



Department for  
Communities and  
Local Government

Our Ref: APP/K1128/V/15/3136298

Mr A Perraton  
BBH Chartered Architects (Dartmouth) Ltd  
9 Duke Street  
Dartmouth  
TQ6 9PY

19 January 2017

Dear Mr Perraton,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77  
APPLICATION MADE BY PERRATON PARTNERS  
LAND AT WINSLADE FARM, FROGMORE, KINGSBRIDGE, DEVON, TQ7 2PA  
APPLICATION REF: 43/2567/13/F**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Ken Barton BSc(Hons) DipArch DipArb RIBA FCI Arb, who held a public local inquiry on 6-8 September 2016 into your client's application for planning permission for the installation of a single wind turbine with a 24.6m tower for agricultural use, in accordance with application ref: 43/2567/13/F, dated 9 October 2013.
2. On 5 October 2015, the Secretary of State directed, in pursuance of Section 77 of the Town and Country Planning Act 1990, that your client's application be referred to him instead of being dealt with by the local planning authority, South Hams District Council.

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

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

**Procedural matters**

5. The Secretary of State has noted the Inspector's remarks and actions at IR1-3.

**Policy and statutory considerations**

6. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

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7. In this case the development plan consists of the South Hams Core Strategy (CS) adopted December 2006, and the Development Policies Development Plan Document (DPD) adopted July 2010. The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR7. The Secretary of State has also taken into account the relevant policies in 2014-2019 South Devon AONB Management Plan (IR55-56).
8. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as the Secretary of State's Written Ministerial Statement (WMS) of 18 June 2015 on Local Planning.
9. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the application or their settings or any features of special architectural or historic interest which they may possess.
10. In accordance with section 72(1) of the LBCA, the Secretary of State has paid special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.
11. In accordance with section 85(1) of the Countryside and Rights of Way Act 2000, the Secretary of State has had regard to the purpose of conserving and enhancing the natural beauty of the AONB.

### **Main issues**

12. The Secretary of State agrees with the Inspector that the main issues are those set out at IR51.

### *Landscape and AONB*

13. The Secretary of State has considered the Inspector's analysis and conclusions at IR53-58. He agrees with the Inspector at IR55-57 that there is a relative absence of built structures in the landscape which would be eroded by the height of the proposed turbine and would be detrimental to the character of the Salcombe Estuary LCA. He agrees that the proposed turbine would introduce an alien element into its predominantly agricultural surroundings and would be dominant over a relatively wide area. The turbine would be seen above the ridge on the opposite bank of Frogmore Creek, breaking the skyline – contrary to Policy Lan/P5 of the 2014-2019 South Devon AONB Management Plan, which seeks to protect the character skylines and open views of the South Devon AONB. It would also be contrary to LanMan/F2 of the Management Plan, which states that "wind turbines... have the potential to damage the traditional agricultural environment."
14. The Secretary of State notes (IR57) that Policy DP2 and CS9, which reflect paragraph 115 of the Framework, require great weight to be given to "conserving the landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty." He agrees with the Inspector that the proposal would be contrary to Policy DP2 and Policy CS9. He also agrees that the harm to the AONB attracts great weight in the planning balance.

15. The Secretary of State agrees with the Inspector at IR58 that even if the permission were to be limited to 25 years, it would still be a significant amount of time, lasting for a generation.

#### *Heritage assets*

16. The Secretary of State agrees with the Inspector at IR60 that the Grade II listed Molescombe House, and its four associated grade II listed structures, and the Bowl Barrow Scheduled Ancient Monument would be the main historic assets to suffer harm to their settings. He agrees that the other assets considered would suffer much less detrimental impact. Having had regard to the local and national policies set out at IR61 relating to the historic environment, as well as the views of Historic England, he considers that the harm to all the affected heritage assets would be less than substantial for the purpose of paragraph 134 of the Framework. However he considers that great weight should be attached to the harm identified.

#### *Public benefits*

17. The Secretary of State has considered the Inspector's analysis and conclusions at IR63-70. He agrees with the Inspector that the proposal would help reduce emissions and combat climate change and recognises that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions. However, he notes that the majority of the turbine's output would serve the private interests of the farm, with little, if any, public benefit. He therefore agrees with the Inspector at IR70 that, in this case, although the turbine would provide a valuable contribution, the overall public, as opposed to private, benefits would be modest.

#### *Written Ministerial Statement on Local Planning*

18. The Secretary of State's Written Ministerial Statement (WMS) of 18 June 2015 is a material consideration in this case. This indicates that the proposed development can be found acceptable if, following consultation, the planning impacts identified by the local community have been addressed and the proposal therefore has their backing. In this case, the local community have raised planning impacts in relation to harm to the setting of a listed building and to the landscape and natural beauty of the AONB. As set out at paragraphs 13-16 above, the Secretary of State has concluded that there would be harm to the landscape and AONB, as well as to heritage assets. He therefore considers that the planning impacts identified by the affected community have not been addressed and the proposal does not have their backing in line with the WMS.

#### *Other matters*

19. The Secretary of State has considered the matters raised at IR38-40 and IR73 regarding procedural fairness. He considers that there is no evidence that the openness and transparency have been undermined in this case.

#### **Planning conditions**

20. The Secretary of State has given consideration to the Inspector's analysis at IR75-78, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework. However, he does not consider that the

imposition of these conditions would overcome his reasons for refusing this planning application.

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

21. For the reasons given above, the Secretary of State considers that the application is not in accordance with Policies DP1, DP2, DP6 and CS9 of the development plan, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
22. The Secretary of State concludes that the public benefits of the proposal, although modest, carry moderate weight overall. However, these benefits would be outweighed by the great weight to be given to the harm to the AONB and the setting of a number of heritage assets, but predominantly Molescombe House and the Bowl Barrow Scheduled Ancient Monument. He considers that granting permission for 25 years would be a significant amount of time and gives limited weight to the temporary nature of the proposal. He considers that the proposal does not have the backing of the local community in line with the WMS. However, like the Inspector, even if the transitional arrangements of the WMS were met, he considers that the harm to the AONB and the settings of heritage assets determine that permission should be refused in this case.
23. The Secretary of State considers that there are no material considerations which indicate that the proposal should be determined otherwise than in accordance with the development plan.
24. The Secretary of State therefore refuses planning permission for this application.

### **Formal decision**

25. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby refuses your client's application for planning permission for the installation of a single wind turbine with a 24.6m tower for agricultural use, in accordance with application ref: 43/2567/13/F, dated 9 October 2013.

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

26. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
27. A copy of this letter has been sent to South Hams District Council and notification has been sent to others who asked to be informed of the decision.

Yours sincerely,

*Merita Lumley*

Authorised by Secretary of State to sign in that behalf

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

**by Ken Barton BSc(Hons) DipArch DipArb RIBA FCI Arb**

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

**Date: 24 October 2016**

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**TOWN AND COUNTRY PLANNING ACT 1990**

**APPLICATION BY PERRATON PARTNERS**

**TO**

**SOUTH HAMS DISTRICT COUNCIL**

Inquiry opened on 6 September 2016

Winslade Farm, Frogmore, Kingsbridge, Devon TQ7 2PA

File Ref: APP/K1128/V/15/3136298

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**File Ref: APP/K1128/V/15/3136298**

**Winslade Farm, Frogmore, Kingsbridge, Devon TQ7 2PA**

- The application was called in for decision by the Secretary of State by a direction, made under Section 77 of the *Town and Country Planning Act 1990*, on 5 October 2015.
- The application is made by Perraton Partners to South Hams District Council.
- The application Ref 43/2567/13/F is dated 9 October 2013.
- The development proposed is the "Installation of single wind turbine with a 24.6m tower for agricultural use".
- On the information available at the time of making the direction, the following were the matters on which the Secretary of State particularly wished to be informed for the purpose of his consideration of the application:
  - 1) Its consistency with the development plan for the area;
  - 2) The extent to which the proposed development is consistent with Government policies for conserving and enhancing the natural environment, including those set out in section 11 of the *National Planning Policy Framework (Framework)*;
  - 3) The extent to which the proposed development is consistent with Government policies for conserving and enhancing the historic environment, including those set out in section 12 of the *Framework*;
  - 4) The extent to which the proposed development is consistent with Government policies for meeting the challenge of climate change including those set out in section 10 of the *Framework*;
  - 5) The extent to which the proposed development is consistent with the Written Ministerial Statement (WMS) on local planning made by the Secretary of State for Communities and Local Government on 18 June 2015;
  - 6) The extent to which the proposed development is consistent with the Department's amended online guidance on renewable and low carbon energy; and,
  - 7) Any other matters the Inspector considers relevant.

**Summary of Recommendation: The Application be Refused**

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**Procedural Matters**

1. The Inquiry sat on 6, 7 and 8 September. Accompanied site visits were undertaken on the afternoon of 7 September and unaccompanied site visits were carried out on 5 and 8 September.
2. No grid reference was provided with the application and various documents refer to slightly different co-ordinates. It was agreed at the Inquiry that the blue location B on the Turbine Analysis Drawing M256 01.07 (SX 277658 041910) is the proposed location.<sup>1</sup>
3. This report includes a description of the site and its surroundings, a summary of the planning policy background and the recent planning history of the site, the gist of the representations made at the inquiry and in writing, and my conclusion and recommendation. Lists of appearances and documents submitted at the Inquiry, a schedule of conditions to be attached if the SoS were minded to grant planning permission, and a glossary of abbreviations are attached as appendices.

**The Site and Its Surroundings**

4. The application site is an agricultural field towards the top of a hill. It lies approximately 690 metres from the nearest point of Frogmore and some 800 metres from the centre of the village. To the north, in a valley, is Winslade

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<sup>1</sup> Mr Hawes Landscape and Visual Impact Assessment App02

farmhouse and farm buildings. A mix of agricultural land and scrub lies to the east whilst agricultural land lies to the south. West of the site is a road that runs between Frogmore and South Pool.

5. The farm is within the South Devon Area of Outstanding Natural Beauty (AONB), and a range of landscape character areas (LCAs). There are some 21 heritage assets within 3.5 kilometres of the site. These are listed in a *Statement of Common Ground* (SCG).<sup>2</sup>

### **Planning Policy**

6. The SCG records that the only adopted development plan documents relevant to this case are the *South Hams Core Strategy* (CS)<sup>3</sup>, adopted December 2006, and the *Development Policies Development Plan Document* (DPD)<sup>4</sup>, adopted July 2010. The development plan contains no specific district target for the generation of electricity from renewable sources. All parties to the Inquiry agree that the WMS is a material consideration and that the transitional provisions within it apply.
7. Policies CS9, CS11, DP1, DP2, DP4 and DP6 are the most relevant in this case. CS11 requires development to reflect the need to plan for climate change whilst DP4 addresses the need for sustainable construction. CS9 generally reflects the aims of statutory requirements and policy in the *Framework* in relation to Landscape and the Historic Environment. DP2 relates to conserving or enhancing the Landscape Character of the area whilst DP6 requires the Historic Environment to be preserved or enhanced. DP1 seeks high quality design in all development.

### **Recent Planning History<sup>5</sup>**

8. The proposed development was granted planning permission, contrary to Officer's advice, on 14 May 2014. That permission was quashed by the High Court in a Consent Order dated 15 August 2014 due to an administrative error in the consultation procedure. The application was re-considered on 3 December 2014 when the Council resolved, again contrary to Officer's recommendation, to approve the application, subject to conditions to control noise emissions, turbine colour and the temporary nature of the permission. However, before permission was granted, the Secretary of State (SOS) called the application in.

### **The Proposal**

9. The proposed turbine, which would have three blades, would have a hub height of 24.5 metres, a tip height of 34.2 metres and a rotor diameter of 19 metres. The mast would be solid not trellised. Access would be through an existing gated field access and no change is proposed. The SCG notes that mitigation has been considered but none is proposed as the Applicant does not consider any to be required.

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<sup>2</sup> Doc 1

<sup>3</sup> Core Doc C1

<sup>4</sup> Core Doc C2

<sup>5</sup> Doc 1 Para 7.1

## The Case for South Hams District Council<sup>6</sup>

10. The Council adopted a neutral position at the Inquiry and its evidence was confined to explaining the provisions of the development plan. The Council focussed on matters 1 and 6 of those identified by the SoS in his call-in letter.
11. The Officer's report to Committee states "National Planning Policies clearly support the delivery of renewable energy developments" and refers to paragraphs 93, 97 and 98 of the *National Planning Policy Framework (Framework)*. The text on a slide presented to committee notes "Renewable energy delivery is in the wider public interest and a material planning consideration. The government does recognise that smaller scale turbines do make a valuable contribution to cutting greenhouse gas emissions".
12. Within the development plan the most relevant policies relating to renewable energy are CS Policy CS11 and DPD Policy DP4. These focus on other forms of development but indicate that there is a role to play in helping to maximise energy efficiency, creating opportunities for development of renewable energy and promoting sustainable development with low or zero carbon emissions.
13. The Council's Landscape Officer advised the Committee of his objection to the proposal due to its impact on the Salcombe Estuary LCA highlighting the relative absence of visible built human intervention in the landscape. The text on a summary slide from the presentation to Committee states "The landscape and visual impacts caused to the AONB in particular the impact on the landscape character of Frogmore Creek". Paragraph 115 of the *Framework* requires 'great weight' to be given to conserving landscape and scenic beauty". Consequently the report to Committee states that the proposal would be contrary to CS Policy CS9, DPD Policy DP2, and the provisions of the *Framework*.
14. The Senior Conservation and Design Officer told the Committee that in terms of visual amenity the impact on views from Molescombe Barn, House, and Farm and Winslade Court and Manor, was not great enough to substantiate a recommendation for refusal in its own right. However, in terms of the setting of heritage assets, particularly the Grade II Molescombe House and Bowl Barrow a Scheduled Ancient Monument (SAM) his opinion, and that of English Heritage (now Historic England), was that in the language of the *Framework* the impact would be 'less than substantial'.
15. Molescombe House is a high status house that dominates its landscape setting as it has done since its origins. The setting is a significant part of the character and significance of the house. The turbine, roughly 500-550 metres away from the house, would usurp its position as the dominating element in the setting causing 'less than substantial' harm.<sup>7</sup>
16. A similar 'less than substantial' harm would be caused to the significance of the Grade II listed Frogmore Lime Kilns. A range of other listed assets would be affected including a number of Grade I listed Churches. The magnitude of the impact on the significance of the Churches ranges from Moderate through Moderate-Low to Low.<sup>8</sup>

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<sup>6</sup> Mr Saward's Proof of Evidence, Doc 9

<sup>7</sup> Mrs Burley's App 5, Application Docs Tab 17

<sup>8</sup> Mrs Burleys Proof Section 8



17. In terms of the Bowl Barrow SAM, Historic England notes "The introduction of a wind turbine on the opposite side of the valley formed by Frogmore Creek is liable to have a moderately adverse effect on the setting of the barrow". The harm is assessed as less than substantial but Historic England notes that less than substantial does not equate to a view that any degree of harm is acceptable.<sup>9</sup>
18. The text on slides shown to Committee explains "Impact on Heritage Assets. 'Less than substantial' harm has been identified in relation to the Grade II listed building Molescombe House and the Scheduled Ancient Monument. 'Less than substantial' does not imply that the impact is acceptable. Where harm to a heritage asset has been identified there should be a strong presumption against approval in the planning balance". Public benefits were not considered to outweigh harm from the 'less than substantial' impact and so the proposal was considered by Officers as contrary to CS Policy CS9, DPD Policy DP6 and the provisions of the *Framework*.
19. Members were reminded that the local Frogmore and Sherford Parish Council supported the proposal whilst the neighbouring Stokenham Parish Council had raised no objection. The Planning Officer considered that it was a case of weighing any harm and benefits in the planning balance. After discussion, Members considered that the economic and public benefits of the proposal relating to long term sustainable farming, in addition to the public benefits of renewable energy stated in the *Framework*, outweighed the impacts on the AONB and heritage assets.
20. A number of conditions have been suggested should the SoS be minded to allow the Application.<sup>10</sup>

### **The Case for Mr D Hayward and Mr and Mrs Cornish (Rule 6 Parties)**

21. It is generally common ground that the development would cause 'less than substantial harm' to the listed Molescombe House and the SAM; would harm the landscape and natural beauty of the South Devon AONB; and, consequently would be contrary to the development plan for the purposes of S38(6) of the *Planning and Compulsory Purchase Act 2004*, due to the acknowledged breach of at least CS Policy CS9 and DPD Policies DP1 and DP2. The difference between the Parties is not whether there is any harm but the extent of the acknowledged harm with the Assessment for the Rule 6 Parties referring to substantial harm.
22. Neither the Applicant, nor any other supporters, have submitted expert evidence to contradict the landscape and visual amenity, and heritage evidence submitted on behalf of the Rule 6 Parties and in consultation responses. There is no evidential basis to support any different conclusions than those they have set out.

#### Landscape and Visual Impact

23. The Landscape and Visual Impact Assessment (LVIA) submitted with the application was not undertaken by a landscape expert and includes a number of shortcomings.

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<sup>9</sup> Application Docs Folder Tab 18

<sup>10</sup> Doc 9

24. In contrast, the Rule 6 Parties' LVIA concluded that the proposal would cause significant landscape and visual harm, including to the AONB. It would introduce an incongruous form within a highly sensitive, protected landscape, which would be seen as the most dominant visual form over a wide geographic area. The proposal, due to its elevation and height, would be seen above the ridge breaking the skyline. This would be in conflict with the 2014-2019 AONB Management Plan Policy Lan/P5 which states "The character of skylines and open views into, within and out of the South Devon AONB will be protected. Suitable alternatives to infrastructure responsible for visual intrusion will be sought together with improvements to reduce the visual impact of unsightly past development. Priorities include protection against intrusive energy generation..... infrastructure". Another threat to the AONB is identified at LanMan/F2 of the Management Plan which states "wind turbines... have the potential to damage the traditional agricultural landscape".
25. The Applicant's references to wind turbines allowed elsewhere in and around the AONB are answered by a change of approach in the Management Plan. The generally permissive approach in the 2009-2014 Plan has changed such that in the 2015-2019 version wind turbines are seen as threats to the AONB. The later Plan identifies the need to reduce and avoid repetition of the "unsightly past development". Similarly, the other turbines referred to also pre-date the WMS but in any event are smaller and less harmful than the current proposal. The objections from the AONB Unit support the Rule 6 Parties' case and its analysis should be given great weight.<sup>11</sup>
26. The magnitude of the impact would not be significantly reduced by limiting the permission to 25 years. It would last for a generation, as was noted in a number of recent appeal decisions, and the restriction should be given little weight. A Foales Leigh Farm decision raised by the Applicant was unreasoned, and did not address consistency with the other decisions, whilst the Court of Appeal in *Mordue* had the extent of an Inspector's duty to give reasons in heritage cases as a sole legal issue.<sup>12</sup>

#### Heritage

27. The most affected heritage asset would be the Grade II listed Molescombe House and the associated buildings and structures that are also listed.<sup>13</sup> These would be approximately 500-550 metres away from the proposed turbine. The house and its two large barns dominate the landscape but the turbine would dwarf them completely undermining that dominance.<sup>14</sup> The harm would be at the high end of the scale of 'less than substantial' harm, consistent with the view of the Council's own Conservation Officer<sup>15</sup> to whom Historic England deferred having flagged up Molecombe House as a matter of concern<sup>16</sup>.
28. The Grade II Frogmore Lime Kilns would also suffer a high degree of 'less than substantial' harm with the turbine intruding in the view of the opposite bank of Frogmore Creek. A wide range of other designated assets would also be affected

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<sup>11</sup> App Docs Tab 19

<sup>12</sup> Mr Graves App 13 para 53 and App 16 para 52, Mr Bryan's Apps pp101-102

<sup>13</sup> Mrs Burley's App 5

<sup>14</sup> Mrs Burley's Fig 12

<sup>15</sup> Mrs Burley's App 8

<sup>16</sup> Mrs Burley's App 6

to a lesser degree including a number of Grade I listed Parish Churches.<sup>17</sup> Undesignated heritage assets within the meaning of Framework paragraph 135 would also be affected, most significantly the AONB, Winslade Manor and Winslade Court. The effect both individually and cumulatively would weigh very heavily against the proposal.

### Planning Balance

29. It is acknowledged that there would be harm to the setting of a listed building and to the landscape and natural beauty of the AONB. These impacts are underpinned by S66(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* and S85 of the *Countryside and Rights of Way Act 1990* and as a matter of law must be given considerable importance and weight in the overall balance. The harm to the designated heritage assets require 'clear and convincing justification' founded on 'public benefits' whilst the harm to the AONB must be given great weight.<sup>18</sup> The onus is on the Applicant to justify a decision other than in accordance with the development plan. It is not suggested that the development plan is 'absent, silent or out of date' and the second bullet of the decision making part of *Framework* paragraph 14 is not engaged.
30. The environmental benefits of contributing towards the supply of renewable energy are not denied but carry only moderate weight. The output of the turbine is stated to be circa 146,051 kWh. At the time of the original application the farm's electricity usage was 300kWh a day, some 109,500 kWh a year. The Applicant's *Statement of Case* notes that this has now increased to 450 kWh a day, around 164,250 kWh a year. Moreover, due to recent planning permissions the electricity demand could be expected to increase and the consequent residual energy output would decrease. The majority of the turbine's output would serve the private interests of the farm and there would be little public benefit, if any.
31. In any event, the turbine does not need to be adjacent to the farm buildings as demonstrated by the Foales Leigh Farm case.<sup>19</sup> Indeed, the Applicant holds over 50 acres of land outside the AONB where a turbine could be connected to the grid without the same level of harm.<sup>20</sup>
32. Turning to alleged economic benefits, the *Agricultural Justification Statement* puts the benefit no higher than 'would help dramatically at reducing the farm's crippling electricity bill'<sup>21</sup> whilst Mr Perraton's Proof states that it would 'reduce costs'<sup>22</sup>. Reducing overheads is not a public benefit. The contribution to employment and the local economy would constitute public benefits but there is little 'clear and convincing' evidence as required by the *Framework*<sup>23</sup>. These therefore carry little weight.
33. In terms of employment there is little evidence that the family would sell or leave. Indeed, Mr Perraton's Proof states as much<sup>24</sup>. Similarly, there is little

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<sup>17</sup> Mrs Burley's Proof Section 8

<sup>18</sup> *Framework* paragraphs 132 and 134

<sup>19</sup> Mr Graves App 6

<sup>20</sup> Mr Graves Proof 9.1-9.10

<sup>21</sup> Core Doc Tab D1

<sup>22</sup> Mr Perratons Proof Para 4.2

<sup>23</sup> *Framework* Para 132

<sup>24</sup> Para 2.3

evidence that if the business were to discontinue another agricultural use of the farm would be unviable. This alleged benefit would also carry little weight.

34. Adverse impacts identified by many in the community, including one of the local Parish Councils and over 100 individual objectors<sup>25</sup> have not been addressed and the WMS also weighs against the grant of permission.
35. In terms of the Department's online guidance, this requires proposals to avoid harm to heritage assets and landscape designations as well as compliance with the WMS. This proposal fails on all counts and is therefore inconsistent with the online guidance on renewable and low carbon energy.
36. Although there would be some moderate benefits, they would not come close to outweighing the force of the statutory and policy considerations relating to heritage assets and the AONB.

### **The Case for Ian Bryan (Rule 6 Party)<sup>26</sup>**

37. Mr Bryan represented himself and stated that he has no professional qualifications pertinent to the subject of this Inquiry other than being a 'reasonable and informed' person. It was accepted in his closing that most of the points made in his Proof had been more 'cogently and expertly' presented by the witnesses called by the other Rule 6 Parties, Mr Hawes on landscape, Mrs Burley on heritage matters and Mr Graves on planning. Mr Bryan stated that they have very fully addressed the main issues that the SoS wished to be informed of. Consequently Mr Bryan did not repeat his evidence.
38. There was, however, one unique point raised by Mr Bryan relating to some of the representations of support submitted to the Council in 2013. The concern is that whilst Officers and Councillors are expected to adhere to the Nolan principles of behaviour in public life not everyone involved in the planning process might do likewise.
39. Examples where matters are not perfectly clear include: a Parish Councillor using a work, rather than a home, address; omitting 'farm' from the postal address; not using the public office title of Councillor; representations from a Councillor with a declared interest in the farm; representations from a close friend; representations from employees of the company acting as agent; and a representation from a company purporting to be an individual.
40. Whilst these matters in themselves might be trivial, the accumulation of instances give Mr Bryan concern that openness and transparency are being undermined. This could eventually jeopardise public trust in local government and the planning system.

### **The Case for Perraton Partners**

41. The Perraton family has farmed Winslade Farm for three generations and has no plans to sell or leave. The farm is mainly dairy with roughly 250 cows in continuous milk production and about another 140 not in production. The AONB depends on the agricultural community to shape and manage the land. However, UK agriculture is in decline with the dairy sector the worst hit. Profitability has

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<sup>25</sup> SCG Paras 6.8, 6.11

<sup>26</sup> Mr Bryan's Proof of Evidence and Opening and Closing Submissions

- fallen by at least 25% in the year to March 2016 due to falling milk prices, not increasing production costs. 5,000 farmers have left the industry in the last 11 years. The crisis in farming is a major threat to small to medium family farms.
42. Winslade Farm is just inside the AONB which covers a large area and is itself manmade beauty sustained by farming. The verdant pastures sustain stock and create employment directly and indirectly through agriculture sustaining local communities. The AONB reflects what has been before. Part of Winslade Farm was a quarry, leading to the construction of Molescombe House, but the quarry can now be used for other things and Molescombe House was at one time next to the Council tip. The lime kilns on the Creek might once have been regarded as anti-social. Without land use the AONB would be starved of life and income. The application is humble and would only be for 25 years unless renewed. Tourism is welcomed but is seasonal whilst agriculture is a significant supplier of work and income. Since the Application in October 2013 the farming business has spent approximately £450,000 with 25 local businesses within a 5 mile radius. The farm employs 5 full time employees and uses around 5 local contractors.
  43. Parish and District Councillors recognised the need for sustainable farming and do not want the area to stagnate forcing locals to leave. They accept the need for change so that agriculture can nourish the AONB they seek to protect. A number of examples demonstrate proposals allowed in the area inside and outside the AONB with one visible from the National Trust coast path. Members' decisions have been controversial in the short term but have not been wrong. Reference has been made to the cumulative effect but farmers are only trying to use natural resources for their own use. With milk consistently selling for less than the cost of production, sustainable sources of energy are needed to enable sustainable farming.
  44. Electricity is an expensive input on the farm used for milking machines, refrigerating milk and pumping water in large amounts to feed animals. Alternatives such as land mass and bio mass have been considered but the farm does not produce enough crops or wood to fuel a digester or boiler. Slurry does not create a lot of energy, around 100 tons of slurry would produce around the same amount of energy as one ton of wheat.
  45. There would be public gains from encouraging the rural economy, helping to reduce emissions, and by combating climate change which if unaltered would destroy what we seek to protect.
  46. Section 85(1) of the *Countryside and Rights of Way Act 2000* states "a relevant authority shall have regard to the purpose of conserving and enhancing the natural beauty of the Area of Outstanding Natural Beauty" whilst paragraph 115 of the *Framework* provides "Great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty which have the highest status of protection in relation to landscape and scenic beauty". Section 38(6) of the *Planning and Compulsory Purchase Act 2004* notes that regard is to be had to the development plan for the purposes of any determination unless material circumstances indicate otherwise. However, policies in the development plan, and the *Framework*, are contradictory and there is a need to balance them. Any adverse consequences of the proposal would be temporary and not as bad as the Rule 6 Parties claim. It would assist the rural economy and contribute to reducing

emissions. It would keep the AONB alive and protect its beauty. The balance could come down on the side of granting permission as the Council Members resolved to do.

47. Section 66(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* requires decision makers to "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". In this case it is a matter of siting and there would be no irreversible damage caused. Harm at its worst would be less than substantial and the assets are not as significant as claimed. The proposal could be approved. Reference was made to *Barnwell Manor* [2014]EWCA Civ 137, *Forge Field* [2014]EWHC 1895 and *Mordue* [2015]EWCA 1243. It is maintained that *Barnwell* is distinguished from this case as the listed building was Grade I with a garden open to the public and so a public benefit, whilst *Forge Field* related to a case where the harm would be irreversible. *Mordue* at paragraph 16 deals with the topic of a 25 year permission.
48. There has been a good deal of support, including from some who will have a direct view of the turbine if allowed. In terms of the WMS the heading 'local' should mean from someone in the proximity not someone from Totnes or London. The true measure is that the Parish Council has twice supported the application as did one neighbouring Parish and two District Councils. There is backing from the affected local communities.

### **Written and Oral Representations**

49. Those who wrote and spoke against the proposal generally raised the same issues as those experts that gave evidence on behalf of the Rule 6 Parties. They are not repeated here.
50. Similarly those supporting the proposal generally repeated the views expressed in Mr Perraton's farming statement. Conflicting matters need to be weighed to reach a decision. People cannot agree whether turbines are ugly or sleek modern items of plant. Some existing turbines are good examples and do not detract from the landscape. It is a working area not a retirement home or a theme park. The farming business provides for year round employment and supports the local economy. 50 years ago there were 10 farms south of the A379 now there are only 2. 94% of the population are represented by Frogmore and Sherford Parish Council that supported and Stokenham Parish Council which did not object compared to the 6% represented by South Pool Parish which objected. The wisdom of Solomon is needed to reach a decision but Members were swayed by Section 10 of the *Framework*.

## Inspector's Conclusions

[The references in square brackets are to earlier paragraphs in this report]

51. It is accepted that the proposal would be contrary to policies in both the development plan and the *Framework*. The Parties therefore agree that it is necessary to balance the harm which it is accepted would be caused to the landscape and AONB, and to heritage assets, against the public benefits of the proposal.<sup>[29]</sup>
52. A Statement, dated August 2014, by BHH Architects Limited was submitted by the Applicant and presented in chief. However, the document, which addresses both heritage and landscape matters, was withdrawn prior to being tested in cross examination. I have, therefore, given the Statement very little weight other than in respect of concessions made within the document. The Applicant did not submit any other evidence on heritage or landscape.

### Landscape and AONB

53. The Application site lies within the AONB which stretches from Plymouth Sound to just outside Dartmouth. Only a modest area of the AONB would be affected by the proposal but that argument could be repeated many times leading to a cumulative detrimental impact.<sup>[42]</sup>
54. The only landscape evidence submitted by the Appellant was withdrawn before it could be tested in cross examination. Consequently, the only expert professional evidence and advice is that on behalf of the Rule 6 Parties and the Council's Landscape Officer. A LVIA submitted with the Applicant's Statement, now withdrawn, does not appear to have been prepared using accepted methodology and does not include wireframe views. In contrast, the Rule 6 Parties LVIA has been prepared using accepted methodology.<sup>[13, 22, 23, 24, 46]</sup>
55. The photomontages in the Rule 6 Parties' LVIA are an aide memoir to views seen during the site visits. There is a relative absence of built structures in the landscape which would be eroded by the height of the proposed turbine and would be detrimental to the character of the Salcombe Estuary LCA. The proposal would introduce an alien element into its predominantly agricultural surroundings and would be dominant over a relatively wide area. It would be seen above the ridge on the opposite bank of Frogmore Creek to the lime kilns and it would break the skyline detrimental to the landscape character of the Creek. Policy Lan/P5 of the 2014-2019 AONB Management Plan states "The character of skylines and open views into, within and out of the South Devon AONB will be protected."<sup>[13, 24]</sup>
56. Reference has been made to wind turbines and other structures allowed in and around the AONB. However, there has been a change of approach in the AONB Management Plan. The 2009-2014 Plan had a generally permissive approach to development whereas the 2015-2019 Plan sees turbines as threats and refers to "unsightly past development". LanMan/F2 of the Management Plan states that "wind turbines... have the potential to damage the traditional agricultural landscape". The examples quoted also predate the WMS and are smaller and so less harmful than the proposal subject of this report. The examples would not justify allowing this application.<sup>[25, 43]</sup>

57. The proposal would be contrary to the aims of DPD Policy DP2, and CS Policy CS9 that broadly reflects the requirements of *Framework* paragraph 115. This requires that “great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty which have the highest status of protection in relation to landscape and scenic beauty”. This is reinforced by Section 85(1) of the *Countryside and Rights of Way Act 2000* that emphasises “a relevant authority shall have regard to the purpose of conserving and enhancing the natural beauty of the Area of Outstanding Natural Beauty” The harm to the AONB therefore attracts ‘great weight’ in the planning balance.<sup>[7, 13, 46]</sup>
58. It has been suggested that the permission be limited to 25 years to reduce the magnitude of the impact. However, even the limited period would last for a generation, a fact highlighted in a number of recent appeal decisions. Reference has been made to *Mordue* in relation to a 25 year permission. Whilst paragraph 16 of the judgement refers to a 25 year permission the sole legal issue in that case relates to an Inspector’s duty to give reasons in heritage cases.<sup>[26, 47]</sup>

#### Heritage Assets

59. Turning to heritage assets, as with the landscape evidence the heritage evidence submitted by the Appellant was withdrawn before it could be tested in cross examination and the only expert professional evidence and advice on heritage is that on behalf of the Rule 6 Parties, the Council’s Senior Conservation and Design Officer, and the consultation responses from Historic England. Historic England notes that the assessment submitted with the application does not fully follow its guidance on settings of listed buildings in terms of significance or the impact on that significance.<sup>[22]</sup>
60. A thorough assessment of the significance of Molescombe House is set out in the Council’s Conservation Consultation Response and the Heritage Appraisal and Impact Assessment prepared for the Rule 6 Parties whilst the Bowl Barrow is considered by Historic England. I agree with the Council, Historic England and the Rule 6 Parties that Molescombe House and the Bowl Barrow would be the main historic assets to suffer damage to their settings. The other assets considered would suffer much less detrimental impact. Notwithstanding the views of the heritage expert for the Rule 6 Parties I consider the harm would be less than substantial but would reiterate the comment of Historic England, and others, that ‘less than substantial’ does not mean insignificant.<sup>[15, 16, 17, 28, 27]</sup>
61. In terms of development plan policies, CS Policy CS9 reflects the objectives of statutory requirements, and the policy in the *Framework* in relation to the historic environment, whilst DPD Policy D6 requires that the historic environment be preserved or enhanced. The statutory requirement is set out in Section 66(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990*. This requires decision makers to “have special regard to the desirability of preserving the building or its setting or any features of special architectural interest which it possesses”.<sup>[7, 47]</sup>
62. There would be no irreversible damage caused by the proposal and in the terminology of the Framework the harm would be less than substantial. However such damage in this case would be significant and would weigh heavily in the planning balance.<sup>[28, 47]</sup>



## Public Benefits

63. The family has farmed Winslade Farm for three generations but farming is in crisis with small to medium family farms at particular risk. Many farmers have left the industry and profitability has fallen at least 25% in the year to March 2016. Nevertheless there are no plans to sell or leave. Even if the family did sell up there is no evidence that another agricultural use of the farm would be unviable.<sup>[33, 41]</sup>
64. A lot of electricity is used on the farm and is an expensive commodity. Alternatives have been considered but the farm does not produce enough crops or wood to fuel a digester or boiler, and slurry does not create a lot of energy. Whilst land is held outside the AONB it is the land within the AONB where the power is required and where it would be most efficiently generated.<sup>[31, 44]</sup>
65. The turbine would produce around 146,051 kWh. At the time of the original application the farm used some 109,500 kWh. This has since increased to around 164,250 kWh and further planning permissions might increase this again. The majority of the turbine's output would therefore serve the private interests of the farm with little, if any, public benefit.<sup>[30]</sup>
66. Turning to economic benefits it is stated that the proposal "would help dramatically at reducing the farm's crippling electricity bill" and "reduce costs". Important as this might be, reducing overheads would be a private, not a public, benefit.<sup>[32]</sup>
67. In terms of employment, tourism is seasonal whereas agriculture is a year round employer. The farm employs 5 full time employees and 5 local contractors. There would be public benefits from supporting the local economy, £450,000 has been spent with 25 local businesses since the original application. The proposal would also help to reduce emissions and combat climate change which threatens the landscape it is sought to protect.<sup>[42, 45]</sup>
68. Agriculture sustains the beauty of the AONB creating employment and sustaining local communities. Change can be accommodated. Part of the farm used to be a quarry, which led to the building of Molescombe House, but is now used for other things. In turn, Molescombe House used to be next to the Council's tip. The lime kilns on Frogmore Creek might have been considered an anti-social use in the area. Local Councillors do not want the area to stagnate and accept the need for change. They recognise the need for sustainable farming<sup>[42, 43]</sup>
69. The development would comply with the objectives of planning for climate change in CS Policy CS11 and sustainable construction in DPD Policy DP4. The former reflects the aim of *Framework* paragraph 93. Paragraph 98 states that decision makers should: "not require applicants for energy development to demonstrate the overall need for renewable or low carbon energy and also recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions".<sup>[11, 12]</sup>
70. In this case, although the proposed turbine would provide a valuable contribution, the overall public, as opposed to private, benefits would be modest.

## WMS and Departmental Guidance

71. In respect of the Department's on-line Guidance, this seeks avoidance of harm to heritage assets and landscape designations, as well as compliance with the WMS. The proposal would be inconsistent with the on-line Guidance on renewable and low carbon energy.<sup>[35]</sup>
72. In terms of the WMS there is a difference between local councillors, who predominantly support, or at least do not object to the turbine, and individuals, the majority of whom object to the proposal. I do not consider that the views of one group carry more weight than another. In this case there is no consensus and it cannot be said the proposal has the backing of the affected local community. The proposal would not, therefore, meet the transitional arrangements in the last paragraph of the WMS. <sup>[19, 34, 48]</sup>

## Other Matters

73. Whilst I might share Mr Bryan's concerns that a lack of openness and transparency could eventually jeopardise public trust in local government and the planning system, I can only take every submission, be it in support of or objecting to a proposal, at face value.<sup>[38, 39, 40]</sup>

## Planning Balance

74. Section 38(6) requires decision makers to start with the development plan and then consider whether there are any material considerations. In this instance the Framework, WMS and Guidance findings support, or are consistent with, my conclusions on the development plan. The moderate public benefits would be clearly outweighed by the great weight to be given to the harm to the AONB and the significant 'less than substantial' harm to the settings of a number of heritage assets, but predominantly Molescombe House and the Bowl Barrow SAM. The proposal does not comply with the development plan taken as a whole and there are no material considerations that would warrant a decision other than in accordance with the development plan. Even if the transitional arrangements were met I consider that the harm to the AONB and the settings of heritage assets would be the determining issues in this case.

## Conditions

75. A number of conditions have been suggested for attaching if the SoS was minded to allow the proposal. Suggested condition 1 is the standard time condition and should be attached. The duration of the permission is the subject of suggested conditions 2, 3 and 4. These limit the permission to 25 years and seek the removal of the turbine within a year of the expiry of the 25 years or a failure to generate electricity for a continuous period of 12 months. These would be necessary in the interests of safety and amenity once the turbine is redundant.<sup>[20]</sup>
76. Suggested conditions 5 to 10 relate to clarifying the approved drawings, the location of the turbine, subject to micro siting, details of colour and finish and the preclusion of signs or logos, confirmation of the size and type of turbine, requiring cabling to be run underground and the preclusion of permanent illumination. All these would be necessary in the interests of clarity and visual amenity.

77. The construction period is covered by suggested conditions 11-15. Condition 11 would require a Construction Management Statement, conditions 12 and 13 require details of the access to be approved and implemented prior to any development taking place. Details of works within the public highway would be required by suggested condition 14 whilst condition 15 would control working hours. These conditions are necessary to safeguard the environment and minimise disturbance to local residents. It has been suggested that no alterations are required to the existing access but it would be unusual. I consider that conditions 12 and 13 would be necessary to reduce impact on the public highway.
78. Suggested condition 16 would provide for protection of flora and fauna and should be attached. Finally, conditions 17 to 20 seek to prevent nuisance due to shadow flicker, TV interference and noise and are all required to safeguard residential amenity.

**Recommendation**

79. I recommend that the application be refused.

*Ken Barton*

INSPECTOR

## **APPENDIX 1**

### **APPEARANCES**

#### **FOR SOUTH HAMS DISTRICT COUNCIL:**

Philip Robson of Counsel

He called

Mr Saward MRTPI, CEnvironmentalist, MLI, AInstEnvMan and Assessment	Planning Consultant
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#### **FOR MR HAYWARD, MR AND MRS CORNISH (Rule 6 Parties):**

Charles Banner of Counsel

He called

Mr Hawes BA(Hons) DipLA MLI	Director Meiloci Ltd Landscape Architects,
Mrs Burley MA, DipConsArch, MRTPI,IHBC	Director Heritage Vision Limited
Mr Graves CTP	Operations Director PCL Planning Ltd

#### **MR BRYAN (Rule 6 Party):**

Representing himself

#### **FOR PERRATON PARTNERS:**

David Hassall of Counsel

He called

Mr A Perraton BA(Hons) DipArch RIBA	Gave evidence in chief but withdrew evidence before cross examination
Mr E Perraton	Adopted his fathers statement

#### **INTERESTED PERSONS:**

Cllr Brazil

Mrs McDonald

Ginny Dawson

Derek Waring

Mr Turner

## **APPENDIX 2**

### **DOCUMENTS SUBMITTED AT THE INQUIRY**

- 1 Statement of Common Ground signed by all 4 main parties
- 2 Council's Opening Submissions
- 3 Opening Statement on behalf of Mr Hayward, and Mr & Mrs Cornish (Rule 6 Parties)
- 4 Opening Statement by Mr Bryan (Rule 6 Party)
- 5 Ring Binder Of Core Documents
- 6 Core Strategy December 2006
- 7 CV of Alex Perraton
- 8 RIBA Code Of Professional Conduct
- 9 Suggested Conditions
- 10 Council's Closing Submissions
- 11 Closing Submissions on behalf of Mr Hayward, and Mr & Mrs Cornish (Rule 6 Parties)
- 12 Closing Statement by Mr Bryan (Rule 6 Party)
- 13 Applicants Closing Submissions
- 14 Itinerary for Accompanied Site Visits

## **APPENDIX 3**

### **GLOSSARY**

AONB	Area of Outstanding Natural Beauty
CS	South Hams Core Strategy
DPD	Development Policies Development Plan Document
Framework	National Planning Policy Framework
LCA	Landscape Character Area
LVIA	Landscape and Visual Impact Assessment
SAM	Scheduled Ancient Monument
SCG	Statement of Common Ground
SoS	Secretary of State
WMS	Written Ministerial Statement 18 July 2015

## **APPENDIX 4**

### **CONDITIONS TO BE ATTACHED SHOULD THE SoS BE MINDED TO ALLOW THE APPLICATION**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) This planning permission shall be for a period not exceeding 25 years from the date electricity is first generated from the wind turbine ("First Generation Date"). Written Confirmation of "First Generation Date" shall be submitted to the Local Planning Authority no later than 28 days following the event.
- 3) Not later than 12 months before the expiry of the 25 year period referred to in condition 2, a decommissioning and site restoration scheme shall be submitted to the Local Planning Authority for approval in writing. The scheme shall include:
  - a) provision for the removal of the wind turbine and associated above ground equipment, and foundations to a depth of 0.5 metres below ground level;
  - b) proposals for the management and timing of any works;
  - c) a traffic management plan;
  - d) a site environmental management plan to include details of measures to be taken to protect wildlife and habitats; and
  - e) details of all restoration measures.

The approved scheme shall be fully implemented prior to the expiry of the 25 year period referred to in condition 2 or the approval of the scheme by the Local Planning, whichever is the later.

- 4) If the wind turbine hereby permitted fails to generate electricity for a continuous period of 12 months, a scheme shall be submitted to the Local Planning Authority for 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 either a programme of remedial works where repairs to the turbine are required, or a programme for the removal of the turbine. The programme for the removal of the turbine shall include:
  - a) provision for the removal of the turbine and associated above ground equipment, and foundations to a depth of 0.5 metres
  - b) proposals for the management and timing of any works;
  - c) a traffic management plan;
  - d) a site environmental management plan to include details of measures to be taken to protect wildlife and habitats; and
  - e) details of all restoration measures.

The scheme shall thereafter be implemented in accordance with the approved details and timetable.

- 5) Subject to condition 6 the development hereby permitted shall take place in accordance with the terms of the submitted application and drawings

(unless any additional drawings are submitted to and approved in writing by the Local Planning Authority in accordance with a condition attached to this planning permission).

- 6) The wind turbine hereby permitted shall be erected at point 'B' (coordinates SX 277658 041910) as shown on the MeiLoc 'Turbine Location Analysis' plan (Ref M256 01.07.) dated April 2016.

Notwithstanding the terms of this condition, but subject to the restrictions set out below, the turbine hereby permitted may be micro-sited within 5 metres of the siting set out in this condition. The turbine hereby permitted shall not be micro-sited in any direction so that the separation distance between each turbine blade tip and the nearest feature of ecological interest (which shall mean any tree, hedgerow or open land drain) within the site to the turbine is less than 50m as measured in accordance with Natural England's Technical Information Note TIN051: Bats and onshore wind turbines *Interim* guidance (Third edition 11 March 2014).

A drawing showing the position of the turbine and any tracks as constructed on the site shall be submitted to the Local Planning Authority within 28 days of commencement of development.

- 7) No development shall commence on site until details of the finish and colour of the turbines and any external transformer units has been submitted to and approved in writing by the Local Planning Authority. No name, sign, symbol or logo shall be displayed on any external surfaces of the turbines or any external transformer units other than those required to meet statutory health and safety requirements. The development shall thereafter be carried out and operated in accordance with the approved details.
- 8) The wind turbine shall have 3 blades which rotate in the same direction. The overall height of the turbine shall not exceed 34.2 metres to the tip of the blades when the turbine is in the vertical position, as measured from original natural ground conditions immediately adjacent to the wind turbine base.
- 9) All cabling between the wind turbine and the control building or transformer shall be laid underground.
- 10) There shall be no permanent illumination on the site other than lighting required during the construction period (as approved through the CMS referred to in condition 11, lighting required during planned or unplanned maintenance or emergency lighting).
- 11) No development shall commence on site until a Construction Method Statement ("CMS") has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the construction of the development shall be carried out in accordance with the approved CMS. The CMS shall address the following matters:
- a) A Traffic Management Plan (including, but not limited to, details of the route to be used by construction vehicles to access the site);
  - b) Details of the phasing of all construction works;
  - c) Details of the construction and surface treatment of all hard surfaces and tracks;



- d) Details of the proposed storage of materials and soils and disposal of surplus materials;
  - e) Dust management;
  - f) Details of the proposed temporary site compound for storage of materials and machinery, including areas designated for car parking;
  - g) Temporary site illumination during the construction period;
  - h) Disposal of surplus materials;
  - i) Details of the methods to be adopted to reduce the effects of noise occurring during the construction period in accordance with BS5228.
- 12) No development shall commence until details of means of vehicular access, including any associated visibility splays, has been submitted to and approved in writing by the Local Planning Authority. The access details shall include a swept path analysis to demonstrate that vehicles including those associated with the construction of the turbine, can be accommodated safely within the public highway, and that vehicles can manoeuvre in and out of the site.
- 13) No development shall commence until the construction of the access into the site and the creation of associated visibility splays has been carried out in accordance with the approved plans. The approved access and visibility splays shall be retained thereafter.
- 14) No development shall commence on site until a scheme has been submitted to and approved in writing by the Local Planning Authority detailing any works required within the public highway to enable the construction of the development. The scheme shall include:
- a) Details of pre and post-construction condition surveys of all relevant roads;
  - b) Detailed geometric and construction plans for all works to relevant roads;
  - c) Track plots showing how all vehicles shall manoeuvre within the public highway;
  - d) Provision of any new kerbs, edging, drainage, signs and lining required;
  - e) Details of any strengthening required to existing embankments; and
  - f) Details of the removal and reinstatement of any highway structures and signs. The scheme shall be implemented as approved.
- 15) Construction work shall only take place on the site between the hours of 0800-1800 hours Monday to Friday (inclusive) and 0900 – 1200 hours on Saturdays with no such work on a Sunday or Public Holiday. Works outside these hours shall only be carried out in the case of an emergency, including turbine erection and works delayed due to the weather, provided that the Local Planning Authority is notified by telephone and in writing as soon as reasonably practicable (and in any event within 2 working days) following the emergency first being identified. Such notification shall include both details of the emergency and any works carried out and/or proposed to be carried out.

- 16) No vegetation removal or ground clearance shall take place between 1 March and 30 September unless a suitably qualified and independent ecologist has first confirmed in writing to the Local Planning Authority that appropriate measures are in place to ensure that no species protected under Schedule 1 of the Wildlife and Countryside Act 1981 as amended will be harmed.
- 17) No development shall commence until a scheme for the avoidance of shadow flicker at any residential dwelling (defined as a building within use Classes C3 and/or C4 of the Town and Country Planning (Use Classes) Order (as amended) which is lawfully existing or has planning permission at the date of this permission has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented as approved.
- 18) No development shall commence until a scheme providing for the investigation of any interference to television signals by the operation of the development and for the remediation of any interference caused by the operation of the development has been submitted to and approved in writing by the Local Planning Authority. The scheme (which shall be implemented as approved) shall provide that complaints from users of television signals in the area may be made either to the developer or to the Local Planning Authority, that complaints made to the developer shall be notified to the Local Planning Authority, and that complaints must be made within 12 calendar months of the First Export Date.
- 19)
  - 1) The rating level of noise from the wind turbine (including the application of any tonal penalty set in accordance with ETSU-R-97) shall not exceed 35 dB LA90 (10 mins) at wind speeds up to 10 metres per second at standardised height of 10 metres, when measured within any amenity areas between 3.5 and 20 metres from the façade of any dwelling.
  - 2) Where the occupiers of the affected dwelling(s) have a financial interest in the operation of the turbine(s), a level of 45dB (A) ( $L_{A90(10min)}$ ) shall apply when measured within any amenity areas between 3.5 and 20 metres from the façade of the dwelling.
  - 3) The wind turbine operator shall continuously log power production, wind speed and wind direction, all in accordance of ETSU-R-97 Guidance Note 1(d). These data shall be retained for a period of not less than 24 months. The operator shall provide this information in the format set out in Guidance Note 1(e) to the Local Planning Authority on its request, within 14 days of receipt in writing of such a request.
  - 4) Following the receipt of a justified complaint (as determined and confirmed by the Local Planning Authority (LPA) following receipt from complainant(s) of noise diary sheets detailing incidents of noise from the wind turbine and the impact on the complainant over a four week period (this period can be reduced depending on the length and recurrent nature of the noise)) relating to wind turbine noise associated with the wind turbine permitted under this permission, the wind turbine operator shall undertake the following actions:
    - a) The wind turbine operator shall at its expense, within 21 days or such longer period as approved by the LPA, employ an independent consultant approved in writing by the LPA to undertake an assessment

of the wind turbine noise in accordance with the requirements of the LPA.

b) The independent noise consultant shall follow procedures, approved in writing by the LPA prior to the commencement of the consultant's investigations, and thereafter the wind turbine operator shall provide to the LPA the independent consultant's assessment and conclusions regarding the said noise complaint, including all calculations, audio recordings and the raw data upon which those assessments and conclusions are based. Such information shall be provided within 60 days of the date of the written request of the LPA unless otherwise extended in writing by the LPA.

c) Should the complaint relate to an audible tone or should the assessment identify an audible tone from the operational turbine, a penalty shall be added to the measured sound levels in accordance with ETSU-R-97. This section applies where no tone has been identified at the planning stage and no tonal penalty was applied to the turbine.

d) In the event that the results of the above measurements indicate that the specified noise limits have been or are being exceeded at any dwelling then, within 21 days of notification in writing of this by the Local Planning Authority, the operator shall submit in writing to the LPA for written approval:

- i) a scheme of noise control measures to achieve compliance with the noise levels outlined in conditions 1 and 2 above;
- ii) a timetable for implementation of the noise control measures;
- iii) a programme of monitoring to demonstrate the efficiency of the noise control measures.

The noise control measures will be implemented and the monitoring undertaken in accordance with the scheme and timetable approved in writing by the LPA.

5) In the event that an alternative turbine to that contained in the submitted noise assessment (Endurance E-312) is chosen for installation, then development shall not take place until a new desktop site specific noise assessment of the proposed turbine has been submitted to and approved in writing by the Local Planning Authority.

- 20) In the event that the assessment submitted to the Local Planning Authority by the wind turbine operator pursuant to condition 19 reveals a breach of the operational noise limits set out in condition 19, the wind farm operator shall, within 1 month of the date of submission of the aforementioned assessment, submit a scheme containing a proposal for the remediation of the aforementioned breach for the Local Planning Authority's written approval. The proposal will be implemented by the wind turbine operator in accordance with the timescales contained within the approved scheme, which shall also contain a requirement on the wind turbine operator to report to the Local Planning Authority on the effectiveness of the remediation undertaken.



## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS**

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

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

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

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

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

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

### **SECTION 4: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.