The Planning Inspectorate

Appeal Decision

Inquiry held on 4 October 2016
Site visits made on 3, 6 & 7 October 2016

by S R G Baird BA(Hons) MRTPI

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

Decision date: 19 December 2016

Appeal Ref: APP/E2001/W/15/3133812
Land to the north-west of Cowden Magna Farm, Withernwick Lane, Cowden, East Riding of Yorkshire HU11 4UH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by EnergieKontor UK Limited against the decision of East Riding of Yorkshire Council.
- The application Ref DC/14/01919/STPLFE/STRAT, dated 10 June 2014, was refused by notice dated 10 June 2015.
- The development proposed is the erection of a 4 turbine extension (T1 [520743, 441670], T2 [521078, 441945], T3 [520795, 441597], T4 [521090, 441625]) to the Withernwick Wind Farm (111m to tip) with associated transformers, hard standings, sub-station/switchgear housing, cable run, access track, landscaping and ecological enhancement.

Preliminary Matter

1. Following the close of the inquiry, I was made aware that several letters supporting the proposal had not been forwarded to the parties. The parties were given the opportunity to comment.

Decision

2. The appeal is allowed and planning permission is granted for the erection of a 4 turbine extension (T1 [520743, 441670], T2 [521078, 441945], T3 [520795, 441597], T4 [521090, 441625]) to the Withernwick Wind Farm (111m to tip) with associated transformers, hard standings, sub-station/switchgear housing, cable run, access track, landscaping and ecological enhancement on land to the north-west of Cowden Magna Farm, Withernwick Lane, Cowden, East Riding of Yorkshire HU11 4UH in accordance with the terms of the application, Ref DC/14/01919/STPLFE/STRAT, dated 10 June 2014, subject to the conditions set out in Annex B.

Main Issue

3. The landscape and public visual impact of the scheme.

Reasons

Development Plan Policy

4. The development plan includes the East Riding Local Plan – Strategy Document (LP) adopted in April 2016. The LP's Vision and Objectives seek to embrace and maximise the opportunities presented by the renewable and

low-carbon energy sector. Policy S1 adopts a positive approach to new development reflecting the presumption in favour of sustainable development contained at paragraph 14 the National Planning Policy Framework (Framework).

5. The LP seeks a reduction in greenhouse gas emissions through the promotion of appropriately located renewable and decentralised energy generation (Policy S2). Energy development and associated infrastructure that respect the intrinsic character of their surroundings will be supported (Policy S4). Policy EC1 supports the growth and diversification of the local economy through strengthening key employment sectors including renewable energy.

6. LP paragraph 7.56 refers to a 2011 study[1] which concludes that "*commercial wind energy is likely to be the main type of renewable energy in the East Riding*". In this regard, the lpa acknowledges that wind turbines are the main way to achieve the LP vision. Policy EC5 - Supporting the Energy Sector and the supporting text at paragraph 7.61 identifies that some energy developments appear industrial in nature and where proposals are in the rural area it is important to ensure that any cumulative effects do not lead to a perception of industrialisation either within a particular landscape or the wider area. In assessing the capacity of a landscape to accept energy developments, Policy ENV2 and the East Riding of Yorkshire Landscape Character Assessment 2005 (LCA) are identified as important considerations.

7. Energy developments, excluding wind energy, will be supported where significant adverse effects are satisfactorily addressed and any residual harm is outweighed by the wider benefits (Policy EC5A). Policy EC5C indicates that prior to the identification of suitable areas for wind energy through a LP Review and/or in Neighbourhood Plans, wind energy proposals will be decided in accordance with national planning policy and practice guidance.

8. Policy ENV2 seeks to promote a high quality landscape. Development proposals should be sensitively integrated into the existing landscape and where possible seek to make the most of the opportunities to protect and enhance landscape characteristics and features (Policy ENV2A). The LCA describes and classifies the landscape characteristics and features of the district. Proposals should protect and enhance the existing landscape character as described in the LCA (Policy ENV2B). Development that would harm the significance of a Heritage Asset (HA) will only be permitted where the public benefits outweigh the potential harm (Policy ENV3).

National Planning Policy and Guidance

9. The National Planning Policy Framework (Framework) has a presumption in favour of sustainable development. A core Framework principle is that the planning system should support the transition to a low carbon future and encourage the use of renewable resources. Paragraph 93 emphasises the key role planning has in supporting the delivery of renewable energy and associated infrastructure; this role is central to the 3 dimensions of sustainable development. Paragraph 97 highlights the responsibility on all communities to contribute to energy generation from renewable and low carbon sources. Paragraph 98 recognises that small-scale renewable energy

[1] Low carbon and Renewable Energy Capacity in Yorkshire and Humber Study 2011.

projects provide a valuable contribution to cutting greenhouse gas emissions. Other core principles recognise the intrinsic character and beauty of the countryside and the conservation of HAs. Development should contribute to conserving and enhancing the natural environment.

10. National Policy Statements (NPS) are a material consideration[2]. NPS EN-1, Overarching National Policy Statement for Energy - July 2011 highlights that to meet emissions targets, the consumption of electricity will need to be almost exclusively from low carbon sources. The short-term implication is that much of the new capacity would need to come from on and off-shore wind generated electricity. To meet the 2020 target for energy from renewable sources, NPS EN-1 highlights an urgent need to bring forward new renewable electricity generating projects as soon as possible. Whilst off-shore wind is expected to provide the largest single contribution to the 2020 target, on-shore wind is highlighted as, the most well-established and currently the most economically viable source of renewable energy available for future large-scale deployment in the UK. To meet binding targets and to decarbonise the power sector by 2030, NPS EN1 reiterates that it is necessary to bring forward renewable energy electricity generating projects as soon as possible and that the need for these projects is urgent.

11. NPS EN-3, Renewable Energy Infrastructure - July 2011 reiterates the importance of on-shore wind and deals with issues including landscape and visual impact, the historic environment, noise and ecology. In particular NPS EN-3 recognises that commercial wind farms are large structures and that there will always be significant landscape and visual impacts for several kilometres around a site.

12. Planning Practice Guidance (PPG) reiterates the importance of renewable energy to the economy, the need to reduce greenhouse gases and tackle climate change. On wind energy, PPG makes it clear that, amongst other things: need does not automatically override environmental protections; local topography is an important factor recognising that the impact can be as great in mainly flat landscapes as in hilly areas; and that protecting local amenity is an important consideration. Reference is also made to noise, public safety, ecology, shadow flicker, energy output, landscape and visual impacts including cumulative impacts.

13. Following a Written Ministerial Statement[3] (WMS), PPG was added to in June 2015 to include, subject to the operation of transitional arrangements, new considerations to be applied to wind energy developments. This scheme is subject to the transitional arrangements, which indicate that where the development plan does not identify suitable sites, the proposal can be found to be acceptable if, following consultation, the lpa is satisfied it has addressed the planning impacts identified by affected local communities and therefore has their backing.

Landscape Character and Public Visual Impact

14. Whilst the appellant and the lpa use slightly different methodologies to assess landscape and public visual impact there is a high degree of

[2] Paragraph 3 – National Planning Policy Framework
[3] Written Statement made by the Secretary of State for Communities and Local Government, 18 June 2016 (HCWS42)

agreement as to the magnitude and significance of change. In terms of assessing the overall landscape and visual impact of the scheme, I do not consider the differences to be material.

15. The photomontages and wireframe drawings contained within the ES have played a part in my consideration of and conclusions on the landscape and public visual amenity impacts of this scheme. Visualisations have some technical limitations, i.e. they cannot capture the dynamic nature of wind turbines. However, here those limitations are mitigated by the presence of the existing wind farm and the applicant's intention to use turbines of a similar height and design. These facts have enabled me to assess the impact of the proposed turbines with a high degree of confidence.

16. The LCA locates the appeal site and existing wind farm within Landscape Character Type (LCT) 19 - Holderness Open Farmland. Here, the landscape is gently undulating and open with few trees overall. The scale of the landscape is medium to large with generally expansive open views limited only by hedgerows, tree cover and in places the rolling topography. The character of the landscape is described as ordinary to good with a medium sensitivity to wind farm development. The LCA identifies a potential sensitivity to the cumulative impacts of wind farm development. To the east, consisting of a long narrow strip of farmland and costal developments, is LCT 20 - Holderness Coastal Farmland. The quality of this landscape is assessed as ordinary with a medium sensitivity overall to wind farm developments. To the west running largely north-south but with a narrow spur running west to east to Hornsea is LCT 18 - Holderness Low lying, Drained Farmland. This is an area of flat, low lying flood plain with a sparse settlement pattern and sparse tree/woodland cover. Whilst the LCA identifies that this area has a potential high sensitivity to change from wind farm development, it recognises that there may be circumstances where sensitivity may be reduced to medium.

17. The LCA assessments were made before the development of the Withernwick Wind Farm and the single wind turbines at Cowden Magna Farm and Wood Farm. Having travelled extensively through these LCTs prior to, during and after the inquiry, I am confident that, despite recent wind turbine developments, the above assessments continue to adequately describe landscape character types and sensitivity.

18. The existing turbines have a significant effect[4] on landscape character of the area immediately around them altering its character to one where turbines are the principal defining element i.e. a Wind Farm Landscape. In 2009[5] it was concluded that this area would extend to a radius of some 800m from the outer turbines. The appellant suggests that the proposed turbines would extend this landscape change by a similar distance northwards towards Wood Farm and Mount Pleasant. From what I have seen, particularly in views from Cowden Lane, Aldbrough Road, Withernwick Road and Mappleton Road, I agree with that conclusion. Thus, the additional turbines would result in a limited extension of the area where turbines would be the principal defining element with significant landscape and visual impacts.

[4] In Environmental Impact Assessment terms.
[5] APP/E2001/A/05/2088796.

19. In 2009 it was concluded that significant and adverse landscape effects would be experienced within a radius of some 4km. Here, the turbines are a prominent feature in the landscape resulting in a Landscape with Wind Farms Sub-Type. The views obtained from the coastal public car park at Mappleton Sands (VP5) at some 3km and from the north-western edge of Aldbrough (VP7) at some 3.2km confirm this conclusion. With the benefit of the wind farm in place, I consider that the Landscape with Wind Farms Sub-Type extends to the southern edge of Hornsea (VP6) at some 4.5km. That said, from these representative viewpoints, whilst the existing turbines are a prominent feature, the landscape character, i.e. medium to large with generally expansive open views, is still the key defining characteristic of landscape character.

20. The determination of where there would be a material modification to landscape character is not a science; rather it is the exercise of professional judgement. In this case, as opposed to my colleague in 2009, I have the benefit of assessing the effect of the wind farm as constructed. In this context, I consider there would be significant effects on landscape character extending out to some 4.5km. With the additional turbines, both the appellant and the lpa find significant and adverse effects on LCT 19 and 20 within a 3.5 to 4km radius. This area would include the settings of Withernwick, Great Hatfield and Mappleton. Where the appellant and the lpa differ is the lpa consider the significant and adverse impact would extend further to some 4.5km.

21. Whilst the additional turbines would extend the area covered by the wind farm, this would not materially alter the degree of the impact on landscape character. Having regard to my conclusion above regarding the effect of the existing wind farm, I conclude that the wind farm as extended would have an effect on the landscape character of LCTs 19 and 20 with the significant visual impacts extending out to some 4.5km. However, given the "ordinary" quality of the landscape, its medium sensitivity to change, the openness of the area and the expansiveness of views, whilst the impact on landscape character and visual receptors would be high, the spatial extent of a significant landscape and visual impact would be similarly limited resulting in moderate harm. Therefore, whilst the extended wind farm would be a prominent feature, the landscape character i.e. medium to large with generally expansive open views would still be the defining feature. As to LCT 18, I agree with the parties that, given the extended wind farm would be beyond 4.5km from this area, there would be no significant or adverse effects.

22. In coming to this conclusion, I have had particular regard to the proposed gap between the existing wind turbines to the south of Cowden Lane and the proposed turbines to the north of the lane. The lpa suggest that in some views, particularly from the east and west (VPs 1, 2, 3, 12 and 13), there would be a noticeable and unacceptable lack of harmony in the relationship between the existing and proposed turbines. This would result in 2 distinct groups of turbines rather than a coherent and balanced group of turbines in the landscape.

23. In views from the west and east, the gap between the existing and proposed turbines would be noticeably larger than the gaps between individual turbines either within the existing group of 9 turbines or the 4 proposed

turbines. This gap would be noticeable in close views, in particular from Cowden Lane to the west (VP1) and the equivalent view from the lane to the east. In my experience, the scale of the gap proposed and the potential for turbine stacking i.e. the visual overlapping of blades, is not unique and in the majority of views, its effect would be acceptably mitigated by planting/buildings in the foreground and the obvious similarity in the height, type and finish of the turbines.

24. I was taken to distant viewpoints (VPs 12 and 13) from where the lpa suggests that the gap would also be noticeable and harmful. These viewpoints are some 6.6km and 7.3km respectively from the nearest turbine and were agreed as part of the ES as being representative viewpoints for assessing potential effects. In addition to VPs 12 and 13, I was taken to or visited several other long distance viewpoints. In terms of views of the existing and proposed turbines, I am confident that VPs 12 and 13 are truly representative of potential impacts. I disagree with the appellant that the gap from these viewpoints would be imperceptible. However, at these distances the influences of intervening planting and the similarity of the existing and proposed turbines would materially and acceptably mitigate the impact of the larger gap. Moreover, in the majority of ES viewpoints the proposed gap would not be obvious and the potential for stacking is reduced. Drawing all this together, I consider that the design rationale of the existing wind farm would not be unacceptably eroded and that the extended wind farm would remain a coherent and balanced group of turbines in the Holderness landscape.

25. PPG provides advice on assessing cumulative landscape impacts and cumulative visual impacts. Cumulative landscape impacts are the effects of the turbines on the fabric, character and quality of the landscape and the degree to which they would become a significant or defining characteristic of the landscape. Cumulative visual impact is the degree to which the turbines would become a feature in particular views or sequences of views, and the impact this would have on people experiencing those views. Cumulative visual impacts may arise where 2 or more wind energy developments would be visible from the same point, or would be visible shortly after each other along the same journey.

26. In addition to the nearby single wind turbines at Cowden Magna Farm (34m to tip) and Wood Farm (67m to tip) there are no other operational turbines within 10km of the Withernwick Wind Farm. At between some 7km and 10km, 3 single wind turbines with tip heights of some 78m have been approved. Within this area, the extended wind farm would only be seen as the defining characteristic within a relatively confined area that would extend no more than 800m from the turbines. Given the expansiveness of the landscape and views, the material differences with and gap to the existing and consented single turbines, there would be no material cumulative harm to the landscape character of the area.

27. Between 10km and 20 km there are 19 sites where there are either single wind turbines or existing and proposed wind farms. These include the offshore turbines at Westermost Rough. The tallest on-shore groupings are to the south at Roos (126m to tip), to the north-west at Hall Farm (100m to tip) and to the north at Lissett (125m to tip). The single turbines vary in height with the tallest some 87m to tip. Between 20km and 30km there are

3 wind farms, the tallest being at Fraisthorpe (130m to tip). In addition there are several single installed and approved turbines the tallest of which would be 125m to tip.

28. The above could be interpreted as a landscape that is cluttered with wind turbines such that the landscape character has changed and that this change would be exacerbated by the proposed turbines at Withernwick. However, from my extensive tours around the area, and careful examination of the PMs and wireframes, I consider that this stage has not been reached. Given the degree of separation between individual turbine developments, the degree of separation between the groups and the generally expansive open landscape, the existing turbines have been absorbed into the landscape. As such the key landscape characteristics of the areas within which these turbines are contained are retained and the wider area can still be described as a Landscape with Wind Farms. For the same reasons that the existing turbines have not materially altered the landscape character of the wider area, the introduction of the additional turbines at Withernwick would not result in a major or unacceptable cumulative change to the landscape quality and character of LCTs 19 and 20 and beyond; the area would still be a Landscape with Wind Farms.

29. For observers travelling on the main tourist routes and some of the secondary routes, east to west and north to south there would be sequential views of the proposed turbines with existing and consented turbines. Given the proximity of the proposed turbines to the existing Withernwick array this would not, in my view, be classed as a sequential view. Rather the sequential views would include the turbines at Cowden Magna Farm and Wood Farm and in a few places with the off-shore turbines. It struck me that there were few if any sequential views of turbines in the wider area. Thus, whilst there would be some sequential views, the mitigating influences of this large scale landscape and the various degrees of separation, the magnitude of that effect would be for the most part minor to moderate and would not result in an impression of the area being saturated by turbines. Accordingly, I conclude there would be no adverse cumulative landscape or visual harm.

30. Before moving away from this topic, it is necessary to deal with a potential time overlap between the decommissioning of the existing wind farm and the decommissioning of the proposed turbines if the scheme is permitted. This overlap could leave 4 turbines standing for several years. Given all of my conclusions above, I consider there would be no material landscape or visual impact of the 4 remaining in isolation.

Other Considerations

Heritage

31. Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to have special regard to the desirability of preserving a Listed Building or its setting or any features of special architectural or historic interest which it possesses. S72 of the same Act requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of a Conservation Area (CA). Framework Paragraphs 132 to 134 indicate that when considering the impact of a development on the significance of a HA great weight should be given to its conservation.

32. There are no known HAs within the appeal site and several designated HAs are located within a 10km radius of the proposed turbines. The ES undertook a robust assessment of the significance of each of the HAs and the likely impact of the proposal. The overall and unchallenged conclusion of the ES is that the potential impact of the proposed turbines on their own or the extended wind farm on HAs would, in Framework terms, be less than substantial. I have no reason to disagree with that conclusion. In these circumstances, Framework Paragraph 134 says that where a development would lead to less than substantial harm to significance, the harm should be weighed against the public benefits of the proposal.

Residential Visual Amenity

33. The ES undertook an assessment of the effect on the visual amenity of residents within 2km and a separate Residential Visual Amenity Assessment (RVAA) has been undertaken to assess the impact of the turbines on dwellings within 1km. For those dwellings within 1km the ES identifies significant visual impacts and applies the "Lavender Test". This approach considers whether any property would be converted into an "*unattractive place in which to live*". The RVAA concludes that whilst residents would experience significant impacts in ES terms, the effect would not result in any property becoming an unattractive place in which to live. The lpa suggest that at least 130 dwellings in the surrounding area would experience significant adverse visual effects.

34. Whilst in some situations the protection of private interests may coincide with the public interest, PPG[6] reiterates the long-standing tenet that the planning system does not exist to protect the private interests of one person against the activities of another. National policy recognises that the erection of turbines would result in significant visual effects that could change the outlook of dwellings over an area extending up to several kilometres. In this context, the identification of a significant change, or indeed a significant change in the outlook of a substantial number of dwellings, is not, on its own, necessarily harmful. Therefore, in deciding whether, in the public interest, there is a case to resist this scheme my assessment of the impact on residential visual amenity has gone beyond that of identifying significant impact in ES terms. Adopting such an approach, does not, in my view, conflict with that taken by the SoS in his decision on a proposed wind farm at Thornholme Fields, Burton Agnes[7]

35. The visual component of residential amenity has be assessed "in the round", taking into account factors such as: separation distance; orientation; the size and layout of the dwelling including internal circulation, division between primary and secondary rooms, garden and other amenity space; arc of view occupied by the turbines; views through the turbines and the availability of screening. This process includes taking into account the cumulative visual impact of wind turbine development whether that be multiple wind farms or individual turbines. Once these factors are assessed, the question to answer is, would the presence of the turbines be so unpleasant, overwhelming and oppressive, that the dwelling would become an unacceptably unattractive place in which to live. Whilst this approach to engaging the public interest test is not formalised in NPSs, the Framework or PPG, it is one that has been

[6] ID: 21b-008-20140306
[7] APP/E2001/A/13/2190363 – Decision Letter paragraph 20.

deployed by the SoS, appellants, lpas and Inspectors. I consider it is an approach that strikes the appropriate balance between the objective of ensuring adequate protection for communities/individuals and the deployment of renewable energy developments and I have adopted it here.

36. As part of my accompanied and unaccompanied visits to the immediate and wider area, I was able to experience the types of views that residents within the rural area and surrounding settlements would experience from their dwellings and gardens. In addition, I visited 5 properties in the immediate area. Although these properties were not suggested or selected as being representative examples of the likely impact of the proposed turbines it struck me that these dwellings could reasonably be considered as representative examples.

37. Straits Farm to the west, south-west and Broom Hill Bungalow to the north have largely unimpeded views of the existing turbines from principal rooms and external areas. For Broom Hill Bungalow these views include sight of the smaller Wood Farm turbine. The remaining 3 properties, Magna Garth, The Meadows including the attached holiday cottage and Withernwick Hall all have screened and heavily filtered views of the existing turbines and the single small turbine at Cowden Magna Farm.

38. Straits Farm and Broom Hill Bungalow are just less than 2km from the proposed turbines. From Straits Farm, the proposed turbines would be seen behind the existing wind farm (further away) and from Broom Hill Bungalow the proposed turbines would be seen in front of the existing wind farm (closer) and behind the single Wood Farm turbine. From Magna Garth at some 900m and The Meadows and Withernwick Hall at just over 1km, views of the proposed turbines from the principal rooms and external amenity areas of these dwellings would be heavily filtered by existing mature hedge and tree planting. In the case of Magna Garth and The Meadows the available views would be oblique.

39. In each of these cases, having carefully assessed their potential relationship with the turbines, including the potential for stacking, and their internal and external layouts, I conclude that, in the round, the cumulative change would not be such as to make those dwellings unacceptable and unattractive places in which to live. Whilst no individual or group of properties would fail the public interest test, the significant cumulative impact the proposal would have on the outlook of residents within the immediate and wider area is a matter to weigh in the overall planning balance.

Noise

40. The Framework[8] seeks to avoid noise resulting from new development giving rise to significant adverse impacts on health and quality of life and to mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development through, amongst other things, the use of planning conditions. The basis on which noise forms part of the assessment of a wind farm is set out in NPSs EN1 and EN3, and more recently in PPG and the Institute of Acoustics Good Practice Guide. National policy/guidance does not seek to ensure that a turbine should be inaudible. Rather, the policy approach promoted through the application of

[8] Paragraph 123.

the framework set out by ETSU-R-97[9] is that turbines should be located and designed so that increases in ambient noise levels around noise sensitive developments are kept to acceptable levels in relation to existing background noise levels.

41. Some residents highlighted the adverse effect noise from the existing wind farm has on the quality of their life and expressed concern that the proposed turbines would exacerbate the situation. In particular, the occupier of Magna Garth, located to the east/north-east of the existing turbines and some 900m to the south-east of the nearest proposed turbine, described the effect of the turbines as a "*living hell*" albeit he acknowledged that he has not made a formal complaint to the lpa about noise. At the time of the application, Holderness Against Industrialisation (HAI) submitted an independent review of the ES noise assessment. This review, which uses materially different parameters than the ES assessment e.g. higher sound power level data, concludes that the proposed turbines would not comply with the noise limits set out in the 2009 permission. The lpa, subject to the imposition of conditions, does not object to the scheme on noise grounds.

42. I have no reason to conclude that the ES noise assessment was not carried out in accordance with the appropriate protocols and parameters provided for by national policy/guidance. This assessment indicates that the proposed turbines can operate in accordance with the existing noise limits. In this case, there is no objective evidence to support HAI's use of sound power levels in excess of those provided by the turbine manufacturer. The noise condition agreed between the parties provides for noise immission levels consistent with the 2009 permission and it is for the wind farm operator to ensure that the existing/proposed wind turbines operate within these limits and, where residents complain about excessive noise, demonstrate that the turbines are operating in accordance with the permitted noise limits.

43. I sympathise with those residents who claim to have been affected by noise. However, there is nothing in the evidence before the inquiry that would allow me to conclude that the addition of the 4 proposed turbines would have an unacceptable effect on the living conditions of residents in terms of noise. In my view the suggested noise condition provides robust protection for residents and the starting point for this protection to engage is for residents to submit a complaint to the lpa.

Shadow Flicker

44. At this latitude, properties within 130 degrees either side of north, relative to the turbine and within 10 rotor diameters of it could potentially be affected in this way. The incidence of shadow flicker can be calculated with reasonable certainty and the turbine controls programmed to ensure that at the appropriate time they can be switched off thereby eliminating the problem. The ES includes an assessment of the potential for shadow flicker for the existing and proposed turbines and concludes that the existing and proposed turbines have the potential to cause a very limited level of shadow flicker at 3 properties, Wood Farm, Wood Farm Cottage and Glebe Farm.

45. Although I have no reason to disagree with ES's conclusion on shadow flicker, the occupiers of 2 dwellings, Beck House in Withernwick and Magna

[9] The Assessment and rating of Noise from Wind Farms – September 1996.

Garth indicated that they experience shadow flicker from the existing turbines. The 2009 permission includes a planning condition (25) relating to a shadow flicker study and the identification of mitigation measures albeit it is limited to an area within 820m of the existing turbines. Magna Garth and Beck House are outside this zone. In this case, a planning condition is proposed that would provide for the submission of a shadow flicker protocol to govern the operation of the existing and proposed turbines at those times of the year when shadow flicker could potentially occur. In these circumstances, I conclude that residents' living conditions would not be unacceptably affected by shadow flicker.

Benefits

46. Direct and indirect benefits of the scheme include:

- renewable electricity generation of up to 8.2MW of installed capacity;
- a reduction in carbon dioxide and greenhouse gas emissions thereby mitigating climate change over the lifetime of the proposed development. Based on the output of the existing wind farm it is estimated that the energy output of the scheme would be some 22,276MWh per annum. It is expected that the estimated output would be the equivalent of serving approximately 5,534 East Riding households and would save up to some 9,579 tonnes of carbon dioxide per annum;
- a contribution to the diversity and security of energy supply;
- an economic development stimulus as part of a national drive to expand renewable energy as a growing industry sector;
- the generation of local and regional economic benefits, including employment generation and a further impetus to the renewable energy sector of the regional economy;
- a contribution to the attainment of renewable energy policy objectives at the national level and international level.

Written Ministerial Statement/PPG Guidance

47. Whilst there have been a number of interpretations of the application of the WMS, here there was no disagreement between the lpa and the appellant as to the approach to be adopted. Two appeal cases[10] setting out how the WMS was approached were commended to me. The lpa put it that if the appellant's case in respect of landscape and visual impact succeeds in addressing the reason for refusal, then the scheme is deemed to have backing under the WMS and permission can follow.

48. Whilst energy production and the security of supply are national issues that affect everyone, the location of the generating facility has a local impact. If the WMS is interpreted literally to mean that each and every planning concern is to be addressed or fully addressed in the sense that there is no adverse or significant effect then no scheme would ever be permitted. That is not, in my view, what the WMS seeks to do. Wind turbines inevitably have an impact on the character and appearance of the countryside. This is recognised in national policy. In particular, NPS EN 3 indicates that

[10] APP/B3030/W/15/3003130 & APP/H0900/A/14/2224323.

commercial wind farms are large structures and that there will always be significant landscape and visual impacts for several kilometres around a site. Similarly, Framework policy maintains that to help increase the use and supply of renewable and low carbon energy lpa's should recognise the responsibility on all communities to contribute to energy generation from renewable and low carbon sources through amongst other things having a positive strategy and policies to maximise such developments whilst ensuring the adverse impacts are addressed satisfactorily.

49. Were it the intention of the WMS to mean that local opinion was the sole arbiter in coming to a decision then the above policies would have been altered or removed. In my view, the WMS and PPG emphasises that in coming to a balanced conclusion on the merits of a proposal the decision maker has to pay careful attention to material planning considerations identified by the local community and give due weight to those concerns in the overall planning balance. Neither the WMS nor PPG, in my view, tilts that weight in favour of local opinion rather it re-emphasises that the degree of weight to be attached to the material considerations is a matter for the decision maker. That is the approach I have adopted in conducting the final planning balance.

Planning Balance

50. The parties agree that in relation to renewable energy, the LP is neither silent nor that relevant policies are out-of-date. As such the test contained within the first limb of the fourth bullet of Framework paragraph 14 does not apply. Support for the renewable energy sector is a thread that runs through the vision, objectives and policies of the LP and Policy EC5 is the lead policy. Policy EC5C indicates that prior to the identification through the development plan process of suitable areas for wind energy development such proposals are to be determined in accordance with national policy. National planning policy is contained within the Framework[11]. That said, S38(6) of the Planning and Compulsory Purchase Act 2004 and S70(2) of the Town and Country Planning Act 1990 require that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Whilst the Framework is a material consideration in planning decisions[12], it does not change the statutory status of the development plan as the starting point for decision making.

51. It is common ground between the main parties that this scheme would deliver significant social and economic benefits. The delivery of these benefits would be consistent with the objectives of LP Policy EC1. The proposed extension would generate a credible and material amount of renewable energy. As such, the scheme would make a valuable contribution towards national targets for the production of energy from renewable sources and contributing to meeting the objectives of the Climate Change Act, the Renewable Energy Strategy and national energy policy. Moreover, given that it would utilise the infrastructure serving the existing wind farm it would make more efficient and economic use of that infrastructure. Thus, having regard to the Core Principles of the Framework and the specific guidance relating to climate change (paragraphs 97 and 98), the thrust of

[11] Framework Paragraph 1.
[12] Framework Paragraph 2.

national energy policy and the vision and objectives of the LP, these benefits attract very substantial weight.

52. LP Policy ENV3 indicates that development that would cause harm to the significance of a HA will only be permitted where the public benefits outweigh the potential harm. Framework paragraph 134 indicates that where a scheme would lead to less than substantial harm to the significance of a HA this harm should be weighed against the public benefits of the proposal. Here, given the significant social and economic benefits that would accrue, I consider the harm would be outweighed and this proposal would not conflict with LP Policy ENV3 or the Framework paragraph 134 policy of restricting development. That said, I am mindful of the statutory duty that Sections 66 (1) and S72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 place upon me as the decision maker. In particular, the requirement when carrying out the balancing exercise to give considerable importance and weight to the statutory duty[13].

53. Both the LP and national policy recognise that wind turbines can have significant landscape and visual effects over a wide area. Whilst supporting the development of the energy sector and recognising that wind energy is likely to be the main type of renewable energy in the East Riding, the LP seeks to avoid a perception of industrialisation within a particular landscape or area. Here, whilst the extension of the wind farm would result in some moderate landscape and visual harm, the spatial extent of this would be limited to an area extending out to some 4.5km, albeit within that area there are large areas where topography and tree/woodland planting would effectively obscure views. Whilst turbines are tall utilitarian structures, the landscape characteristics of the Holderness area would be largely maintained i.e. a medium to large landscape with expansive open views. In this context, I consider the proposed extension would not industrialise the landscape and would not conflict with the vision and objectives of the LP and Policies S2 and ENV2 in particular.

54. In terms of the effect on neighbours' living conditions whilst there would be a material change in the views obtained from a substantial number of properties, the change would not result in any property becoming an unacceptable or unattractive place in which to live. As to the effect of noise, the evidence in this case does not support a conclusion that the proposed turbines on their own or in combination with the existing wind farm would result in unacceptable living conditions. Similarly with the imposition of an appropriate condition, I consider the proposal would not result in unacceptable levels of shadow flicker. Accordingly, I consider the proposal would not have an unacceptable impact on residents' living conditions.

55. Taking together my conclusions on: the landscape and visual impact of the proposed extension; residents' living conditions and how the WMS is to be approached, I consider that the planning impacts the community have identified have been reasonably addressed and as such I conclude this scheme would meet the transitional arrangements set out in the WMS.

[13] (1) East Northamptonshire District Council (2) English Heritage (3) National Trust v (1) Secretary of State for Communities and Local Government (2) Barnwell Manor Wind Energy Limited [2013] EWHC 473 (Admin) & Barnwell Manor Wind Energy Limited v East Northamptonshire District Council and others [2014] EWCA Civ 137.

56. In this case, although I attach considerable weight to the less than substantial harm to HAs, significant weight to the moderate harm to landscape character and public visual amenity and significant weight to residential visual impact, this does not outweigh the very considerable weight I attach to the benefits of the development in terms of its contribution to meeting the national and local objectives regarding the deployment of renewable energy and tackling climate change through reductions in greenhouse gas emissions. Accordingly, I conclude that the proposed extension to the Withernwick Wind Farm does not conflict with the vision and objectives of the LP and the Framework taken as a whole. Accordingly, I conclude that this appeal should be allowed.

Conditions

57. The planning conditions attached to this permission are set out in Annex B and are based on a schedule of conditions discussed at the inquiry. Conditions are reasonable and necessary:

- to provide for the implementation of and to define the permission (1, 2 & 3[14]);
- to provide for decommissioning and restoration of the site at the end of the 25-year lifespan and the removal of any turbine that fails to produce electricity for a continuous period of 12 months (4 & 5);
- to minimise the landscape and visual impact (6, 7, 8, 9, 10 & 11);
- to mitigate the effect on the living conditions of residents (12, 13 & 14);
- to minimise the impact on hydrology and drainage (15);
- to minimise the ecological impact (16 & 17);
- to mitigate the impact on aircraft safety (16, 19 & 20);
- to mitigate the impact of the development during construction (21, 22, 23 & 24); and
- to mitigate the impact of the development on potential archaeological remains (25).

58. Where necessary, in the interests of precision and enforceability, I have reworded several of the suggested conditions.

George Baird

Inspector

[14] The numbers in brackets refer to the conditions set out in Annex B - Schedule of Planning Conditions.

Annex A - APPEARANCES & DOCUMENTS

APPEARANCES

FOR THE APPELLANT

David Hardy LL.B (Hons) B.C.L. (Hons), Partner, Squire Patton Boggs (UK) LLP.

He called:

Kenneth Halliday BSc (Hons), MPhil, CMLI
Director of Landscape Planning, Stephenson Halliday.

David Bell BSc (Hons), DipUD, MCIHT, MRTPI
Regional Director, Jones Lang Lasalle.

FOR THE LOCAL PLANNING AUTHORITY

Anthony Gill of Counsel instructed by Peter Atkinson, Solicitor, Legal and Democratic Services, East Riding of Yorkshire Council

He called:

Mark Steele BA DipLD, CMLI
Mark Steele Consultants Limited.

Anthony Devey MPlan
Principal Development Management Officer, East Riding of Yorkshire Council.

Interested Persons

Dr. P Ayling, East Yorkshire & Derwent Area Ramblers.
Mrs P Macleod.
Mr Butterworth.
Mr Mars.
Mr Grove.
Mrs Florin-White.
Mr Phillips.
Mr Oxley.
Mr Heuck.
Mr Howarth.
Mr M Marshall.

DOCUMENTS SUBMITTED AT THE INQUIRY

Doc 1	-	List of suggested conditions.
Doc 2	-	Submissions by Dr. Ayling.
Doc 3	-	Submissions by Mrs Macleod.
Doc 4	-	Submissions by Mr Butterworth.
Doc 5	-	Submissions by Mr Mars.
Doc 6	-	Submissions by Mrs Florin-White.
Doc 7	-	Letter from Mrs Robinson.
Doc 8	-	Submissions by Mr Phillips.
Doc 9	-	Submissions by Mr Oxley.
Doc 10	-	Submissions by Mr Heuck.

Annex B - SCHEDULE OF PLANNING CONDITIONS

1. The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.

2. The development hereby permitted shall be removed in accordance with condition 3 below after a period of 25 years from the date when electricity is first exported from any of the wind turbines to the electricity grid (First Export Date). Written notification of the First Export Date shall be given to the local planning authority no later than 14 days after the event.

3. The development hereby permitted shall be carried out in accordance with the following approved plans: Figure 1.1 Site Location Plan; Figure 1.2 Site Location Plan (wider area); Figure 3.1 Site Layout Plan.

4. Not later than 12 months before the expiry of this permission, a decommissioning and site restoration scheme shall be submitted for the written approval of the local planning authority. The scheme shall make provision for the removal of the wind turbines and the associated above ground equipment and foundations to a depth of at least 1 metre below ground. The scheme shall include:

   (a) details of the management and timing of any works;
   (b) a traffic management plan to address likely traffic impact issues during the decommissioning period;
   (c) an environmental management plan to include details of measures to be taken during the decommissioning period to protect wildlife and habitats;
   (d) the identification of access routes;
   (e) the location of material laydown areas;
   (f) details of restoration measures and a programme of implementation.

   The approved scheme shall be fully carried out within 24 months of the expiry of this permission or any other timeframe agreed in writing by the local planning authority.

5. If any wind turbine hereby permitted ceases to export electricity to the grid for a continuous period of 12 months, unless otherwise agreed in writing with the local planning authority, then a scheme shall be submitted to the local planning authority for its written approval within 3 months of the end of that 12 month period for the repair or removal of that turbine. The scheme shall include either a programme of remedial works where repairs to the relevant turbine are required, or a programme for removal of the relevant turbine and associated above ground works approved under this permission and the removal of the turbine foundation to a depth of at least 1 metre below ground and for site restoration measures following the removal of the relevant turbine. The scheme shall thereafter be implemented in accordance with the approved details and timetable.

6. Prior to the erection of any wind turbine, details of the colour and finish of the towers, nacelles and blades and any external transformer units shall be submitted to and approved in writing by the local planning authority. No name, sign, or logo shall be displayed on any external surfaces of the wind turbines or any external transformer units other than those required to meet statutory health and safety requirements. The approved colour and finish of the wind turbines and any external transformer units shall not be changed without the prior consent in writing of the local planning authority. The development shall be carried out in accordance with the approved details.

7. The turbines shall be 3 bladed horizontal axis type wind turbines on a free standing monopole steel tower, a maximum of 111 metres from existing ground level to tip, with a maximum rotor diameter of 92.5 metres. Any change to the above shall be with the prior written consent of the local planning authority.

8. The turbines shall be located at the following grid references: a) Turbine 1 E520743 N441870; b) Turbine 2 E521078 N441945; c) Turbine 3 E520795 N441597; d) Turbine 4 E521090 N441625. The turbines shall be erected at these co-ordinates unless agreed in writing by the local planning authority and any variation shall be a maximum of 25 metres for any turbine in any direction, with the exception of Turbine 1 which is restricted from moving north. A plan showing the position of the turbines as built shall be submitted to the local planning authority within one month of the First Export Date.

9. No development shall take place until full details of soft landscape works has been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved prior to the First Export Date or as may be otherwise agreed in writing by the local planning authority. These details shall include:

   (a). planting plans;
   (b). written specifications (including cultivation and other operations associated with plant and grass establishment);
   (c). schedules of plants, noting species, plant sizes and proposed numbers/densities;
   (d). a programme for the implementation of the landscaping works;
   (e). a scheme for the future maintenance.

   All soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the first export to the grid or in accordance with a programme of implementation if this has been previously agreed in writing by the local planning authority.

10. If within a period of 5 years from the date of the planting of any tree or shrub that tree or shrub or any tree or shrub planted in replacement for it, is removed, uprooted or destroyed or dies (or becomes, in the

opinion of the local planning authority, seriously damaged or defective) another tree or shrub of the same species, size and maturity as that originally planted shall be planted at the same place, unless the local planning authority gives its written consent to any variation.

11. Before the commencement of development details of the method of connecting the development to the grid shall be notified to the local planning authority in writing. All cabling on site shall be placed underground unless otherwise agreed in writing with the local planning authority.

12. The rating level of noise emissions from the combined effects of the wind turbines (including the application of any tonal penalty) when determined in accordance with the Guidance Notes attached to this permission, shall not exceed the values for the relevant integer wind speed set out in, or derived from, Table 1 and 2 attached to this condition at any dwelling which is lawfully existing or has planning permission at the date of this permission and:

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

    b) no electricity shall be exported until the wind farm operator has submitted 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;

    c) within 21 days from receipt of a written request from the local planning authority following a complaint to it from an occupant of a dwelling alleging noise disturbance at that dwelling, the wind farm operator shall, at its expense, employ a consultant approved by the local planning authority to assess the level of noise emissions from the wind farm at the complainant's property in accordance with the procedures described in the Guidance Notes below. The written request from the local planning authority shall set out at least the date, time and location that the complaint relates to and any identified atmospheric conditions, including wind direction, and include a statement as to whether, in the opinion of the local planning authority, the noise giving rise to the complaint contains or is likely to contain a tonal component;

    d) the assessment of the rating level of noise immissions shall be undertaken in accordance with an assessment protocol that shall

previously have been submitted to and approved in writing by the local planning authority. The protocol shall include the proposed measurement location identified in accordance with the Guidance Notes where measurements for compliance checking purposes shall be undertaken, whether noise giving rise to the complaint contains or is likely to contain a tonal component, and also the range of meteorological and operational conditions (which shall include the range of wind speeds, wind conditions, power generation and times of day) to determine the assessment of rating level of noise emissions. 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 written request of the local planning authority under paragraph (c), and such others as the independent consultant considers likely to result in a breach of the noise limits;

e) where a dwelling to which a complaint is related is not listed 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 rating level of noise emissions resulting from the combined effects of the wind turbines when determined in accordance with the attached Guidance Notes shall not exceed the noise limits approved in writing by the local planning authority for the complainant's dwelling;

f) the wind farm operator shall provide to the local planning authority the independent consultant's assessment of the rating level of noise emissions undertaken in accordance with the Guidance Notes within 2 months of the date of the written request of the local planning authority for compliance measurements to be made under paragraph (c), unless the time limit is extended in writing 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 emissions;

g) where a further assessment of the rating level of noise emissions from the wind farm is required pursuant to Guidance Note 4(c), 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 (d) above unless the time limit has been extended in writing by the local planning authority.

Table 1 - Between 07:00 and 23:00 - Noise limits expressed in dB LA90,10 min as a function of the standardised wind speed (m/s) at 10 metre height as determined within the site averaged over 10 minute periods.

Receptor	Standardised 10 m height wind speed, ms-1								
	<4	5	6	7	8	9	10	11	12
	Noise Limit, dB, LA,90 10 min								
Whitefields Farm	40	40	40	43	46	49	51	54	56
Glebe Farm	40	40	40	43	46	49	51	54	56
Cowden Magna	40	40	40	42	44	47	50	53	55
New House	40	40	40	42	44	47	50	53	55
Green Acres	40	40	41	45	48	50	52	54	54
Homer House	43	43	43	44	48	51	54	57	59
School House	40	40	40	44	48	51	54	57	59
Wood Farm	45	45	45	45	46	49	51	54	56

Table 2 - Between 23:00 and 07:00 - Noise limits expressed in dB LA90,10 min as a function of the standardised wind speed (m/s) at 10 metre height as determined within the site averaged over 10 minute periods.

Receptor	Standardised 10 m height wind speed, ms-1								
	<4	5	6	7	8	9	10	11	12
	Noise Limit, dB, LA90 10min								
Whitefields Farm	43	43	43	43	45	48	51	54	55
Glebe Farm	43	43	43	43	45	48	51	54	55
Cowden Magna	43	43	43	43	45	49	52	54	56
New House	43	43	43	43	45	49	52	54	56
Green Acres	43	43	43	44	48	51	53	54	54
Homer House	43	43	43	44	48	52	55	58	60
School House	43	43	43	44	48	52	55	58	60
Wood Farm	45	45	45	45	45	48	51	54	55

13. Before the construction of the final wind turbine a written scheme shall be submitted to and approved in writing by the local planning authority setting out a protocol for the assessment of shadow flicker in the event of any complaint to the local planning authority from the owner or occupier of a dwelling or employment premises 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/or the existing turbines granted consent pursuant to appeal ref: APP/E2001/A/05/2088796. Operation of the wind turbines shall

take place in accordance with the approved scheme unless the local planning authority gives its prior written consent to any variations.

14. No development shall be commenced on site until a scheme to secure the investigation and rectification of any electro-magnetic interference to terrestrial TV caused by the operation of the turbines has been submitted to and approved in writing by the local planning authority. The scheme shall include:

    (a). identification of the shadow area;
    (b). baseline study completed prior to erection;
    (c). procedures and timings for investigative surveys following commissioning of the turbines;
    (d). details of remedial works and timescales for implementation

    All surveys required by the scheme shall be carried out by a qualified engineer and shall be submitted to the local planning authority for approval within 3 months of completion. The development shall be carried out in accordance with the approved scheme.

15. No development shall take place until full details of mitigation drainage works have been submitted to and approved in writing by the local planning authority to confirm how existing hard surfaced areas that currently drain into the existing ditch, will be drained to the diverted ditch. Development shall be carried out in accordance with the approved details.

16. No development shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP shall be compiled by a suitably qualified ecologist and include a detailed plan. The statement shall contain full details of all of the mitigation measures to minimise the impact on ecologically sensitive features on the site as set out in the Withernwick Wind Farm Environmental Statement (EnergieKontor, June 2014). The CEMP shall also include the appointment of an Ecological Clerk of Works (ECW) to oversee the work, details of the scope and remit of the ECW, and a timetable for implementation, details of site induction information and tool box talks for all relevant on site working practices. Actions to be taken if protected species are found during construction shall also be provided. The development shall be carried out in accordance with the approved details.

17. No turbine shall come into operation until an Ecological Habitat Enhancement Plan (EHEP) has been submitted to and approved in writing by the local planning authority. The EHEP shall include (but not be limited to) all of the measures detailed in the Withernwick Wind Farm Environmental Statement (EnergieKontor, June 2014). The scheme shall also include a timetable for implementation and incorporate management and monitoring requirements for avian and non-avian ecology. The approved EHEP shall be implemented in full in accordance with the approved details.

18. The applicant shall notify the local planning authority, Humberside Airport, the Ministry of Defence and the Civil Aviation Authority the following information: the date construction starts and ends; the maximum height of construction equipment and the latitude and longitude of every turbine.

19. Ministry of Defence accredited infrared warning lighting with an optimised flash pattern of 60 flashes per minute of 200ms to 500ms duration at the highest practicable point shall be installed on all turbines. Each turbine will be erected with this lighting installed and the lighting will remain operational throughout the duration of this consent.

20. No development shall commence unless and until an Air Defence Radar Mitigation Scheme (the ADRM Scheme) has been submitted to and approved in writing by the local planning authority. For the purposes of this condition, the ADRM Scheme means a detailed scheme to mitigate the adverse impacts of the Development on the air defence radar at Remote Radar Head (RRH) Staxton Wold and the air surveillance and control operation of the Ministry of Defenece. The scheme will set out the appropriate measures to be implemented to that end. No turbine shall become operational until: a) the mitigation measures which the approved ADRM Scheme requires to be implemented prior to the operation of the turbines have been implemented; and b)any performance criteria specified in the approved ADRM Scheme and which the approved ADRM Scheme requires to have been satisfied prior to the operation of the turbines have been satisfied. The Company shall thereafter comply with all other obligations contained within the approved ADRM Scheme for the duration of the operation of the development.

21. Deliveries to and from the site and the loading or unloading of raw materials during the construction phase of the development shall be restricted to the hours of 08:00 hours to 18:00 hours Monday to Friday and 08:00 hours to 13:00 hours on Saturday, except as may otherwise be agreed in writing with the local planning authority. No deliveries on Sundays or Bank Holidays.

22. Development shall not begin on the site until the vehicular access and construction parking facilities have been constructed in accordance with the approved details. The construction parking areas shall be maintained for the duration of the works.

23. No development shall commence until a Construction Traffic Management Plan (CTMP) shall be submitted to and approved in writing by the local planning authority. The CTMP shall include proposals for the routing of construction traffic, scheduling and timing of movements, the management of junctions to and crossings of the public highway and other public rights of way, details of escorts for abnormal loads, temporary warning signs, temporary removal and replacement of highway infrastructure/street furniture, reinstatement of any signs, verges or other items displaced by construction traffic, and banksman/escort details. The approved CTMP including any agreed improvements or works to accommodate construction

traffic where required along the route, shall be carried out as approved in writing by the local planning authority. The works shall be carried out in accordance with the approved CTMP.

24. The development shall not commence until such time as a construction programme detailing the operations to take place on the site has been submitted to and approved in writing by the local planning authority and thereafter construction works shall be carried out in accordance with the approved construction programme. The programme shall identify:

(a) areas on site designated for the storage of heavy duty plant and equipment, including vehicles and car parking facilities for construction site operatives and visitors;
(b) activities such as earth moving, on site aggregate mixing, crushing, screening, piling etc. and on site storage and transportation of raw material;
(c) working practices to control fugitive emissions of dust arising from on-site activities for example (but not exclusively) wheel washing facilities;
(d) identification of all roadways, temporary or otherwise, to be used for the conveyance of construction materials, plant and equipment, at all times including appropriate measures for the minimisation of noise and the egress of mud and dust from the site by construction vehicles;
(e) working practices for protecting the nearby residential dwellings, including measures to control noise and vibration arising from on-site activities such as piling, set out in British Standard 5228 Part 1: 1997 - Noise and Vibration Control on Construction and Open Sites;
(f) Codes of Practice in respect of (a) to (e) above with which the site contractor and the applicant shall monitor compliance.

The applicant/operator will identify a range of measures associated with each of the above aspects, to control and reduce fugitive emissions of dust, grit, run off water and slurry and noise. The applicant/operator will comply with those measures as agreed with the local planning authority and ensure the same compliance by all Sub-Contractors delivering to or working on all parts of the site.

25. No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by to and approved in writing by the local planning authority. The written scheme of investigation shall include an assessment of significance and research questions; and:

(a). the programme and methodology of site investigation and recording; this would provide for the proper identification and evaluation of the

extent, character and significance of archaeological remains within the application area;

(b). an assessment of the impact of the proposed development on the archaeological remains;

(c). proposals for the preservation in situ, or for the investigation, recording and recovery of archaeological remains and the publishing of the findings, it being understood that there shall be a presumption in favour of their preservation in situ wherever feasible;

(d). the programme for post investigation assessment of the results of the on-site evaluation;

(e). provision to be made for analysis of the site investigation and recording, following the post-excavation assessment, where the results justify this (as required under Paragraph 141 of the National Planning Policy Framework);

(f). provision to be made for publication and dissemination of the analysis and records of the site investigation, where the results justify this (as required under Paragraph 141 of the National Planning Policy Framework);

(g). full provision to be made for archive deposition of the analysis and records of the site investigation (as required under Paragraph 141 of the National Planning Policy Framework);

(h). nomination of a competent person or persons/ organisation to undertake the works set out within the Written Scheme of Investigation. Sufficient notification and allowance of time to archaeological contractors nominated by the developer to ensure that archaeological fieldwork as proposed in pursuance of (a and c) above is completed prior to the commencement of permitted development in the area of archaeological interest; and

(i). notification in writing to the Curatorial Officer of the Humber Archaeology Partnership of the commencement of archaeological works and the opportunity to monitor such works.

GUIDANCE NOTES

These notes are to be read with and form part of noise condition 12. They further explain the condition and specify the methods to be employed in the assessment of complaints about noise immissions from the wind farm. The rating level at each integer wind speed is the arithmetic sum of the wind farm noise level as determined from the best-fit curve described in Guidance Note 2 of these Guidance Notes and any tonal penalty applied in accordance with Guidance Note 3. Reference to ETSUR-97 refers to the publication entitled "The Assessment and Rating of Noise from Wind Farms" (1997) published by the Energy Technology Support Unit (ETSU) for the Department of Trade and Industry (DTI).

Guidance Note 1

(a) Values of the LA90,10-minute noise statistic should be measured at the complainant's property, using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This should be calibrated in accordance with the procedure specified in BS 4142: 1997 (or the equivalent UK adopted standard in force at the time of the measurements). Measurements shall be undertaken in such a manner to enable a tonal penalty to be applied in accordance with Guidance Note 3.

(b) The microphone should 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. Measurements should be made in "free field" conditions. To achieve this, the microphone should 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 LA90,10-minute measurements should be synchronised with measurements of the 10-minute arithmetic mean wind and operational data logged in accordance with Guidance Note 1(d), including the power generation data from the turbine control systems of the wind farm.

(d) To enable compliance with the conditions to be evaluated, the wind farm operator shall continuously log arithmetic mean wind speed and wind direction at hub height for each turbine and arithmetic mean power generated by each turbine, all in successive 10-minute periods, unless otherwise agreed in writing with the local planning authority. The mean wind speed data for the operating turbines shall be 'standardised' to a reference height of 10 metres as described in ETSU-R-97 at page 120 using a reference roughness length of 0.05 metres. It is this standardised 10 metre height wind speed data, averaged across all operating wind turbines, which is correlated with the noise measurements determined as valid in accordance with

Guidance Note 2, such correlation to be undertaken in the manner described in Guidance Note 2. All 10-minute periods shall commence on the hour and in 10- minute increments thereafter.

(e) Data provided to the local planning authority in accordance with the noise condition shall be provided in comma separated values in electronic format.

(f) A data logging rain gauge shall be installed in the course of the assessment of the levels of noise emissions. The gauge shall record over successive 10-minute periods synchronised with the periods of data recorded in accordance with Note 1(d).

Guidance Note 2

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

(b) Valid data points are those measured in the conditions specified in the agreed written protocol under paragraph (d) of the noise condition, but excluding any periods of rainfall measured in the vicinity of the sound level meter. Rainfall shall be assessed by use of a rain gauge that shall log the occurrence of rainfall in each 10 minute period concurrent with the measurements periods set out in Guidance Note 1. In specifying such conditions the local planning authority shall have regard to those conditions which prevailed during times when the complainant alleges there was disturbance due to noise or which are considered likely to result in a breach of the limits.

(c) For those data points considered valid in accordance with Guidance Note 2(b), values of the LA90,10-minute noise measurements and corresponding values of the 10- minute wind speed, as derived from the standardised ten metre height wind speed averaged across all operating wind turbines using the procedure specified in Guidance Note 1(d), shall be plotted on an XY chart with noise level on the Y-axis and the standardised mean 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) should be fitted to the data points and define the wind farm noise level at each integer speed.

Guidance Note 3

(a) Where, in accordance with the approved assessment protocol under paragraph (d) 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 is to be calculated and applied using the following rating procedure.

(b) For each 10-minute interval for which LA90,10-minute in accordance with Guidance Note 2 a tonal assessment shall be performed on noise immissions during 2 minutes of each 10-minute period. The 2-minute periods should be spaced at 10-minute intervals provided that uninterrupted uncorrupted data are available (‘’the standard procedure"). Where uncorrupted data are not available, the first available uninterrupted clean 2-minute period out of the affected overall 10-minute period shall be selected. Any such deviations from the standard procedure, as described in Section 2.1 on pages 104-109 of ETSU-R-97, shall be reported.

(c) For each of the 2-minute samples the tone level above or below 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 line 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 at each integer wind speed. 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 Guidance Note 2.

(f) The tonal penalty is derived from the margin above audibility of the tone according to the figure below.

Guidance Note 4

(a) If a tonal penalty is to be applied in accordance with Guidance Note 3 the rating level of the turbine noise at each wind speed is the arithmetic sum of the measured noise level as determined from the best fit curve described in Note 2 and the penalty for tonal noise as derived in accordance with Guidance Note 3 at each integer wind speed within the range specified by the local planning authority in its written protocol under paragraph (d) of the noise condition.

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

(c) 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 (e) 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:

(e) Repeating the steps in Guidance Note 2, with the wind farm switched off, and determining the background noise (L3) at each integer wind speed within the range requested by the local planning authority in its written request under paragraph (c) and the approved protocol under paragraph (d) of the noise condition.

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

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

(h) 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 (e) 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 (e) of the noise condition then the development fails to comply with the conditions.