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## Appeal Decision

Inquiry opened on 22 July 2014

Site visits made on 19 May, 31 July, 1 August and 30 October 2014

**by Jessica Graham BA(Hons) PgDipL**

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

**Decision date: 7 January 2015**

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**Appeal Ref: APP/C1435/A/13/2208526**

**Land off Shepham Lane, North of A27, Polegate, East Sussex BN24 5BT**

- 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 Regeneco Ltd against the decision of Wealden District Council.
  - The application Ref WD/2013/0346/MEA, dated 18 February 2013, was refused by notice dated 9 May 2013.
  - The development proposed is the erection of three wind turbines; on-site access tracks; temporary site access from the A27; site access from Hailsham Road; one site sub-station and control building, and on-site underground cabling.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of three wind turbines; on-site access tracks; temporary site access from the A27; site access from Hailsham Road; one site sub-station and control building, and on-site underground cabling on land off Shepham Lane, North of A27, Polegate, East Sussex BN24 5BT in accordance with the terms of the application, Ref WD/2013/0346/MEA, dated 18 February 2013, and subject to the 27 conditions set out in the Schedule attached to this Decision Letter.

### Procedural matters

2. The proposed development involves the installation of three 115m high wind turbines and associated infrastructure. A previous application for five wind turbines on this site, which was accompanied by an Environmental Statement ("the 2011 ES"), was withdrawn shortly before its determination in July 2012. The subsequent application for three wind turbines, which is now the subject of this appeal, was accompanied by the 2011 ES and also a number of additional documents addressing the effects of reducing the proposed number of turbines from five to three ("the 2013 ES Addendum").
3. On 19 May 2014 I held a pre-inquiry meeting, the purpose of which was to consider the arrangements for the inquiry itself. Representatives of both main parties were present. There was no discussion at that meeting of the merits or otherwise of the proposed development.
4. The inquiry opened on 22 July and also sat on 23, 24, 25, and 30 July 2014.
5. In the course of the inquiry it became clear that neither the 2011 ES nor the 2013 ES Addendum included information on the potential cumulative impacts of the current proposal and the recently consented Rampion offshore wind

farm. I therefore issued a direction, pursuant to Regulation 22 of the EIA Regulations<sup>1</sup>, that Further Environmental Information (FEI) be supplied, to enable an assessment of the incremental cumulative landscape and visual impacts, and the sequential cumulative impact on the South Downs Way.

6. I adjourned the inquiry to allow time for the FEI to be compiled and subsequently advertised for a 21 day consultation period, and for the main parties then to submit further evidence relating to the FEI, in accordance with an agreed timetable. This was duly done. Closing submissions were also exchanged in writing in accordance with the agreed timetable, and I closed the inquiry on 21 October 2014.
7. I am satisfied that the information contained in the 2011 ES, the 2013 ES Addendum, the FEI, and the further evidence I heard at the inquiry on a wide range of environmental matters, together represents the necessary environmental information for the purposes of the EIA Regulations. I have taken this information into account in determining this appeal.
8. I made accompanied site visits to the appeal site, parts of the surrounding area, a number of residential properties and various agreed viewpoints (the itinerary is set out at ID 30) on 31 July. I also made extensive unaccompanied site visits on 19 May and 1 August and, in the light of the FEI, on 30 October 2014.

## **Main issue**

9. The main issue in this appeal is the effect that the proposed development would have upon the character and appearance of the area. This encompasses its impact on views to and from the South Downs National Park and the Pevensey Levels.

## **Reasons**

### *The Policy context*

10. The Development Plan for the District of Wealden consists of saved Policy NRM6 of the Regional Spatial Strategy (which concerns the Thames Basin Heaths Special Protection Area, and is agreed not to be relevant to this appeal); the saved policies of the Wealden District Local Plan adopted in 1998 ("the Local Plan"); and the Wealden District (Incorporating Part of the South Downs National Park) Core Strategy Local Plan adopted in 2013 ("the Core Strategy").
11. The Council's Refusal Notice cited perceived conflict with saved policies of the Local Plan. However, the appellant contends that the Local Plan contains no policies that are relevant to this proposal or, alternatively, that if there are relevant policies, they are out of date.
12. Given that saved Policy EN1 of the Local Plan refers specifically and explicitly to "...renewable energy [and waste management] proposals..." I do not consider it can rightly be said that, as regards proposals for renewable energy development, the Development Plan is "silent" (in the terms of the NPPF) or contains "no policies relevant to the application" (in the terms of the Core Strategy).

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<sup>1</sup> The Town and Country Planning (Environmental Impact Assessment) Regulations 2011

13. As to whether saved Policy EN1 should be considered out of date, the Council drew my attention to the *Bloor Homes*<sup>2</sup> judgment, which held that if a Development Plan does contain "relevant policies" these may have been overtaken by things that have happened since it was adopted, either on the ground or in some change in national policy, or for some other reason, so that they are now "out-of-date".
14. The Local Plan was adopted in 1998, and so pre-dates the significant change in national policy effected by the introduction of the NPPF in 2012. Footnote 17 to paragraph 97 of the NPPF explains that in determining applications, the approach set out in the Overarching National Policy Statement for Energy should be followed: this advises, at paragraph 5.9.12, that it is necessary to "judge whether any adverse impact on the landscape would be so damaging that it is not offset by the benefits (including need) of the project".
15. Local Plan Policy EN1 does not take this "costs/benefits" approach. It does not set out any measures against which the impacts of renewable energy development proposals may be assessed, or give any other indication as to how the extent to which such impacts might be beneficial, or adverse, should be determined in the particular circumstances of the district of Wealden. It simply states that the Council will pursue sustainable development, having regard to the principles contained in government guidance.
16. The Council contends that a policy can hardly be inconsistent with government guidance when the text of the policy itself cross-refers to having regard to the principles of that guidance. That is a fair point, but while such a policy may have been a helpful inclusion in a Local Plan prior to the NPPF, the situation is very different now. The Ministerial Foreword to the NPPF explains that over a thousand pages of national policy have been replaced with around fifty, "...allowing people and communities back into planning", and the first paragraph of the NPPF itself explains that it *provides a framework within which local people and their accountable councils can produce their own distinctive local and neighbourhood plans, which reflect the needs and priorities of their communities*.
17. There is, therefore, now a clear expectation that rather than simply refer back to government guidance, Local Plan policies should set out the specific criteria that will be applied to the assessment of renewable energy proposals in their area. Local Plan Policy EN1 does not do that, and as a consequence, is out of date. To the extent that Policy GD2 of the Local Plan seeks to place a blanket restriction on development outside development boundaries, without reference to specific criteria against which renewable energy might be assessed as constituting an exception, that too is out of date. That being so, Core Strategy Policy WCS14 applies: it states that where relevant policies are out of date at the time of making the decision, planning permission will be granted unless material considerations indicate otherwise, taking into account whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.
18. The Council argues that since Core Strategy Policy WCS14 is clearly intended to replicate the guidance set out in paragraph 14 of the NPPF,

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<sup>2</sup> *Bloor Homes Ltd v SSCLG* [2014] EWHC 754 (Admin)

judgments as to the correct interpretation of paragraph 14 (specifically, the findings of Lang J in the case of *William Davis*<sup>3</sup>) should also be applied to the interpretation of Policy WCS14. I am not persuaded by that argument. The text of Policy WCS14 was carefully formulated by the Council in the light of NPPF guidance, scrutinised at the Examination in Public of the Core Strategy, and found sound. The extent to which the correct interpretation of the NPPF's "presumption in favour of sustainable development" has been (and may well continue to be) the subject of further consideration by higher authorities does not, in my view, have any bearing on the straightforward interpretation and application of this adopted Development Plan policy.

19. It is important to note that, as the appellant accepts, the application of Policy WCS14 does not mean that other relevant Development Plan policies should simply be disregarded. The extent to which the proposal does or does not comply with their requirements will still be a key component in determining whether or not it should be permitted.
20. The government's Planning Practice Guidance (PPG), issued in March 2014, is also a material consideration. The section on "renewable and low carbon energy" refers to the advice in the NPPF that all communities have a responsibility to help increase the use and supply of green energy, and explains that this does not mean that the need for renewable energy automatically overrides environmental protections and the planning concerns of local communities. It goes on to note that local topography is an important factor in assessing whether wind turbines could have a damaging effect on landscapes, advising that their impact can be as great in predominantly flat landscapes as in hilly or mountainous ones.

*The effect on the character and appearance of the area*

21. The appeal site is an area of agricultural land on the northern side of the A27 Polegate by-pass. It is part of the lowland landscape between the more elevated areas of the High Weald to the north-east, and the South Downs to the south-west. This lowland area of landscape, known as the Pevensey Levels, runs from the coast at Eastbourne inland towards Hailsham and Lewes. The flat landscape underlying the appeal site forms the southernmost part of Glynleigh Level, which in turn forms the western part of the Pevensey Levels. It is crossed by a large number of drainage ditches and watercourses.
22. Clearly, the erection of three 115m high wind turbines on the appeal site would have significant and wide-ranging impacts on the surrounding landscape. This is recognised in national planning guidance: the government's Overarching National Policy Statement for Energy observes that "the scale of such projects means that they will often be visible within many miles of the proposed infrastructure." It also notes that "the fact that a proposed project will be visible from within a designated area should not itself be a reason for refusing consent". What is at issue is whether any adverse impact on the landscape would be so damaging that it would not be offset by the benefits of the proposed development.
23. The Council identified the two areas of concern as views from the South Downs National Park, and views from the Pevensey Levels.

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<sup>3</sup> *William Davis v SSCLG* [2013] EWHC 3058 (Admin)

### The Pevensey Levels

24. A number of landscape character assessments, undertaken at national and local level, have identified the defining characteristics of the Pevensey Levels as being a low-lying tract of largely reclaimed wetland, actively maintained by purpose-built drainage systems and river floodplain improvements. It is a predominantly open landscape, with extensive grazed wet meadows and some arable fields with characteristic dykes, wetlands and wide skies. The open windswept feel is further enhanced by the scarcity of trees and hedges in the landscape. The fragmented pattern of settlement reflects the land reclamation undertaken, with isolated farmsteads occupying some of the higher topographical "eyes" within the Levels. While the Levels do not benefit from any formal recognition of landscape value, their openness and the patchwork of fields created by the extensive system of drains is distinctive.
25. The appeal site is situated at the edge of the Levels, to the south of Hankham Ridge and here the character of the landscape is subject to urban influences, such as the built development of Polegate, the A259 and busy A27, and pylons with overhead power lines. While the eastern part of the Pevensey Levels has more open views across to the coast, with limited direct views to the South Downs scarp, there are direct and uninterrupted views from this western part of the Levels towards the scarp, which forms a distinctive backdrop.
26. The proposed wind turbines would be a distinctly modern form of development. However, it is material to note that historically, the Pevensey Levels were characterised by a number of windmills, powering pumps to keep the land from flooding. Some windmills still remain, and the image of a windmill features on a variety of locational signs in the area. Clearly, the wind turbines would be structures of vastly greater scale than the earlier windmills. But against the background of this historic use of windpower to keep the land from flooding, in the light of the current environmental threat posed by climate change, and in the context of this wide, open landscape where the trees are few and windswept, there would be a certain functional and visual logic to their presence, harnessing energy from the wind.
27. The large scale of the landscape, its openness and wide skies, would in my view enable this particular development proposal to be accommodated without harmfully undermining its openness or sense of remoteness, and without obscuring the distinctive pattern of fields and ditches. I therefore find that the proposed development would not conflict with the aims of Local Plan Policy EN11, which seek to ensure that development proposals within the Coastal Levels conserve its generally open and exposed landscape character.
28. From locations to the north-east of the appeal site, the proposed wind turbines would be seen against the backdrop of the South Downs scarp. The hub height would be below the skyline of the ridge, but from some viewpoints the blades of the proposed turbines would project above it. The Council has expressed concern that the presence of the turbines would disrupt the sense of scale and perception of the Downs that is experienced from within the landscape of the Levels, drawing in the overall sense of openness, and that the backdrop of the scarp would emphasise the size of the proposed turbines more than would a backdrop of open sky.

29. I am not convinced that this would be the case. I saw at my site visit that in views from this part of the Levels, the South Downs scarp is clearly distinguishable as a distinctive but distant element of the landscape, unconnected with the foreground and middle ground of the Levels themselves, and of a very different character in landscape terms. It would be evident in such views that the proposed turbines were set within the Pevensy Levels, and would be a component of this lowland landscape, rather than being associated with the elevated ground of the Downs.
30. It is fair to note that the considerable height of the turbines, and their moving blades, would draw the eye in a way that existing static infrastructure, such as the electricity pylons that would be seen in the same views, does not. However, the turbines would be slender structures and spaced well apart, such that they would be visually permeable in terms of continuing views through and beyond them to the distant escarpment of the Downs. The dramatic visual contrast between the height of that scarp, some 190m AOD, and the much lower-lying landscape of the Levels, which is only just above sea level, would remain easily appreciable.
31. As the appellant accepts, the proposed turbines would be visually prominent in local views up to 4 kilometres away. From public viewpoints beyond this range, the relatively compact cluster of three wind turbines would be a small element of the panoramic views available over the low-lying landscape of the Levels, in contrast with the extensive views of the scarp beyond. I agree with the appellant that seen against the backdrop of the scarp, the lower elements of the turbines would be perceived as smaller and more recessive in the landscape than would be the case if their verticality were made starkly apparent against a backdrop of open sky.
32. There are a number of recreational routes which pass through the Levels and which would afford views of the proposed development. The 1066 Country Walk, a regional trail from Pevensy to Winchelsea, crosses the Pevensy Levels and has a loop at its southern end, via Hankham, which would pass 500m from the proposed turbines at its nearest point. The Cuckoo Walk and Sustrans 21 cycle route follow the former railway line from Polegate to Heathfield, passing some 1.5km from the appeal site. There are many other public rights of way and minor roads in the vicinity, used by walkers, cyclists and equestrians. There is evidence that these routes are popular with local residents and visitors alike, providing welcome opportunities to get out into the countryside.
33. The extent to which the proposed turbines would be seen in views from public rights of way is assessed in the 2011 ES and 2013 ES Addenda, and supplemented by material produced by the appellant's and Council's professional landscape witnesses. Whether the presence of the proposed development would detract from people's enjoyment of these routes is likely to be dependent on each individual's perception of this type of development. There is a wide range of public attitudes towards wind turbines, as was evident from representations made to the inquiry. Some admire them as elegant sculptural beacons of hope and progress: others detest them as ugly industrial machines that blight the landscape. In order to make as objective an assessment as possible of the changes to views which would occur, it is appropriate to proceed on the precautionary basis that the changes would be perceived as adverse.

34. The proposed development would have a significant visual impact on a number of viewpoints on public rights of way. Where these lie in close proximity to the appeal site, the proposed turbines would be dominant elements of the available views. There is also the sequential aspect to consider; for example, walkers heading south along the 1066 Country Walk would have the turbines in view over a considerable distance, and therefore for a considerable length of time. The visual impacts of the proposed development would not be experienced to the same degree throughout. Views from many of the identified public rights of way would be intermittent, due to varying degrees of screening provided by the local landform and hedges. Motorists would experience significant visual effects for relatively brief periods in the context of their overall journeys. Walkers covering a long distance along the promoted recreational footpaths would not have their overall experience characterised by the proposed wind farm, although of course the same would not hold true for residents using sections of those longer routes for walks around their local area.
35. Taking all of this into account, I conclude that while the proposed development would not undermine the overall landscape character of the area, it would have an adverse visual impact from a number of public viewpoints, and that is a consideration which needs to be weighed in the overall planning balance.

#### South Downs National Park

36. The NPPF advises that National Parks have the highest status of protection in relation to landscape and scenic beauty, and that great weight should be given to conserving these qualities. The South Downs National Park (SDNP), designated as such in 2010, stretches some 140km from Eastbourne to Winchester. It is recognised for its unique chalkland geology, and the variety of vegetation, birds and animals this supports. The appeal site lies some 2.5km from the boundary of the SDNP which, in this part, is characterised by the open chalk escarpment which faces north and east towards the appeal site.
37. From the top of this escarpment there are extensive, panoramic views out over the lower lying landscape below. There are a number of formal viewpoint locations situated along the ridge at the break of this scarp slope, many of them destinations in their own right, as well as forming part of the experience of long distance routes or within areas of open access. Views toward a variety of landscape areas are available, including the extended settlement of Eastbourne and other smaller settlements; the coastal zone towards Bexhill and Seaford; the expansive downland of the National Park itself, between the scarp and the coast to the south; and the lower lying landscape containing the A27 and other communication routes. The High Weald is also visible as the distant north-east horizon.
38. The combination of elevation, breadth and depth of views enables visitors to the SDNP to experience a strong sense of "getting away from it all". The value of this is recognised in the South Down National Park Authority's paper *South Downs National Park: Special Qualities* (2011), which assists interpretation of the two statutory purposes of the National Park: to conserve and enhance the natural beauty, wildlife and cultural heritage of the area, and to promote opportunities for the understanding and enjoyment of the special

qualities of the National Park by the public. The identified special qualities of the SDNP include “diverse inspirational landscapes and breathtaking views”, “tranquil and unspoilt places”, and “great opportunities for recreational activities and learning experiences”.

39. It is material to note that, as detailed in the FEI, there are viewpoints from within the SDNP from which the 70m wind turbine at Glyndebourne (now operational), and the recently consented Rampion offshore wind farm (likely to consist of some 100 wind turbines up to 210m high) would be seen in addition to the three currently proposed wind turbines. The downland scarp topography provides physical and visual separation between the three locations. While views south to the offshore Rampion site are extensive throughout the SDNP, views of the currently proposed development are largely limited to the ridge of the scarp slope that forms the northern boundary of the National Park. The most significant visual cumulative effects would be experienced from viewpoints at Folkington Down, Combe Hill and Willingdon Hill.
40. From these viewpoints, the elevated location allows for 360 degree panoramic views across the surrounding landscape and seascape. The Rampion wind farm, which would be visible on the horizon over 25km away, would be clearly identified as part of the expansive seascape. The Glyndebourne wind turbine would be between 12 and 17km from each of these viewpoints, across the Low Weald, where it would appear as a remote element in the distance. The currently proposed wind turbines would be seen in the opposite direction to the Rampion offshore wind farm, and the low-lying, large-scale landscape of the Pevensey Levels would separate them, physically and visually, from the wind turbine at Glyndebourne.
41. The proposed turbines would constitute a new element in the landscape, altering the composition of views from the National Park over the Pevensey Levels. I saw at my site visits that from viewpoints in the eastern part of the SDNP closest to the appeal site, such as Combe Hill and Folkington Down, the new development would be seen in the context of extensive residential development at Eastbourne and Polegate, existing infrastructure such as roads, pylons and railways, and some large-scale industrial facilities and warehouses. From SDNP viewpoints further to the west, such as Firle Beacon, I saw that the turbines would be viewed in the context of a more rural landscape, with smaller pockets of residential development and a larger proportion of open fields, but still a landscape in which the signs of human intervention (such as roads, bridges, telegraph poles and reservoirs) are clearly apparent.
42. While the proposed turbines would be easily recognisable within these views, I do not see that this would in any way diminish the viewers’ sense of being “away from it all”. That sense derives from an appreciation of being up on the tranquil, timeless landscape of the unspoilt downlands, surrounded by nature, and therefore set apart from built development, and other evidence of the hustle and bustle of daily life that is carrying on below. This appreciation would not be affected by the addition of the proposed turbines to the view. The movement of the turbine blades would draw the eye, but having done so, they would not necessarily retain it at the expense of other features. The regular sweep of the blades would not be the only moving element of views;



cars on roads are visible, as are trains moving through the landscape and, from some viewpoints, ships at sea.

43. As noted above in the context of the Pevensey Levels, the extent to which the enjoyment of visitors to the National Park and walkers on the South Downs Way would be affected by the proposed development is likely to be dependent on individuals' attitudes toward wind turbines. Given the separation distances involved, and the wide expanse of the views available, I see no reason to suppose that even those strongly opposed to wind farm development would consider their enjoyment of the SDNP as a whole to be significantly reduced by the proposed development, or choose to stay away from this particular area of it as a consequence. A number of studies have been carried out around the country into the effects of wind farms upon tourism, and there is no conclusive evidence of any adverse impacts; in some areas, visitor numbers are said to have increased as a consequence of their construction.
44. The Council expressed concern that views of the SDNP from within the Pevensey Levels would be adversely affected by the presence of the proposed turbines, and that this would be harmful to the special qualities of the SDNP. I have noted above that the proposed development would have an adverse impact upon such views, but have not been provided with any convincing argument as to why this would also lead in turn to an adverse impact on the special qualities of the SDNP. It seems to me that none of those identified in the SDNPA's 2011 *Special Qualities* paper would be affected by the change to views from the Pevensey Levels, and nor would the special qualities of the escarpment itself, identified in the South Downs Joint Committee's *The South Downs Integrated Landscape Character Assessment*.
45. Taking all of this into account, I find that the proposed development would not alter the landscape and scenic beauty of the SDNP itself, and would not compromise the special qualities of the National Park or conflict with its statutory purposes. I conclude that the proposal would accord with the overall aim of Core Strategy Policy SP01 to protect the nationally designated landscapes of the district.

#### *Living conditions at nearby properties*

46. I turn next to the visual impact that the proposed wind turbines would have on nearby residential properties. It is important to note at the outset that the planning system exists to regulate the development and use of land in the public interest. In most cases, the outlook from a private property is a private interest, not a public one: in other words, there is no "right to a view" that would protect private views from development that would adversely affect them. However, the question of public interest may be at issue where a development proposal would have such a severe adverse impact on the outlook from a private residence that it would render it an unsatisfactory place to live, for future as well as current occupiers.
47. This point was specifically addressed by my colleague, Inspector Lavender, in an appeal decision in 2009<sup>4</sup>. He wrote: *...when turbines are present in such number, size and proximity that they represent an unpleasantly overwhelming and unavoidable presence in main views from a house or garden, there is*

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<sup>4</sup> Appeal Ref: APP/X220/A/08/2071880

*every likelihood that the property concerned would come to be regarded as an unattractive and thus unsatisfactory (but not necessarily uninhabitable) place in which to live. It is not in the public interest to create such living conditions where they did not exist before.* The Secretary of State subsequently endorsed this approach in an appeal decision in 2011<sup>5</sup>. He held that when assessing the effect on visual outlook, it is helpful to pose the question: would the proposal affect the outlook of these residents to such an extent, i.e. be so unpleasant, overwhelming and oppressive that this would become an unattractive place to live?

48. In this current case, the Council conducted a thorough assessment of the visual impact that the development would have on nearby residential properties, and concluded that while significant effects at 1 & 2 Old Court Cottages would be an adverse impact of moderate weight, no dwellings would experience such an overwhelming and oppressive alteration to their outlooks as to be rendered unattractive places in which to live. The appellant has also undertaken a detailed Residential Visual Amenity study, and I have had careful regard to the representations made by the owners and occupiers of potentially affected properties. I assessed the situation for myself in the course of my site visits.
49. Old Court Cottages are a pair of semi-detached dwellings to the north of the appeal site. The two houses front the B2104, such that they each have an elevation facing south west. Views from windows in the side elevation of No.2 are towards the north west, away from the appeal site, and in these the proposed turbines would not be visible. However, the side elevation of No. 1 faces south east, such that oblique views towards the turbines would be available from a number of windows in this elevation, as well as from all of the south-west facing windows. Some views of the turbines would be available from some parts of the garden, but from others would be screened by the house. The timber fence and boundary hedge along Cottage Lane would provide some screening for the ground-floor side windows of the single-storey living space toward the rear of the dwelling, which is also served by rear-facing patio doors, but the low boundaries to the front of the property, and to the opposite side of B2104, would provide no effective screening.
50. The proposed turbines would clearly have a significant impact on the outlook from No.1 Old Court Cottages; three large, man-made structures with moving blades would be inserted into the existing views across the open fields of the appeal site. However, the orientation of the windows is such that the turbines would be seen obliquely, as peripheral elements of the view, rather than filling the field of vision. Taking into account a 30m allowance for micro-siting, the closest of the turbines would still be some 620m away. Thus, while the turbines would loom large, I reach the same conclusion as the Council: their visual impact would not be so oppressive or overwhelming as to render No. 1 Old Court Cottage an unattractive and thus unsatisfactory place to live. No. 2 Old Court Cottage would experience a much lesser degree of visual impact, since the turbines would not be visible at all from the windows of its side elevation, and it too would not become an unattractive place to live as a consequence of the proposed development.

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<sup>5</sup> Appeal Ref: APP/D0515/A/10/2123739 & 2131194

51. While the various dwellings at Priesthawes and Drockmill would be closer to the proposed turbines, with the nearest at a distance of just over 0.5km, there is a greater degree of intervening screening than is the case for Old Court Cottages, and each of the properties would retain a variety of views and aspects unaffected by the proposed development. While some would experience significant visual impacts, none would be rendered an unattractive place to live.
52. Willoughby Cottage is a two-storey detached property in Hankham, some 1.3km from the nearest of the proposed turbines. From windows in the west and south elevations there would be oblique views toward the turbines, while more direct views would be available from parts of the garden. The dense boundary vegetation would provide some effective screening while in leaf; less so during winter months. However, the fact that the turbines would be visible, to varying degrees, from parts of the property does not, of itself, render the ensuing change of outlook unacceptable. The impact on views from within the house would not be oppressive or overbearing, and views of the turbines from parts of the garden would not cause such harm as to render that outdoor amenity space unattractive.
53. At the inquiry there was some dispute as to the separation distances between the proposed wind turbines and the recent, and ongoing, residential development on the north-east side of Polegate. On the basis of the evidence before me and the grid coordinates provided, none of the existing dwellings, or any of those permitted but yet to be built, would be closer than 500m. Some of these have large windows and first-floor balconies facing out toward the appeal site, from which the proposed turbines would be directly in view, across a wide field of vision. However, the intervening A27, a busy dual carriageway with some tree screening to either side, functions as a significant visual and audible barrier, separating the residential development to its south from the appeal site and surrounding countryside to its north. This sense of physical separation would reduce the extent to which the proposed turbines might otherwise be perceived as an oppressive presence, such that while the development would have a significant impact on the outlook from these dwellings, it would not be so unpleasant or overwhelming as to render their living conditions unsatisfactory.
54. To conclude on the question of the visual impact on residential properties, many others besides those discussed above would experience a visual impact, and alterations of varying degree to their outlook, as a result of the proposed development. I appreciate that the occupiers of some of these dwellings would consider that their living conditions had been made less attractive as a consequence. However, applying the test set out above, I conclude that the proposed wind turbines would not have such an unpleasant, overwhelming and oppressive effect on the outlook of any dwelling as to make it an unattractive place in which to live.

### *Cultural heritage*

55. S.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 sets out the duty, placed on decision-makers who are considering whether to grant planning permission for development which affects a listed building or its setting, to "have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic

interest which it possesses". This is reflected in the NPPF, which explains that one of the core principles for the planning system is to "conserve heritage assets in a manner appropriate to their significance".

56. Paragraph 128 of the NPPF explains that applicants for planning permission should describe the significance of any heritage assets affected, including any contribution made by their setting, so that the potential impact of the development proposal on their significance can be understood. Paragraphs 133 and 134 advise that development resulting in substantial harm to the significance of designated heritage assets should not be permitted unless it would be necessary to achieve substantial public benefits that would outweigh the harm. Where less than substantial harm would result, this should be weighed against the public benefits of the proposal. The NPPF does not define what is meant by "substantial harm" for these purposes, but the PPG provides some guidance. It states that "In general terms, substantial harm is a high test, so it may not arise in many cases. It is the degree of harm to the asset's significance rather than the scale of the development that is to be assessed."
57. In this case, no designated heritage assets would be physically altered by the proposed development. Rather, it is the indirect effect of the development, in terms of its impact on the setting of heritage assets, that needs to be considered. The 2011 ES incorporated an assessment of the heritage assets that may have been affected by the original five-turbine proposal, and I note that English Heritage raised a number of concerns about the extent to which the significance of these assets had been adequately described and understood. A revised assessment was undertaken and included in the 2013 ES Addendum, together with a further assessment of four specific heritage assets identified by English Heritage as likely to suffer the greatest harm: the chapel at Otham Court, Priesthawes, the Church of St Mary Magdalene at Wartling, and Glyndley Manor.
58. English Heritage subsequently confirmed that this additional material addressed its previous concerns about providing an adequate description of the affected assets' significance, and agreed that the proposed development would be likely to cause less than substantial harm to heritage assets, including the four identified as likely to suffer the greatest harm. I visited each of these in the course of my site visits.
59. Glyndley Manor is not a listed building, or a "designated heritage asset" for the purposes of the NPPF. The manor house dates from the 16<sup>th</sup> Century but has been much altered. The ornamental gardens to the north, east and south-east contribute to the heritage significance of the house, as does its wider parkland setting. On the south front, the carriage sweep has been re-shaped to form a large (20m x 40m) car park and tennis court, and it is in views from this south front that one of the turbines would be visible at a distance of just over 1km. The introduction of an incongruous modern structure in one of the principal outward views from the house would clearly be a noticeable change, but this is not the only view outward or the only component of the setting; further, the turbine would be seen in the context of the existing car park. I consider that the harm caused to the significance of this heritage asset would be slight, and considerably less than substantial.
60. The Church of St Mary Magdalene at Wartling is Listed Grade I. It derives much of its heritage significance from the special architectural, historic and

artistic value of its fabric and construction but the surrounding churchyard, which includes a number of mature trees, also contributes to its significance. The spire of the church is visible against the skyline in a number of views from lower ground to the south and south west, which reinforces its significance as a landmark in the wider historic landscape. In views toward the south-west from within the churchyard, through gaps in the vegetation on the southern boundary, all three turbines would be visible some 6km away. At this distance, they would form only a very small component of the overall view. While there is a historic relationship between the church and views toward the south-west, the impact on this part of the setting of the church would be very slight, and in my judgment would have only a very slight adverse impact on the significance of this designated heritage asset.

61. Priesthawes is Listed Grade II, and dates from the 16<sup>th</sup> Century. Its heritage significance lies largely in the architectural and archaeological interest of its historic fabric, but includes its historical connection with its surroundings. Its setting contributes to the latter aspect of its significance through its strong connection with the private landscaped gardens to the north-east, and to a lesser degree its visibility, from Hailsham Road, as a familiar feature in the local landscape. The proposed turbines would not intrude into any important views toward the house, would not be visible in principal views from the windows of the listed building to the north-east, and would only be seen from the upper (bedroom) windows of the south-west elevation, over the roofs of the intervening service buildings. I agree with the 2013 ES assessment's finding that the effect on the setting would be relatively contained and localised, and the impact on significance would be minor.
62. The Chapel at Otham<sup>6</sup> Court is Listed Grade II\*, and is also a Scheduled Ancient Monument. Otham Court itself is Listed Grade II. The heritage significance of the chapel, and the house, derives mainly from their archaeological and historic interest as structures dating from the 14<sup>th</sup> and 15<sup>th</sup> Centuries, and also their architectural and artistic interest. The chapel is an unassuming building sited toward the side and rear of the house, and its setting is largely restricted to the residential curtilage of the house; this contextual historic relationship contributes to the heritage significance of both buildings. While the surrounding agricultural land is of contextual and historical relevance, the relationship is difficult to discern from points close to the listed buildings themselves due to intervening grounds, outbuildings and boundary trees. There is no indication that the chapel and the house were intended to be buildings from which to look out in any direction, and no evidence of a historic garden layout in association with either the house or the chapel.
63. There are no positions from which the proposed turbines would be visible above the buildings, and no views toward them into which the turbines would intrude. The turbines would not be visible from within the chapel. From outside the chapel and from the garden to the east of the house, and to a lesser extent from windows in the east elevation of the house, the blades of the turbines would be visible in views to the east, but would be filtered by intervening trees in the foreground and middle distance. Taking all of this into

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<sup>6</sup> Also appears as "Othham" and "Otteham" in various documents. I have adopted the spelling used by the owner in his written submissions.

account, I consider that the harm caused by the proposed development to the significance of these two designated heritage assets would be slight.

64. I have given careful consideration to the other heritage assets identified as potentially affected by the development proposal, and visited a number of them in the course of my site visits, including Pevensey Castle. While the proposed development would result in a visual change to the setting of some of these heritage assets, I am satisfied that these changes would not in any instance be harmful to the setting, or the significance, of the heritage assets in question.
65. Nevertheless, harm to the significance of the five heritage assets identified above is a factor that must be weighed in the overall planning balance.

### *Aviation*

66. The private helipad at Otham Court would be some 1.25km from the closest of the proposed turbines, in an area where there are currently no significant airspace constraints. The proposed development would result in the introduction of obstacles that would curtail, to an extent that would largely depend on wind direction, the freedom of movement currently available to users of the helipad. However, the evidence before me indicates that continued flying operations would not pose any additional danger, so long as standard aviation practices were observed. Similarly, the presence of the proposed turbines may, in certain wind conditions, mean that alterations to the circuit pattern, take-off and landing approaches at Downash airfield would be needed. While this would clearly be inconvenient, there is no evidence that it would present any additional danger.
67. Concerns about the aviation safety implications of erecting three 115m high wind turbines on the appeal site are wholly understandable; they would constitute a new obstacle, with the potential therefore to increase the risk of collision. But it is important that such concerns be kept in proportion. The proposed turbines would not obstruct any commercial flight paths, or any existing radar sight lines, and neither the MoD nor NATS has raised any objection to the proposed development. Thus, while the implications for aviation weigh against the proposed development, the extent of that weight is limited to the adverse effect upon the amenity currently enjoyed by the operators of these two private aviation facilities, rather than any wider concern about public safety.

### *The benefits of the proposed development*

68. The government's Overarching National Policy Statement for Energy, published in 2011, explains that as part of the UK's need to diversify and decarbonise electricity generation, the UK government is committed to increasing dramatically the amount of renewable generation capacity; in the short to medium term, much of this new capacity is likely to be onshore and offshore wind. In respect of the UK's commitments to sourcing 15% of energy from renewable sources by 2020, it states that to hit this target, and to largely decarbonise the power sector by 2030, "it is necessary to bring forward new renewable electricity generating projects as soon as possible. The need for new renewable electricity generation projects is therefore urgent".

69. More recently, in 2013, the Government published its Third Update to the UK Renewable Energy Roadmap. This reiterated the UK Government's commitment to achieving the UK's 15% renewable energy target by 2020 (committed by the Energy Directive 2009). It states that renewable energy offers the UK a wide range of benefits from an economic growth, energy security and climate change perspective, and that a key benefit of deploying renewable energy technologies is the potential reduction in carbon emissions (paragraph 91). It also states that onshore wind is one of the most cost effective and proven renewable energy technologies, and has an important part to play in a responsible and balanced UK energy policy.
70. The proposed development would supply renewable electricity generation of up to 7.5 MW of installed capacity, sufficient to power up to 4,000 homes, and would achieve an annual saving of up to 8,475 tonnes of carbon. This would make a material contribution to the attainment of the national renewable energy policy objectives set out above; it would help to improve the security of the energy supply through diversifying the range of resources, would have direct and indirect economic benefits, and would reduce carbon dioxide and greenhouse gas emissions, thereby helping to mitigate climate change.
71. These are substantial benefits which carry a great deal of weight.

#### *Other matters*

72. The PPG makes it very clear that the need for renewable energy does not automatically override environmental protections and the planning concerns of local communities. Rather, it notes: "As with other types of development, it is important that the planning concerns of local communities are properly heard in matters that directly affect them". This was emphasised by the Secretary of State in his Written Ministerial Statement of April 2014. My consideration of this appeal has therefore proceeded on the basis of a clear understanding that the need for renewable energy should not override the views of the local community: the extent of the need for the proposed development is only one of the many considerations that must be placed in the planning balance and, like each of them, has the potential to be outweighed by others.
73. I am aware that some have taken the Government's most recent guidance to mean that renewable energy proposals should be refused if the local community is against them. In my opinion the PPG does not bear such an interpretation. Rather, it seems to me that the PPG emphasises the need for decision makers to pay very careful attention to the concerns of local communities, since they, after all, are the people who will have to live with the consequences of the development that is under consideration. In so far as the concerns raised are material and relevant, they must be given due weight in the overall balance of considerations. But the extent of the weight that is due to such considerations remains a matter for the appointed decision maker.
74. A number of local residents expressed concern that noise generated by the proposed development could lead to sleep deprivation, and other harm to health. However, the evidence before me is that the proposed development would accord with noise limits set out in the government's ETSU-R-97 *The Assessment and Rating of Noise from Wind Turbines* at all properties, day and

night, for all wind speeds and in all conditions. The imposition of an appropriately detailed condition would ensure that compliance was achieved.

75. Concerns were also expressed about the impact the turbines might have upon TV reception. There is no convincing evidence that any disruption would occur, but neither is there any certainty that it would not. This uncertainty could however be adequately addressed by the imposition of a condition requiring that any such disruption be investigated by an independent engineer, and appropriate remedial action taken, funded by the wind farm operator. Similarly, a condition could be imposed requiring an agreed protocol for the prevention, assessment and mitigation of any shadow flicker that may be caused at nearby dwellings.
76. The 2011 ES and 2013 ES Addendum record the detailed ecological assessment of the appeal site and surrounding area, undertaken with input from Natural England and the RSPB. Having carefully reviewed this material the Council accepted its conclusion that, subject to the identified mitigation measures, there would be no residual significant adverse effects. Having assessed all of the evidence before me, and noting that the necessary mitigation could be secured by an appropriately worded condition, I see no reason to depart from these findings. I do not, however, share the Council's view that the proposed habitat improvements carry weight in favour of the proposed development, since these are provided to mitigate the adverse impact that the development would otherwise have.
77. Concerns were expressed about the impact that the proposed development would have upon food security. I note that the appeal site is currently in agricultural use, but the built footprints of the three proposed turbines and associated infrastructure would not be large, and in any event would not preclude the ongoing agricultural use of the remainder of the appeal site. Concerns were also expressed about the potential for drivers on nearby roads to become distracted by the moving blades, but a large number of turbines have now been erected in the UK, including some alongside motorways, and I have seen no evidence that any of these have distracted drivers to such an extent as to cause an accident. Concerns about the impact of the development upon the water table, and surface water drainage, can be adequately addressed by condition.
78. I note concerns raised by the British Horse Society that horses may be startled by the visibility and noise of the turbines, or shadow flicker caused by their blades. It is fair to note that horses may be startled by any number of things, including bicycles and unexpected noises, but also that they have, historically, been trained to work alongside vehicles and machinery, in traffic, and even in battlefields. The turbine towers would be static features of the landscape, while their blades would move in a smooth and regular pattern, rather than suddenly or unexpectedly. In the absence of any convincing evidence that significant safety concerns would arise, the possibility that horses might be spooked by the proposed turbines is not, in my view, a consideration that carries any weight.
79. Concerns were also expressed that the proposed development might deter visitors to local businesses and visitor attractions, such as the fishing lake and caravan site at Sharnfolds Farm, and the Chapel at Otham Court, which is used as a venue for weddings. However, as discussed above, there is no



convincing evidence that existing wind turbines have adversely affected visitor numbers, and in the absence of any such evidence, this is not a concern to which I attach weight.

### *Conclusions*

80. I have found that Local Plan Policy EN1 is out of date, and have not found any conflict with other policies of the adopted Development Plan. Core Strategy Policy WCS14 provides that where relevant policies are out of date, planning permission should be granted unless material considerations indicate otherwise, taking into account whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.
81. For the reasons set out above, I have concluded that the proposed development would have an adverse visual impact on views within the Pevensey Levels, and that is a material consideration to which I attach a moderate amount of weight. I also attach some weight to the adverse visual impacts that would be experienced at No. 1 Old Court Cottages and, to a lesser extent, other nearby residential properties, albeit these would not be so unpleasant as to render any dwelling an unsatisfactory place in which to live. I attach a small amount of weight to the limited harm that the proposed development would cause to the amenity of two private airfields.
82. I attach considerable weight and importance to the fact that the proposed development would fail to preserve the settings of four Listed Buildings, and the less than substantial harm that would thereby be caused to their heritage significance. I include in the balance the slight harm that would also be caused to the heritage significance of Glyndley Manor.
83. However, I find that the combined weight of these adverse impacts is clearly and convincingly outweighed by the substantial public benefits that would arise from the proposed development.
84. I therefore conclude that planning permission should be granted.

### *Conditions*

85. The Council and the appellant helpfully collaborated to produce an annotated list of suggested conditions (INQ 29), which then formed the basis for a discussion session at the inquiry. I consider that the majority of these conditions are necessary and reasonable, but have amalgamated and amended some of them, in accordance with discussions at the inquiry, to improve clarity and concision and to ensure they accord with the tests and guidance set out in the NPPF and Circular 11/95: *The Use of Conditions in Planning Permissions* (to the extent that the latter remains extant).
86. The appellant queried the need to impose a condition requiring the development to accord with the approved plans. I appreciate that a number of the submitted plans, such as those detailing the candidate turbine model, and a potential layout for the site compound, were submitted for indicative purposes only and it would not be appropriate to require compliance with them. Instead, such matters should be the subject of the Council's written approval: control over the height, design, colour and finish of the turbines, as well as details of the compound, is provided by conditions (7), (8) and (9). Nevertheless, in the interests of certainty and precision I consider it is

reasonable and necessary to attach a condition (2) requiring the development to be carried out in accordance with the Site Boundary Plan and Detailed Layout Plan (2), since these provide necessary detail to inform further conditions dealing with the micro-siting of the turbines and the creation of accesses (see below).

87. The Council expressed concern about the suggested micro-siting condition (3), which allows a tolerance of 30m for the siting of the turbines. This is a relatively standard condition for wind turbine development, which provides flexibility in addressing site-specific ground conditions. Given the nearby presence of hedges and trees, which may be frequented by foraging or commuting bats, I consider it necessary to include provision that the micro-siting should not result in any turbine being located closer than the recommended 50m separation distance from these features.
88. Since this permission is limited to a period of 25 years, it is necessary to include a condition to that effect (4), and conditions requiring the removal of the development at the end of that period (5), or sooner if the turbines cease to produce electricity (6).
89. In order to minimise visual disturbance at night, and adverse ecological impacts, a condition is needed to prevent illumination of the turbines other than by the infrared lighting required for aviation safety (10). Condition (11) is also necessary to the interests of aviation safety, to ensure the potential hazards are duly notified to, and recorded by, the relevant authorities. It is not appropriate for this condition to require that the operators of individual aerodromes are notified, but it would remain open to those operators to make arrangements with the Council for notification if required.
90. A condition requiring the cabling to be underground (12) will help to reduce the visual impact of the development, and conditions requiring the Council's prior approval of a Construction Traffic Management Plan (13) and Construction Method Statement (17) will help to protect the living conditions of local residents during the construction period, as will conditions limiting the hours of construction (18) and deliveries (14 and 15).
91. The Highway Authority proposed a number of conditions concerning the proposed access from the A27 for abnormal loads, but the requirements to complete construction of this access in accordance with approved details prior to the first such delivery, and to prevent any other traffic from using it, can usefully be secured by a single condition (16).
92. Conditions are needed to secure appropriate archaeological investigations and works (19), and the Council's prior approval of a Construction Environmental Management Plan (20), a Habitat Management Plan (21), drainage arrangements (22) and flood risk mitigation works (23), before the development commences. Further, to protect the amenities of local residents, it is necessary to attach conditions requiring the provision of telemetry mitigation (24), and the Council's prior approval, before the turbines are erected, of protocols to address any problems that may subsequently arise in respect of television reception (25) and shadow flicker (26).
93. The noise condition (27) is complex and very lengthy, but this is necessary to protect nearby residents from any unacceptably adverse impact on their living conditions. It specifies clear limits for a wide range of representative

locations, and makes detailed provision for a thorough and fair investigation of any complaint made about noise levels at affected dwellings. The wording is clear about the circumstances in which the development would be found not to comply with the condition: it would then be for the local planning authority to decide what action would be expedient.

*Determination*

94. For the reasons set out above, the appeal is allowed.

*Jessica Graham*

INSPECTOR

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY

Mr S Lyness, of Counsel

Instructed by Mr V Scarpa, the Council's solicitor

He called:

Mr P Russell-Vick DipLA CMLI  
Ms E Murphy BSc(Hons) PgDipUD  
RTPI IHBC

Director, Enplan  
Director, Murphy Associates

### FOR THE APPELLANT

Mr D Hardy, of Counsel

Partner in Eversheds LLP, instructed by Regeneco Ltd

He called:

Mr A Cook BA(Hons) MLD CMLI  
MIEMA CEnv MID

Environmental and Landscape Design  
Director, Pegasus Group

Mr D Bell BSc(Hons) DipUD MRTPI  
MCIHT

Regional Director, Jones Lang LaSalle

### INTERESTED PERSONS:

Mr A Lovell

Resident of Stone Cross

Mr K Saxby

Resident of Hankham; Parish Councillor

Mr I Casselden

Resident of Polegate

Mr M Clewett Dipl Arch (Oxford) RIBA

Local resident, architect (ret'd) and Mayor of Polegate

Mr S Popek

Resident of Polegate

Mr R Van-der Kieft

Resident of Polegate

Mr J Kenwood

On behalf of SSWAG (Stop Shepham Wind Farm Action Group)

Ms B Echlin

Resident of Bexhill on Sea

Mr J Fowler

Resident of Bexhill on Sea

Mr A Gurney

Resident of Durley; Parish Councillor

## **DOCUMENTS SUBMITTED IN THE COURSE OF THE INQUIRY**

- 1 Copy of Council's letters notifying interested persons of the appeal and inquiry details, with circulation list
- 2 List of appearances on behalf of the Appellant
- 3 Copy of opening submissions made on behalf of the Appellant
- 4 Copy of opening submissions made on behalf of the Council
- 5 Topographical map of the appeal site and surroundings, submitted by the appellant
- 6 Extract (pp 60-67) from the North Northamptonshire Core Spatial Strategy (2008), submitted by the Appellant
- 7 e-on newsletter of April 2013 concerning Rampion Offshore Wind Farm, submitted by the Appellant
- 8 Copy of appeal decision ref: APP/D2510/A/12/2176754 (Thacker Bank), submitted by the Appellant
- 9 Copy of Mr I Casselden's statement to the inquiry
- 10 Copies of (a) statement made by Mr M Clewett to the inquiry on behalf of Polegate Town Council, and (b) Mr Clewett's own statement to the inquiry
- 11 Copy of Mr S Popek's statement to the inquiry
- 12 Copy of Mr R Van-der Kieft's statement to the inquiry
- 13 Further information, including photomontages, submitted by SSWAG
- 14 Copy of Supplementary Environmental Information dated April 2012, provided at Inspector's request (missing from documents originally submitted to PINS)
- 15 Letter from Mr M Clewett to the Inspector dated 23 July 2014
- 16 Copies of Approved Boundary Treatments Plan for Land North of Dittons Road (drg. No. MPL\_01\_A Rev A); Approved Site Plan for "Polegate Phase 2" (drg. No. 00177A\_RS02 Rev D); Illustrative Masterplan for "The Winfields" (drg. No. GDG.P\_001)
- 17 Draft list of suggested conditions, compiled by the Council and the Appellant
- 18 Set of 10 aerial photographs, taken above the appeal site, provided by Mr Van-der Kieft
- 19 Copies of documents, previously referenced via hyperlink, referred to in Mr R Van-der Kieft's representations
- 20 Copy of Ms B Echlin's statement to the inquiry
- 21 Copy of Mr J Fowler's statement to the inquiry
- 22 Set of 4 images, produced by the appellant, showing the Bluebells Development Plan and Polegate Phase 2 Development Plan superimposed, respectively, on a base plan and an aerial photograph
- 23 Letter from Mr N Howcroft to the Inspector, dated 24 July 2014
- 24 A3 binder of material concerning cumulative landscape and visual impacts, prepared by the appellant, and intended to form the basis of an agreed statement between the Appellant and the Council
- 25 E-mail from the Council to the Appellant, dated 29 July 2014, responding to Document 24 (above)
- 26 Copy of RuSource Briefing 1589 "Wind power"
- 27 Extract of Maldon District Council Local Plan, submitted by the Appellant
- 28 Transcript of the High Court's judgment in *Lark Energy Ltd v SoS CLG & Waveney DC* [2014] EWHC 2006 (Admin)
- 29 Updated version of Document 17 (above)
- 30 Draft Itinerary, agreed between the Council and the Appellant, for the Inspector's accompanied site visits

- 31 Regulation 22 request for Further Environmental Information, dated 4 August 2014, issued by the Planning Inspectorate
- 32 Update Note concerning recently published DUKES Statistics 2014, submitted by the appellant
- 33 The Council's response to Document 31 above
- 34 Update Note on Consultation Draft Guidance Notes issued by English Heritage, submitted by the Council
- 35 Copies of the responses to the consultation on the Further Environmental Information
- 36 The Appellant's supplementary evidence on cumulative landscape and visual effects
- 37 The Council's supplementary evidence on cumulative landscape and visual effects
- 38 The Appellant's Rebuttal of Document 37 above
- 39 Closing submissions on behalf of the Council
- 40 Closing submissions on behalf of the Appellant

**SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision. Written confirmation of the commencement of development shall be provided to the local planning authority within 14 days of its occurrence.
- 2) Subject to conditions nos. 3, 8 and 9 below, the development hereby permitted shall be carried out in accordance with the approved plans numbered Figure 1.2A: Turbine Layout and Site Boundary and Figure 3.6A: Detailed Site Layout.
- 3) The wind turbines hereby permitted shall be erected at the following grid co-ordinates:

<b>Turbine</b>	<b>Easting</b>	<b>Northing</b>
1	560051	105565
2	560238	105396
3	560513	105291

EXCEPT THAT notwithstanding the terms of this condition and condition no. 2 above, the wind turbines hereby permitted may be micro-sited within 30 metres of the specified locations, and the consequential realignment of the crane pads, and access tracks between the wind turbines, is permitted SUBJECT TO THE PROVISIO that the blade-swept area of each turbine shall be no closer than 50m from any hedge or tree.

- 4) This grant of planning permission shall expire no later than 25 years from the date when electricity is first exported from any of the wind turbines to the electricity grid ("First Export Date"). Written notification of the First Export Date shall be given to the local planning authority within 14 days of its occurrence.
- 5) No later than 12 months before the expiry of this permission, a decommissioning method statement shall be submitted for the written approval of the local planning authority. The statement shall include a traffic management plan, and details of the timing and management of the decommissioning works, the removal of the development, and the reinstatement of the land to its former condition. The works shall be carried out in accordance with the approved details, within 12 months from the date of expiry of this permission.
- 6) If any of the wind turbines hereby permitted ceases to produce electricity for supply to the local electricity grid network for a continuous period of 12 months, then details of a scheme, to repair or remove the turbine, shall be submitted to the local planning authority for its written approval within 3 months of the end of that 12 month period. If repairs to the turbine are proposed, the details shall include a programme of remedial works. If removal of the turbine is proposed, the turbine shall be removed within 12 months of the details being approved and the details shall include a method statement and timetable for the dismantling and removal of the turbine and the associated above-ground works; the removal of the turbine foundation to a depth of at least 1 metre below ground; a traffic management plan; and a method statement and

timetable for any necessary site restoration works following the removal of the turbine. The scheme shall be implemented in accordance with the approved details.

- 7) The development hereby permitted shall comprise up to 3 wind turbine generators which are three-bladed machines with a maximum blade-tip height of 115 metres. All of the blades of the wind turbines hereby permitted shall rotate in the same direction.
- 8) None of the wind turbines hereby permitted shall be erected until details of their design, colour and finish, and those of any external transformer units, have been submitted to and approved in writing by the local planning authority. No name, sign, symbol or logo shall be displayed on any external surfaces of any turbine or external transformer unit, other than that which is required to meet statutory health and safety requirements. The development shall be carried out in accordance with the approved details and thereafter retained as such.
- 9) The substation building hereby permitted shall not be erected until details of the design and external materials for the building, and for any associated compound or parking area, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and thereafter retained as such.
- 10) Other than the infrared aviation lighting required for the safety of aircraft the turbines shall not carry any form of external illumination, and there shall be no permanent illumination on the site other than lighting required during the construction period as agreed in connection with condition no. 17(viii) below, and lighting required for maintenance or emergencies, and a PIR-operated external door light for the sub-station building door to allow safe access.
- 11) At least one month before the commencement of development, the developer shall provide the Local Planning Authority, the Ministry of Defence (MOD) and the Civil Aviation Authority (CAA) with written confirmation of the following details:
  - i) the date when development is expected to commence;
  - ii) the maximum height of any turbine; and
  - iii) the maximum extension height of any construction equipment to be used on the site.

Within fourteen days of the First Export Date, the developer shall provide the local planning authority, the MOD and the CAA with written confirmation of the following details:

- iv) the date of completion of construction;
  - v) the height above ground level of the highest structure that has been erected as part of the development hereby permitted;
  - vi) the position of the turbines in latitude and longitude; and
  - vii) details of the aviation lighting to be fitted to the turbines.
- 12) All electrical cabling between the individual turbines and the on-site electricity sub-station shall be located underground. Following the



installation of that cabling, the excavated ground shall be reinstated to its former condition within 3 months of the First Export Date.

- 13) No development shall take place until a construction traffic management plan has been submitted to and approved in writing by the local planning authority. The plan shall include details of:
- (i) The timetable for works on site;
  - (ii) The routing of vehicles to and from the site;
  - (iii) Arrangements for escorting abnormal loads;
  - (iv) Temporary warning signage;
  - (v) Temporary removal and replacement of highway infrastructure and street furniture;
  - (vi) Any road closures;
  - (vii) Expected levels and timings of development traffic;
  - (vii) Measures to control traffic, in and around the site;
  - (viii) All loading and unloading areas which will be used for the delivery or despatch of materials related to the development; and
  - (ix) Measures to ensure that delivery vehicles and construction traffic will not park on the public highway for loading, unloading or waiting for site entry.

The development shall be carried out in accordance with the approved plan.

- 14) Delivery to the site of construction materials, and of equipment for the construction of the development, shall only take place between the hours of 07:00 - 18:00 on Monday to Friday inclusive and 08:00 - 16:00 hours on Saturday. No such deliveries shall take place on any Sunday, Bank or Public holiday unless the local planning authority has been given at least two full working days' notice of the proposed delivery and has subsequently given its written approval to the delivery.
- 15) Notwithstanding the provisions of condition no. 14 above, the delivery of turbine, nacelle and crane components to the site may take place outside the hours specified by condition no. 14 if the local planning authority has given its prior written approval to the delivery.
- 16) The access to the A27 for abnormal loads shall be fully constructed, in accordance with details first approved in writing by the local planning authority, before the delivery of any turbine components to the site. This access shall be limited to use by abnormal loads bringing turbine components, nacelles or crane components to the site. No other traffic shall be permitted to use this access to the A27, at any time, for any purpose.
- 17) Prior to the commencement of development a construction method statement (CMS) shall be submitted to and approved in writing by the Local Planning Authority. The CMS shall include details of:
- (i) the routes, and site entrances, to be used by traffic accessing the site;
  - (ii) details of the temporary construction access to the B2104, including hardening and surfacing of the site access, visibility splays, and provisions for the removal of the access and restoration of the land once the development is complete;

- (iii) the deposition, grading and finishing (in relation to local landform and habitat) of soil and other natural materials not removed from the site during the construction works;
- (iv) pollution prevention measures to be adopted during the construction phase to ensure that suitable bunding is used around fuel tanks and that excavation/construction works do not harm local sewerage, groundwater supplies, surface water quality or the quality of subsoil;
- (v) construction mitigation and post construction reinstatement measures;
- (vi) measures to control dust and mud arising from the development;
- (vii) measures to clean and maintain site entrances, and the adjacent public highway;
- (viii) temporary site illumination;
- (ix) methods to reduce the effects of construction noise in accordance with BS5228;
- (x) arrangements for the disposal of waste and surplus materials;
- (xi) the siting and design of the temporary site compound including any structures/buildings, fencing, parking and storage provision to be used in connection with the construction of the development;
- (xii) emergency procedures and pollution response plans; and
- (xiii) the timing and phasing of the above elements.

The CMS shall be implemented in accordance with the approved details.

- 18) Construction of the development hereby permitted shall only take place on the site between the hours of 07:00 - 18:00 on Monday to Friday inclusive and 08:00 - 16:00 hours on Saturday. No such construction work shall take place on any Sunday, Bank or Public holiday. Works outside these hours shall only be carried out (a) with the prior written approval of the local planning authority or (b) in the case of an emergency or (c) for dust suppression works. Emergency works shall include, but not be limited to, works to make safe a turbine that is under construction. The local planning authority shall be informed in writing of any emergency works within one working day of their occurrence.
- 19) No development shall take place until the implementation of a programme of archaeological works has been secured in accordance with a written scheme of investigation, including a timetable for the investigation, which has been submitted to and approved in writing by the local planning authority. The works shall be undertaken in accordance with the approved details. A written record of any archaeological works undertaken shall be submitted to the local planning authority within 3 months of the completion of any archaeological investigation unless an alternative timescale for submission of the report is first agreed in writing with the local planning authority.
- 20) No development shall take place until a detailed Construction Environmental Management Plan (CEMP), with particular regard to mitigation to alleviate any effects upon the hydrological baseline, which shall reflect the details in the ES Addendum (Non-Technical Summary) and parts 10.7 - 10.9 and 11.4 of the Environmental Statement Parts 1 and 2, has been submitted to and approved in writing by the local planning authority. Details shall include measures for the protection of,

- and mitigation of damage to, the rivers, streams and ponds BAP habitats. Development shall be carried out in accordance with the approved CEMP.
- 21) No development shall take place until details of an on-site Habitat Management Plan, including a timetable for its implementation and provisions for future management and maintenance, have been submitted to and approved in writing by the local planning authority. The details shall be consistent with part 6.6 of the Environmental Statement Parts 1 and 2 and the details on figure 6.8a of the ES Addendum Volume 2 part 8 and shall include improvements to habitat within the ditch networks and planting of native hedgerows together with mitigation for reducing bird strike. They shall also include details of any new habitat created on site, and a scheme for the provision of a minimum 3m wide buffer zone alongside watercourses, ditches and ponds, and details of any proposed planting. The Habitat Management Plan shall be implemented in accordance with the approved details.
  - 22) No development shall take place until details of surface water drainage, which shall follow the principles of sustainable drainage as far as practicable, have been submitted to and approved by the local planning authority. The drainage shall be provided in accordance with the approved details before the First Export Date.
  - 23) No development shall take place until details of proposed flood risk mitigation works (which shall demonstrate that adequate flood routing will be incorporated within the development to accommodate overland flows arising from both within the site and externally as a result of extreme rainfall conditions) have been submitted and approved by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
  - 24) Prior to the erection of any turbine components on the site the mitigation scheme for the terrestrial telemetry link between Fairlight and Alfriston for Southern Gas Networks shall be provided.
  - 25) None of the wind turbines hereby permitted shall be erected until details of a scheme to investigate and remedy any electro-magnetic interference to terrestrial television, caused by the operation of the turbines, has been submitted to and approved in writing by the local planning authority. The scheme shall provide for a baseline survey of electro-magnetic interference and for the investigation, by an independent qualified television engineer ("the Independent Engineer"), of any complaint of interference with television reception at a building which lawfully existed or had planning permission at the date of this permission, where such complaint is notified to the local planning authority within 12 months of the First Export Date. If the Independent Engineer determines that interference is attributable to the wind farm development hereby permitted, the remedial works shall be carried out in accordance with the approved details at the expense of the wind farm operator.
  - 26) None of the wind turbines hereby permitted shall be erected until a written scheme has been submitted to and approved in writing by the local planning authority, setting out a protocol for the assessment of shadow flicker in the event of any complaint to the local planning authority from the owner or occupier of any dwelling (defined for the purposes of this condition as a building within Use Class C3 or C4 of the

Use Classes Order) which lawfully exists or had planning permission at the date of this permission. The written scheme shall include remedial measures to alleviate any shadow flicker attributable to the development and shall be implemented in accordance with the approved details and thereafter retained. Operation of the wind turbines shall take place in accordance with the approved scheme unless the local planning authority gives its prior written consent to any variation.

- 27) The rating level of noise immissions from 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 dwelling, the wind farm operator shall, at its own expense, employ an independent consultant approved by the local planning authority to assess the level of noise immissions from the wind turbines at the dwelling in accordance with the procedures described in the attached Guidance Notes. The written request from the local planning authority shall set out at least the date, time and location that the complaint relates to. Within 14 days of receipt of the written request of the local planning authority made under this paragraph (B), the wind farm operator shall provide the information relevant to the complaint logged in accordance with paragraph (H) to the Local Planning Authority in the format set out in Guidance Note 1(e).
  - (C) Where there is more than one property at a location specified in Tables 1 and 2 attached to this condition, the noise limits set for that location shall apply to all dwellings at that location. Where a dwelling to which a complaint is related is not identified by name or location in the Tables attached to these conditions, the wind farm operator shall submit to the local planning authority for written approval proposed noise limits selected from those listed in the Tables to be adopted at the complainant's dwelling for compliance checking purposes. The proposed noise limits are to be those limits selected from the Tables specified for a listed location which the independent consultant considers as being likely to experience the most similar background noise environment to that experienced at the complainant's dwelling. The submission of the proposed noise limits to the local planning authority shall include a written justification of the choice of the representative background noise environment provided by the independent consultant. The rating level of noise immissions resulting from the combined effects of the wind turbine when determined in accordance with the attached Guidance Notes shall not exceed the

noise limits approved in writing by the local planning authority for the complainant's dwelling.

- (D) Prior to the commencement of any measurements by the independent consultant to be undertaken in accordance with these conditions, the wind farm operator shall submit to the local planning authority for written approval the proposed measurement location identified in accordance with the Guidance Notes where measurements for compliance checking purposes shall be undertaken. Measurements to assess compliance with the noise limits set out in the Tables attached to these conditions or approved by the local planning authority pursuant to paragraph (C) of this condition shall be undertaken at the measurement location approved in writing by the local planning authority.
- (E) Prior to the submission of the independent consultant's assessment of the rating level of noise immissions, the wind farm operator shall submit to the local planning authority for written approval a proposed assessment protocol setting out the following:
- (i) the range of meteorological and operational conditions (the range of wind speeds, wind directions, power generation and times of day) to determine the assessment of rating level of noise immissions.
  - (ii) a reasoned assessment as to whether the noise giving rise to the complaint contains or is likely to contain a tonal component.

The proposed range of conditions shall be those which prevailed during times when the complainant alleges there was disturbance due to noise, having regard to the information provided in the written request of the local planning authority under paragraph (B), and such others as the independent consultant considers likely to result in a breach of the noise limits. The assessment of the rating level of noise 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 turbines 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 the turbines in accordance with this consent, all in accordance with Guidance Note 1(d) of the attached Guidance Notes. The data from the wind turbines shall be retained for the duration of this planning permission. 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 "dwelling" is a building within Use Class C3 or C4 of the Use Classes Order which lawfully exists or had planning permission at the date of this permission.

**Table 1 - Between 07:00 and 23:00 - Noise level dB L<sub>A90</sub>, 10-minute**

Location northing coordinates)	(easting, grid	Standardised wind speed at 10 metres height (m/s) within the site averaged over 10-minute periods									
		3	4	5	6	7	8	9	10	11	12
		L <sub>A90</sub> Decibel Levels									
Glyndley Cottage 560508, 106304		45.8	45.8	47.3	49	51.2	53.7	56.9	56.9	56.9	56.9
Little Shepham 559250, 105297		50.0	50.0	51.2	52.6	53.9	55.2	56.2	56.2	56.2	56.2
Little Friars Farm 559182, 106123		44.8	44.8	45.9	47.3	48.9	50.8	53.1	55.7	55.7	55.7
Sharnfold Cottages 561044, 105139		46.1	46.1	47.4	48.7	50.0	51.3	52.9	52.9	52.9	52.9
Willowby Cottage 561527, 105694		41.4	41.4	42.1	43.0	44.7	44.7	44.7	44.7	44.7	44.7
Otteham Court 558769, 105699		44.8	44.8	45.9	47.3	48.9	50.8	53.1	55.7	55.7	55.7
New Barn Cottage 560273, 106236		45.8	45.8	47.3	49.0	51.2	53.7	56.9	56.9	56.9	56.9
New Barn Farmhouse 560308, 106349		45.8	45.8	47.3	49.0	51.2	53.7	56.9	56.9	56.9	56.9
Old Court Cottages 560376, 106142		45.8	45.8	47.3	49.0	51.2	53.7	56.9	56.9	56.9	56.9
Nursery 560157, 106419		45.8	45.8	47.3	49.0	51.2	53.7	56.9	56.9	56.9	56.9
Priesthawes 560664, 105875		45.8	45.8	47.3	49.0	51.2	53.7	56.9	56.9	56.9	56.9

Priesthawes Farm 560739, 106009	45.8	45.8	47.3	49.0	51.2	53.7	56.9	56.9	56.9	56.9
East Lodge 561068, 106408	45.8	45.8	47.3	49.0	51.2	53.7	56.9	56.9	56.9	56.9
Cherry Croft 561496, 105081	46.1	46.1	47.4	48.7	50.0	51.3	52.9	52.9	52.9	52.9
Milton Nurseries 561290, 104889	46.1	46.1	47.4	48.7	50.0	51.3	52.9	52.9	52.9	52.9
Sharnfold Farm 560867, 104923	46.1	46.1	47.4	48.7	50.0	51.3	52.9	52.9	52.9	52.9
Dittons Road 560858, 104547	46.1	46.1	47.4	48.7	50.0	51.3	52.9	52.9	52.9	52.9
Roundabout East 560420, 104603	50.0	50.0	51.2	52.6	53.9	55.2	56.2	56.2	56.2	56.2
Roundabout West 560190, 104795	50.0	50.0	51.2	52.6	53.9	55.2	56.2	56.2	56.2	56.2
Dittons Road Nursery 559569, 104928	50.0	50.0	51.2	52.6	53.9	55.2	56.2	56.2	56.2	56.2
Winfield Farm 559836, 104880	50.0	50.0	51.2	52.6	53.9	55.2	56.2	56.2	56.2	56.2
Lusteds 561420, 106394	45.8	45.8	47.3	49.0	51.2	53.7	56.9	56.9	56.9	56.9
Holme Farm 558950, 106883	44.8	44.8	45.9	47.3	48.9	50.8	53.1	55.7	55.7	55.7
Hankham Primary School 561871, 105519	41.4	41.4	42.1	43.0	44.7	44.7	44.7	44.7	44.7	44.7
East of Shepham Lane Development 559725, 105071	50.0	50.0	51.2	52.6	53.9	55.2	56.2	56.2	56.2	56.2
North east of Shepham Lane development 559595, 105249	50.0	50.0	51.2	52.6	53.9	55.2	56.2	56.2	56.2	56.2
Bluebells 559863, 105052	50.0	50.0	51.2	52.6	53.9	55.2	56.2	56.2	56.2	56.2
Shepham Lane 559590, 105228	50.0	50.0	51.2	52.6	53.9	55.2	56.2	56.2	56.2	56.2

**Table 2 - Between 23:00 and 07:00 - Noise level dB L<sub>A90</sub>, 10-minute**

Location (easting, northing coordinates)	Standardised wind speed at 10 metres height (m/s) within the site averaged over 10-minute periods									
	3	4	5	6	7	8	9	10	11	12
	L <sub>A90</sub> Decibel Levels									
Glyndley Cottage 560508, 106304	43.0	43.0	43.0	43.0	47.0	47.0	47.0	47.0	47.0	47.0
Little Shepham 559250, 105297	43.0	43.0	43.0	43.0	45.8	50.4	50.4	50.4	50.4	50.4
Little Friars Farm 559182, 106123	43.0	43.0	43.0	43.0	43.8	43.8	43.8	43.8	43.8	43.8
Sharnfold Cottages 561044, 105139	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0

Willowby Cottage 561527, 105694	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
Otteham Court 558769, 105699	43.0	43.0	43.0	43.0	43.8	43.8	43.8	43.8	43.8	43.8
New Barn Cottage 560273, 106236	43.0	43.0	43.0	43.0	47.0	47.0	47.0	47.0	47.0	47.0
New Barn Farmhouse 560308, 106349	43.0	43.0	43.0	43.0	47.0	47.0	47.0	47.0	47.0	47.0
Old Court Cottages 560376, 106142	43.0	43.0	43.0	43.0	47.0	47.0	47.0	47.0	47.0	47.0
Nursery 560157, 106419	43.0	43.0	43.0	43.0	47.0	47.0	47.0	47.0	47.0	47.0
Priesthaves 560664, 105875	43.0	43.0	43.0	43.0	47.0	47.0	47.0	47.0	47.0	47.0
Priesthaves Farm 560739, 106009	43.0	43.0	43.0	43.0	47.0	47.0	47.0	47.0	47.0	47.0
East Lodge 561068, 106408	43.0	43.0	43.0	43.0	47.0	47.0	47.0	47.0	47.0	47.0
Cherry Croft 561496, 105081	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
Milton Nurseries 561290, 104889	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
Sharnfold Farm 560867, 104923	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
Dittons Road 560858, 104547	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
Roundabout East 560420, 104603	43.0	43.0	43.0	43.0	45.8	50.4	50.4	50.4	50.4	50.4
Roundabout West 560190, 104795	43.0	43.0	43.0	43.0	45.8	50.4	50.4	50.4	50.4	50.4
Dittons Road Nursery 559569, 104928	43.0	43.0	43.0	43.0	45.8	50.4	50.4	50.4	50.4	50.4
Winfield Farm 559836, 104880	43.0	43.0	43.0	43.0	45.8	50.4	50.4	50.4	50.4	50.4
Lusteds 561420, 106394	43.0	43.0	43.0	43.0	47.0	47.0	47.0	47.0	47.0	47.0
Holme Farm 558950, 106883	43.0	43.0	43.0	43.0	43.8	43.8	43.8	43.8	43.8	43.8
Hankham Primary School 561871, 105519	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
East of Shepham Lane Development 559725, 105071	43.0	43.0	43.0	43.0	45.8	50.4	50.4	50.4	50.4	50.4
North east of Shepham Lane development 559595, 105249	43.0	43.0	43.0	43.0	45.8	50.4	50.4	50.4	50.4	50.4
Bluebells 559863, 105052	43.0	43.0	43.0	43.0	45.8	50.4	50.4	50.4	50.4	50.4
Shepham Lane 559590, 105228	43.0	43.0	43.0	43.0	45.8	50.4	50.4	50.4	50.4	50.4



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

### **Guidance Notes for Noise Condition (No. 27 above)**

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 turbines. The rating level at each integer wind speed is the arithmetic sum of the wind turbines 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 turbines" (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 shall be measured at the complainant's property (or an approved alternative representative location as detailed in Note 1(b)), using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This should be calibrated before and after each set of measurements, using a calibrator meeting IEC 60945:2003 "Electroacoustics – sound calibrators" Class 1 with PTB Type Approval (or the equivalent UK adopted standard in force at the time of the measurements) and the results shall be recorded. Measurements shall be undertaken in such a manner to enable a tonal penalty to be applied in accordance with Guidance Note 3.
- (b) The microphone shall be mounted at 1.2 - 1.5 metres above ground level, fitted with a two-layer windshield or suitable equivalent approved in writing by the Local Planning Authority, and placed outside the complainant's dwelling and be not more than 35 metres from it. Measurements should be made in "free field" conditions. To achieve this, the microphone shall be placed at least 3.5 metres away from the building facade or any reflecting surface except the ground at the approved measurement location. In the event that the consent of the complainant for access to his or her property to undertake compliance measurements is withheld, the 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.

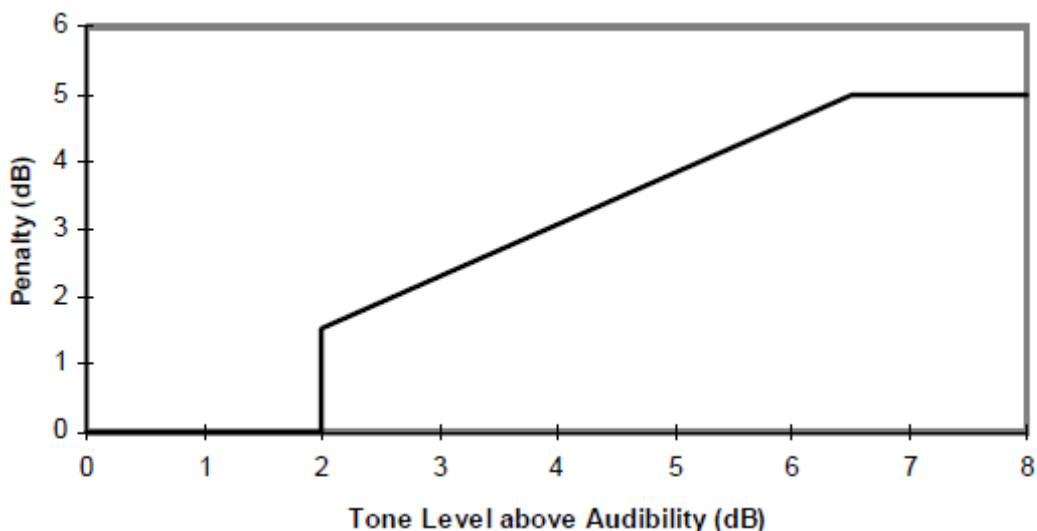
- (c) The  $L_{A90,10\text{-minute}}$  measurements shall be synchronised with measurements of the 10-minute arithmetic mean wind speed and wind direction data and with operational data logged in accordance with Guidance Note 1(d) and rain data logged in accordance with Note 1(f).
- (d) To enable compliance 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 the wind turbines on the site. The hub height wind speeds recorded from the nacelle anemometers or as calculated from the power output of the turbines shall be supplemented by standardised ten metre height wind speed data calculated for each 10-minute period from those measured at hub height assuming a reference roughness length of 0.05 metres and using the equation given on page 120 of ETSU-R-97. All 10-minute periods shall commence on the hour and in 10-minute increments thereafter synchronised with Greenwich Mean Time and adjusted to British Summer Time where necessary. Standardised 10 metre height wind speed data shall be correlated with the noise measurements determined as valid in accordance with Note 2(b), such correlation to be undertaken in the manner described in Note 2(c).
- (e) Data provided to the Local Planning Authority in accordance with paragraphs (E) (F) (G) and (H) of the noise condition shall be provided in comma separated values in electronic format.
- (f) A data logging rain gauge shall be installed within 3m of any sound level meter installed in the course of the independent consultant undertaking an assessment of the level of noise 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 paragraph (b).
- (b) Valid data points are those measured during the conditions set out in the assessment protocol approved by the Local Planning Authority under paragraph (E) of the noise condition but excluding any periods of rainfall measured in accordance with Note 1(f).
- (c) Values of the  $L_{A90,10\text{-minute}}$  noise measurements and corresponding values of the 10-minute standardised ten metre height wind speed for those data points considered valid in accordance with Note 2(b) shall be plotted on an XY chart with noise level on the Y-axis and wind speed on the X-axis. A least squares, "best fit" curve of an order deemed appropriate by the independent consultant (but which may not be higher than a fourth order) shall be fitted to the data points to define the wind turbines noise level at each integer speed.

### Note 3

- (a) Where, in accordance with the approved assessment protocol under paragraph (E) of the noise condition, noise 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. This process shall be repeated for each integer wind speed for which there is an assessment of overall levels in Note 2.
- (f) The tonal penalty is derived from the margin above audibility of the tone according to the figure below derived from the average tone level above audibility for each integer wind speed.



#### **Note 4**

- (a) If a tonal penalty is to be applied in accordance with Note 3 the rating level of the turbines 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 turbines noise at each wind speed is equal to the measured noise level as determined from the best fit curve described in Note 2.
- (c) If the rating level at any integer wind speed lies at or below the values set out in the Tables attached to the conditions or at or below the noise limits approved by the Local Planning Authority for a complainant's dwelling in accordance with paragraph (C) of the noise condition then no further action is necessary. In the event that the rating level is above the limit(s) set out in the Tables attached to the noise conditions or the noise limits for a complainant's dwelling approved in accordance with paragraph (C) of the noise condition, the independent consultant shall undertake a further assessment of the rating level to correct for background noise so that the rating level relates to wind turbine noise immission only.
- (d) The wind farm operator shall ensure that all the wind turbines in the development are turned off for such period as the independent consultant requires to undertake the further assessment. The further assessment shall be undertaken in accordance with the following steps:
  - i. Repeating the steps in Note 2, with the wind turbines 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 turbine noise ( $L_1$ ) at this speed shall then be calculated as follows where  $L_2$  is the measured level with the 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 turbine 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 dwelling in accordance with paragraph (C) of the noise condition then no further action is

necessary. If the rating level at any integer wind speed exceeds the values set out in the Tables attached to the conditions or the noise limits approved by the local planning authority for a complainant's dwelling in accordance with paragraph (C) of the noise condition then the development fails to comply with the conditions.

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