs to be imposed. Similarly, given the complexities involved, a similar condition is required to secure a Construction Method Statement. Conditions are necessary to control hours of working and the times when deliveries can take place. I note the more restrictive suggestion by the Council but given that the site is relatively remote from dwellings, 0700 to 1900 hours on weekdays, as put forward by the appellant, is reasonable.
91. Conditions are necessary to ensure that the turbine blades all rotate in the same direction, to limit their height to 126.5 metres, to secure details of the colour and finish of the wind turbines and anemometer mast, and to control signage or logos. As set out, the proportions of the wind turbines is an important matter so it is necessary to address design in the condition too. It is necessary to deal with the substation building similarly and to ensure that electricity cables are routed underground. To allow a degree of flexibility, a condition is necessary to deal with the micro-siting of turbines (other than T1) and other components of the development.
92. In the interests of nature conservation, a condition is required to secure checking surveys for any badgers, great crested newts, dormice or the nests of breeding birds that may have established a presence on the site since previous surveys were carried out, and any works of mitigation that may be necessary.
93. A series of conditions are necessary to address highway matters, notably the removal and reinstatement of two illuminated signs, to address any repairs required to the A6116 post-construction, to limit access for construction traffic to the A6116 and to require details of the site access, including a programme, to be submitted for approval.
94. To make a record of the site and its surroundings as they stand, the appellant has pointed to the benefits that would flow from a LiDAR survey. While the weight that can be attached to those benefits is limited, it does play a part in the overall balancing exercise. It is therefore necessary for those benefits to be secured through a condition.
95. There is potential for the proposal to interfere with terrestrial television. To address that, a condition is necessary to secure mitigation work. I favour the detailed and time-limited condition put forward by the appellant, rather than the more open-ended version put forward by the Council. If interference does take place it will be shortly after the turbines become operational and in that context it is reasonable to expect any complaints to be forthcoming within twelve months of the First Export Date.

96. A series of conditions have been put forward to deal with aviation-related matters. These deal with the need for a Radar Mitigation Scheme linked to the Primary Surveillance Radar at RAF Cottesmore, to notify the local planning authority and the MoD of various matters, including the construction commencement and completion dates, the height of the highest structure and the location of the wind turbines, and to secure the installation and operation of aviation lighting. All are clearly reasonable and necessary.
97. A condition is necessary to control noise from the turbines and set up a protocol for dealing with complaints. The additions to the condition suggested by the appellant, put forward by the Council are not necessary. The condition promulgated sets day-time and night-time limits at a series of dwellings based on a notional turbine specification. It is therefore a matter for the appellant whether the turbine they choose to install can operate within those limits. Similarly, there is no reason to require a separate scheme to measure noise from the turbines for a set period before the First Export Date because the protocol within the condition clearly sets out what must happen in the event of any noise-related complaint.
98. The completed UU, submitted at the Inquiry, deals with the permissive bridleways referred to above and a series of ecological matters. The provisions of the UU meet the tests set out in Circular 05/2005: *Planning Obligations*, being necessary to make the proposed development acceptable in planning terms, in particular.

Final Conclusion

99. For the reasons given above I conclude that the appeal should be allowed.

Paul Griffiths

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY

Robert Jameson LLB	Solicitor, Jameson and Hill Instructed by East Northamptonshire Council
He called	
Kate Ahern	Principal, Land Use Consultants
BSc MSc CMLI	
Lloyd Mills	Senior Conservation Officer, East Northamptonshire Council
BA(Hons) IHBC	Principal Engineer, Development Management, Northamptonshire County Council
Richard Anthony Hall	
Honours Degree in Combined Studies (Geography and European Studies)	
James Croucher	Associate Director, DLP Planning Ltd
MTP MRTPI	

FOR THE APPELLANT:

David Hardy	Partner, Eversheds LLP
LL.B(Hons) (1 st Class)	Instructed by West Coast Energy Ltd
B.C.L.(Hons) (Oxon)	
He called	
Jonathan Mason	Technical Director, AXIS
BSc(Hons) DipLa MLI	
Dr Jon Huckle	Principal Ecologist, Atmos Consulting
CEnv MIEEM	
John Barber	Chairman, AOC Archaeology Group
BA MA FSA (London)	
FSA (Scotland)	
MICOMOS MIFA	
David Stewart	Principal, David Stewart Associates
MA(Cantab) DipTP	
MRTPI	

FOR STOP BARNWELL MANOR WIND FARM (SBMWF):

Gordon Pollock QC	
He called	
Roy M Lewis	Director, Grover Lewis Associates
BA(Hons) MA (Arch Cons) MRTPI IHBC	
Karen Pollock	Councillor, Wadenhoe, Pilton & Stoke Doyle Parish Council
Sarah Wills	Secretary, Nene Valley Association and Chair of Hemington, Ludington & Thurning Parish Council
Ibby Mallett	Local Resident

Karen Pollock, Sarah Wills and Ibby Mallett presented their evidence together.

INTERESTED PERSONS:

Louise Mensch	MP for Corby and East Northamptonshire
Dr Ben Robinson	Inspector & Team Leader, East Midlands Region,
MA PhD	English Heritage
Mark Bradshaw	Property Manager, National Trust
Matthew Oates	National Specialist on Nature & Wildlife
	Engagement, National Trust
Councillor Heather Smith	Cabinet Member for Customer Services,
	Northamptonshire County Council
Chris Haines	Countryside Services Manager, Northamptonshire
	County Council
John Christopher Hill	Committee Member & Treasurer, Nene Valley
	Association
Sally Wilkes	Brigstock Parish Council
Pete Burdett	Local Resident
Phillip William Richardson MA	Northamptonshire Bat Group
Mrs Huntington	Local Resident

DOCUMENTS

- 1 Statement of Common Ground
- 2 Copy of Appeal Decision APP/Y0435/A/10/2140401, APP/K0235/A/11/2149434, and APP/H2835/A/11/2149437 (Nun Wood)
- 3 Letter of Objection from Louise Mensch MP
- 4 Extract from Website of Louise Mensch MP quoting her contribution to the Energy Efficiency Debate on 30 June 2010
- 5 Extract from Website of SBMWF quoting Louise Mensch MP
- 6 Submissions of Dr Ben Robinson
- 7 Submissions of Mark Bradshaw and Rebuttal Proof
- 8 Submissions of Matthew Oates
- 9 Submissions of Councillor Heather Smith & Chris Haines
- 10 Submissions of John Christopher Hill
- 11 Submissions of Sally Wilkes
- 12 Submissions of Pete Burdett
- 13 Submissions of Phillip William Richardson
- 14 Letter of objection from Mark Seddon, Deputy Chairman, the BB Society
- 15 Letter of objection from Brian Skittrall, CPRE Northamptonshire
- 16 Letter of objection from Tim Capper, a local resident
- 17 Letter of from the Leaders' Office, Northamptonshire County Council to Mark Bradshaw
- 18 Draft Unilateral Undertaking and associated plans
- 19 List of Plates put in by Roy Lewis
- 20 Commentary on 'The Setting of Heritage Assets' put in by Roy Lewis
- 21 Copy of e-mail of 21/11/11 from Kate Felus to Mark Bradshaw
- 22 Copy of e-mail of 16/12/11 from Kate Felus to Mark Bradshaw
- 23 Letter of 14/11/11 from English Nature
- 24 Letter of 14/11/11 from Defence Infrastructure Organisation
- 25 Letter of 05/12/11 from Sudborough parish Council
- 26 Explanatory Notes from CADW guidance referring to 'Essential Setting'
- 27 Copy of 'Guide to Good Practice on Using the Register of Landscapes of Historic Interest in Wales in the Planning and Development Process' published by CADW

- 28 Articles from the Daily Telegraph (01/12/11) and Sunday Telegraph (04/12/11) referring to the Riding for the Disabled Association
- 29 Inset plan of Brigstock from Proposals Map
- 30 Plans showing nature of woodland and woodland management around the site
- 31 Extracts of news reports relating to a burning wind turbine in Ardrossan and a collapsed wind turbine near Coldingham
- 32 Copy of BHS survey findings
- 33 Extract from EIA Regulations
- 34 Rebuttal Proof prepared by John Barber and Jonathan Mason
- 35 Clarification of Lease Option Boundary put in by Jonathan Mason
- 36 Draft conditions (successive versions)
- 37 Completed Unilateral Undertaking
- 38 Site Visit Itinerary (08/12/11)
- 39 Copy of Map 4.13: Northamptonshire Onshore Wind Energy Opportunity Plan (from Low Carbon Energy Opportunities for Local Planning Areas across the East Midlands)
- 40 Errata put in by Kate Ahern
- 41 A3 versions of SBMWF Viewpoints 03A, 15 and 25
- 42 E-mail and map relating to the blimp flown on 10/01/12
- 43 Post Inquiry Correspondence regarding the High Court Challenge to the Nun Wood Decision

PLANS

- A Figure FEI 1: Site Location
- B Figure FEI 2: Site Layout and Application Boundary
- C Figure FEI 3.1: Typical Wind Turbine Detail
- D Figure FEI 3.2: Scaled Elevation of Turbine
- E Figure EIA 4: Typical Anemometry Mast Detail
- F Figure FEI 5: Typical Access track, Cable Trench, Turbine Foundation & Installation Area
- G Figure FEI 6: Site Entrance Detail
- H Figure FEI 7: Transportation Route
- I Figure FEI 8: Typical Substation Building

Annex A: Schedule of Conditions

- 1) The development hereby permitted shall begin not later than five years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: FEI Figure 2: Site Layout and Application Boundary; and Drawing No.D125770-203 Rev.01.
- 3) The permission hereby granted shall endure for a period of 25 years from the date when electricity is first exported from any of the wind turbines to the electricity grid (the 'First Export Date'). Written notification of the First Export Date shall be given to the local planning authority no later than 14 days after the event.
- 4) No later than 12 months before the permanent cessation of electricity generation at the site, 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, the anemometer mast and associated above ground works approved under this permission and details of the depth to which the wind turbine foundations will be removed. The scheme shall also include details of the management and timing of any works, a traffic management plan to address likely traffic impact issues during the decommissioning period, the location of material laydown areas, an environmental management plan, to include any measures to be taken during the decommissioning period to protect wildlife and habitats, and site restoration measures. The decommissioning and site restoration scheme shall be implemented and completed, in accordance with the approved details, within 12 months of the expiry of this permission.
- 5) If any wind turbine generator 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 turbine. The scheme shall include a programme of remedial works where repairs to the relevant turbine are required. Where removal is necessary, the scheme shall include a programme for removal of the relevant turbine and associated above ground works approved under this permission, details of the depth to which the wind turbine foundations will be removed, and for site restoration measures following removal. The scheme shall be implemented and completed in accordance with the approved details and timetable.
- 6) No development shall take place until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the local planning authority. The CTMP shall include details of the routing of construction traffic, the scheduling and timing of movements, the management of junctions to, and crossings of, the public highway and rights of way, 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, the site access, and banksman/escort. The CTMP, including any required improvements or works to accommodate construction traffic along the route shall be implemented in accordance with the approved details.

- 7) No development shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved CMS. The CMS shall address the following matters:
- i) 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;
 - ii) Details of the proposed storage of materials and disposal of surplus materials;
 - iii) Dust management;
 - iv) Pollution control measures in respect of water courses and ground water; the bunding of storage areas; and foul sewerage;
 - v) Temporary site illumination during the construction period including proposed lighting levels and a specification of any lighting;
 - vi) Details of the phasing of construction works;
 - vii) Details of surface treatments and the construction of all hard surfaces and tracks;
 - viii) Details of emergency procedures and pollution response plans;
 - ix) Siting and details of wheel washing facilities and their operation;
 - x) 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;
 - xi) A site environmental management plan to include details of measures to be taken during the construction period to protect wildlife and habitats;
 - xii) Areas on site designated for the storage, loading, off-loading, parking and manoeuvring of heavy duty plant, equipment and vehicles;
 - xiii) Details and a timetable for post construction restoration/reinstatement of the temporary working areas and the construction compound; and
 - xiv) 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.
- 8) Construction work shall only take place between the hours of 07:00 to 19:00 Monday to Friday inclusive and 08:00-13:00 Saturdays with no such work on a Sunday or Public Holiday. Exceptions for work outside these hours including 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 works undertaken within 24 hours.
- 9) The delivery of any construction materials or equipment for the construction of the development, other than turbine blades, nacelles and towers, shall be restricted to the hours of 07:00 to 19:00 on Monday to Friday inclusive, 07:00 to 13:00 on Saturdays with no such deliveries on a Sunday or Public Holiday.

- 10) The blades of the wind turbines shall rotate in the same direction. The overall height of the wind turbines shall not exceed 126.5m to the tip of the blades when the blade is in the vertical position, as measured from natural ground conditions immediately adjacent to the turbine base.
- 11) Neither any turbine nor the anemometer mast shall be erected until details of the design, colour and finish of the turbine towers, nacelles and blades, and any external transformer units, and of the design, finish and colour of the anemometer mast, 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 turbines or any external transformer units or the anemometer mast other than those required for statutory health and safety reasons. Development shall be carried out in accordance with the approved details and retained as such thereafter.
- 12) Before construction of the electricity substation commences, details of its design, external appearance, dimensions, materials, surface and foul water drainage, and any associated compound or parking area, shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and retained as such thereafter.
- 13) All electrical cabling within the site shall be installed underground. No development shall take place until details of cable routes have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and retained as such thereafter.
- 14) Notwithstanding condition no.2, the turbines (other than T1 which shall not be micro-sited), associated crane pads, access tracks and meteorological mast may be micro-sited within 25 metres. Access tracks may be micro-sited within 10 metres and the consequential realignment of the access tracks between and to the turbines following micro-siting of the turbines, in accordance with this condition, is permitted. No turbine shall be micro-sited to a position closer to the nearest public right of way to that turbine. A plan showing the position of the turbines, anemometer mast and tracks established on the site shall be submitted to the local planning authority within one month of the First Export Date.
- 15) No development shall take place until details of checking surveys for any great crested newts, badgers, dormice or the nests of any breeding birds on the site have been submitted to, and approved in writing by, the local planning authority. The surveys shall be carried out by a suitability qualified ecologist, in accordance with the approved details, in the last suitable season prior to the commencement of site preparation and construction work. No development shall take place until the results of the surveys, along with details of, and a programme for, any mitigation works required as a consequence, have been submitted to and approved in writing by the local planning authority. Any mitigation works required shall be completed in accordance with the approved details.
- 16) No development shall take place until details of works for the removal and reinstatement of two illuminated signs, as shown on Drawing No. D125770-203 Rev.01, and a programme, have been submitted to and approved in writing by the local planning authority. The signs shall be removed and reinstated in accordance with the approved details.

- 17) No development shall take place until a scheme to secure any repairs to the length of the A6116 from the intersection of the A6116 and the A14 to the site access, required as a consequence of the development, have been submitted to and approved in writing by the local planning authority. The scheme shall include proposals for a condition survey of this length of the road affected and a programme and methodology for any necessary repairs, following the completion of construction. The scheme shall be implemented in accordance with the approved details.
- 18) No development shall take place until details of the site entrance and hard over run area, including a programme of works, have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details. The sole means of construction access to the site shall be from the A6116.
- 19) No development shall take place until details of a LiDAR survey have been submitted to and approved in writing by the local planning authority. The scheme shall include details of the area to be surveyed, the resolution of the scanning, the production of secondary products from the raw data including an archaeological sites and monuments map, the archiving of the raw data and integration of the raw data with existing Historic Environment Record and National Monuments Record data. The survey shall be completed, in accordance with the approved details, prior to site preparation and construction work commencing.
- 20) Prior to the First Export Date a scheme providing for a baseline survey and the investigation and alleviation of any electro-magnetic interference to terrestrial television caused by the operation of the 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 wind turbines approved herein, mitigation works shall be carried out in accordance with the approved scheme.
- 21) Before the first wind turbine is erected, written confirmation shall be provided to the local planning authority and the Ministry of Defence of the proposed date for the commencement of construction; the anticipated date of completion of construction; the height above ground level of the highest structure in the development; and the position of each wind turbine, and the anemometer mast, in terms of latitude and longitude.
- 22) Ministry of Defence accredited 25 candela lighting or infra-red aviation lighting shall be installed on the most northerly and southerly turbines (as shown on FEI Figure 2: Site Layout and Application Boundary or as micro-sited in accordance with condition 14) in a location on the turbine to be submitted to and approved in writing by the local planning authority. The turbines shall be erected with this lighting installed in accordance with the approved details and the lighting shall remain operational for the duration of this permission.

- 23) No development shall take place until a Radar Mitigation Scheme has been submitted to and approved in writing by the local planning authority. For the purposes of this condition 'Radar Mitigation Scheme' means a scheme to mitigate the impact of the development upon the operation of the Primary Surveillance Radar at RAF Cottesmore ('the Radar') and the air traffic control operations of the Ministry of Defence, reliant upon the Radar. No turbine(s) shall become operational until the local planning authority has confirmed in writing that all obligations, as specified in the approved Radar Mitigation Scheme, to be implemented prior to operation of the turbines, have been so implemented. The development shall thereafter be operated fully in accordance with the approved Radar Mitigation Scheme, provided that the Primary Surveillance Radar located at RAF Cottesmore remains in operation.
- 24) The rating level of noise immissions from the combined effects of the wind turbines (including the application of any tonal penalty), when determined in accordance with the attached Guidance Notes, shall not exceed the values for the relevant integer wind speed set out in 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 complaint to it alleging noise disturbance at a residential property, the wind farm operator shall, at its expense, employ an independent consultant approved by the local planning authority to assess the level of noise immissions from the wind farm at the complainant's property in accordance with the procedures described in the attached Guidance Notes. The written request from the local planning authority shall set out the conditions described in Guidance Note 2(b) and shall include a statement as to whether, in the opinion of the local planning authority, the noise giving rise to the complaint contains or is likely to contain a tonal component. The wind farm operator shall provide the information relevant to the complaint logged in accordance with paragraph (G) to the local planning authority in the format set out in Guidance Note 1(e) within 28 days of receipt in writing of the local planning authority's request.
 - (C) Where there is more than one property at a location specified in the Tables attached to this condition, the noise limits set for that location shall apply to all residential properties at that location. Where a residential property to which a complaint is related is not identified by name or location in the Tables attached to this condition, 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 residential property 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 residential property. The submission of the proposed noise limits to the local planning authority shall include a written justification of the choice of the representative background noise environment provided by the independent consultant. The rating level of noise immissions resulting from the combined effects of the wind turbines when determined in accordance with the attached Guidance Notes shall not exceed the noise limits approved in writing by the local planning authority for the complainant's residential property.

- (D) Prior to the commencement of any measurements by the independent consultant to be undertaken in accordance with paragraph (F), the wind farm operator shall submit to the local planning authority for written approval the proposed measurement location identified in accordance with the Guidance Notes where measurements for compliance checking purposes shall be undertaken. Measurements to assess compliance with the noise limits set out in the Tables attached to these conditions or approved by the local planning authority pursuant to paragraph (C) of this condition shall be undertaken at the measurement location approved in writing by the local planning authority.
- (E) Prior to the submission of the independent consultant's assessment of the rating level of noise immissions, the wind farm operator shall submit to the local planning authority for written approval the range of meteorological and operational conditions to determine the assessment of rating level of noise immissions. The proposed range of conditions (which shall include the range of wind speeds, wind directions, power generation and times of day) shall be those which prevailed during times when the complainant alleges there was disturbance due to noise, having regard to the written request of the local planning authority under paragraph b). The assessment of the rating level of noise immissions shall be undertaken in accordance with the assessment protocol approved in writing by the local planning authority.
- (F) The wind farm operator shall provide to the local planning authority the independent consultant's assessment of the rating level of noise immissions undertaken in accordance with the Guidance Notes within 2 months of the date of the written request of the local planning authority made under paragraph (B) of this condition unless the time limit is extended in writing by the local planning authority. 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 immissions.

- (G) Where a further assessment of the rating level of noise immissions from the wind farm is required pursuant to Guidance Note 4(c) of the attached Guidance Notes, the wind farm operator shall submit a copy of the further assessment within 21 days of submission of the independent consultant’s assessment pursuant to paragraph (F) above, unless the time limit for the submission of the further assessment has been extended in writing by the local planning authority.
- (H) The wind farm operator shall continuously log nacelle wind speed, nacelle orientation, power generation and nacelle wind direction for each turbine and shall continuously log wind speed, wind direction and wind direction data recorded at the permanent anemometer monitoring mast (if erected) in accordance with this permission, all in accordance with Guidance Note 1(d) of the attached Guidance Notes. The data from each wind turbine, and the data from the permanent anemometer mast (if erected), 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.

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

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

Location (easting, northing grid coordinates)	Standardised wind speed at 10 metres height (m/s) within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
	L _{A90} Decibel Levels											
Lustcote Lodge (497161, 285842)	35	35	35	36	37	40	44	48	52	52	52	52
Lyveden New Bield Cottage (498363, 285350)	35	35	35	35	35	35	38	42	45	45	45	45
Sudborough Green Lodge (496992, 284026)	35	35	35	36	37	40	44	48	52	52	52	52
Catshead Farm (495871, 283652)	40	40	40	41	42	44	46	49	51	53	53	53
Manor Farm (495237, 284507)	42	42	43	44	44	46	48	50	52	55	55	55
Log Cabin (495410, 285261)	35	36	38	39	41	42	44	45	47	48	48	48
Harley Way Lodge (495923, 285575)	35	35	36	38	41	44	47	50	52	54	54	54

Table 2 - Between 23:00 and 07:00 - Noise level dB L_{A90}, 10-minute

Location (easting, northing grid coordinates)	Standardised wind speed at 10 metres height (m/s) within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
	L _{A90} Decibel Levels											
Lustcote Lodge (497161, 285842)	43	43	43	43	43	43	43	43	43	43	43	43
Lyveden New Bield Cottage (498363, 285350)	43	43	43	43	43	43	43	43	43	43	43	43
Sudborough Green Lodge (496992, 284026)	43	43	43	43	43	43	43	43	43	43	43	43
Catshead Farm (495871, 283652)	43	43	43	43	43	43	43	43	43	43	43	43
Manor Farm (495237, 284507)	43	43	43	43	43	43	43	43	43	43	43	43
Log Cabin (495410, 285261)	43	43	43	43	43	43	43	43	43	43	43	43
Harley Way Lodge (495923, 285575)	43	43	43	43	43	43	43	43	46	46	46	46

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 residential properties 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 Conditions

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

Note 1

- (a) Values of the $L_{A90,10\text{-minute}}$ noise statistic should be measured at the complainant's property, 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 in accordance with the procedure specified in BS 4142: 1997 (or the equivalent UK adopted standard in force at the time of the measurements). 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 residential property 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 wind farm operator shall submit for the written approval of the local planning authority details of the proposed alternative representative measurement location prior to the commencement of measurements and the measurements shall be undertaken at the approved alternative representative measurement location.
- (c) The $L_{A90,10\text{-minute}}$ measurements should be synchronised with measurements of the 10-minute arithmetic mean wind speed and wind direction data and with operational data logged in accordance with Guidance Note 1(d) and rain data logged in accordance with Note 1(f).
- (d) To enable compliance with the conditions to be evaluated, the wind farm operator shall continuously log arithmetic mean nacelle wind speed (duly corrected for the presence of the rotating blades), arithmetic mean nacelle orientation, nacelle wind direction and arithmetic mean power generated during each successive 10-minute periods for each wind turbine on the site. The wind farm operator shall continuously log

arithmetic mean wind speed in metres per second and arithmetic mean wind direction in degrees from north, at the permanent anemometer mast (if erected), such measurements to be taken at the hub height of the wind turbines in each successive 10-minute periods. The hub height wind speeds recorded from the nacelle anemometers or as calculated from the power output of each turbine, or at the permanent anemometer mast, 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) and (G) of the noise condition shall be provided in comma separated values in electronic format.
- (f) A data logging rain gauge shall be installed within 3 metres of any sound level meter installed in the course of the independent consultant undertaking an assessment of the level of noise immissions. The gauge shall record over successive 10-minute periods synchronised with the periods of data recorded in accordance with Note 1(d).

Note 2

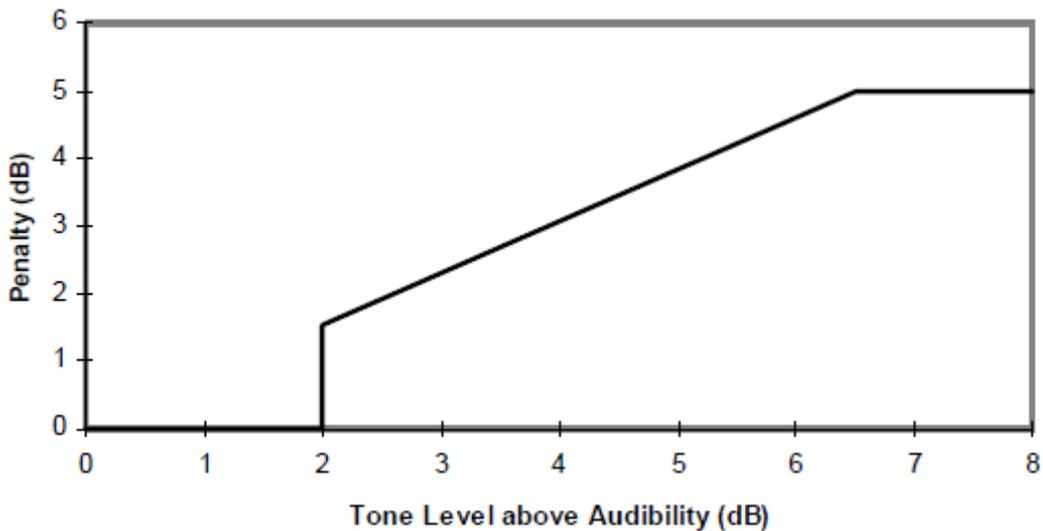
- (a) The noise measurements should be made so as to provide not less than 20 valid data points as defined in Note 2.
- (b) Valid data points are those measured during the conditions specified by the local planning authority set out in the assessment protocol approved by the local planning authority 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 the opinion of the local planning authority as advised to the wind farm operator in its written request under paragraph (B) of the noise condition, noise immissions at the location or locations where compliance measurements are being undertaken contain or are likely to contain a tonal component, a tonal penalty shall be calculated and applied using the following rating procedure.
- (b) For each 10-minute interval for which $L_{A90,10\text{-minute}}$ data have been determined as valid in accordance with Note 2, a tonal assessment shall

be performed on noise immissions during 2-minutes of each 10-minute period. The 2-minute periods should be spaced at 10-minute intervals provided that uninterrupted uncorrupted data are available ('the standard procedure'). Where uncorrupted data are not available, the first available uninterrupted clean 2-minute period out of the affected overall 10-minute period shall be selected. Any such deviations from the standard procedure 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.
- (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 residential property 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 residential property 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 (L_3) at each integer wind speed within the range set out in the approved noise assessment protocol under paragraph (E) of this condition.

ii) The wind farm noise (L_1) at this speed shall then be calculated as follows where L_2 is the measured level with turbines running but without the addition of any tonal penalty:

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

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 L_1 at that integer wind speed.

iv) If the rating level after adjustment for background noise contribution and adjustment for tonal penalty (if required in accordance with note (iii) above) at any integer wind speed lies at or below the values set out in the Tables attached to the conditions or at or below the noise limits approved by the local planning authority for a complainant's residential property 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 residential property in accordance with paragraph (C) of the noise condition then the development fails to comply with the conditions.

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