
Appeal Decision

Inquiry held on 17-20 December 2013¹

Site visits made on 16 and 20 December 2013 and 2 January 2014

by Neil Pope BA (HONS) MRTPI

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

Decision date: 30 January 2014

Appeal Ref: APP/W1145/A/13/2194484

Land at Dunsland Cross, Brandis Corner, Devon, EX22.

- 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 Mr Mike Corker of Bolsterstone Innovative Energy (Holsworthy) Ltd against the decision of Torridge District Council.
 - The application Ref. 1/1250/2011/FULM, dated 21 December 2011, was refused by notice dated 22 January 2013.
 - The development proposed is the *erection of 3 no. wind turbines of height between 95 metres and 100 metres to tip and associated infrastructure including access tracks, 1 switchgear and control building with transformers and grid connection infrastructure, underground cabling, turbine foundations, crane hardstandings, 1 upgraded site access point and 1 meteorological mast.*
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 3 no. wind turbines of height between 95 metres and 100 metres to tip and associated infrastructure including access tracks, 1 switchgear and control building with transformers and grid connection infrastructure, underground cabling, turbine foundations, crane hardstandings, 1 upgraded site access point and 1 meteorological mast at land at Dunsland Cross, Brandis Corner, Devon. The permission is granted in accordance with the terms of the application, Ref. 1/1250/2011/FULM, dated 21 December 2011, subject to the conditions in the attached Schedule.

Procedural Matters

2. The application was accompanied by an Environmental Statement (ES) prepared in accordance with The Town and Country Planning (Environmental Impact Assessment) Regulations 2011. I have taken into account the contents of the ES in determining the appeal.
3. The Rule 6 party² has expressed concerns³ regarding the adequacy of the ES. However, the ES outlines the site selection and design processes and I note the ruling in Derbyshire Dales District Council (2) Peak District National Park Authority v Secretary of State for Communities and Local Government (2) Carsington Wind Energy Limited [2009] EWHC 1729 (Admin). The ES and the 'residential visual amenity' assessments undertaken by the appellant and the

¹ With the agreement of the main parties, I closed the Inquiry in writing on 3 January 2014 following the receipt of closing submissions.

² Dunsland Turbines Opposition Group (DTOG)

³ It is argued that the ES does not consider or evaluate alternatives.

Council provide adequate information to reasonably assess the environmental effects of the proposed development and allow an informed decision to be made. I concur with the Council that it complies with the above Regulations.

4. As agreed by the main parties, I have determined the appeal on the basis of the access track design details shown on drawing No. 007 Rev B rather than drawing No. 007a specified in the Council's decision notice. This would not prejudice the case of any party.
5. The Council's decision notice includes reference to various policies contained within the Devon Structure Plan. However, The Regional Strategy for the South West (Revocation) Order 2013 (SI 2013 No.935) came into force on 20 May 2013. This Order revoked the Structure Plan policies and the Regional Planning Guidance for the South West (RPG10).
6. Appendix B to the Statement of Common Ground (SoCG) that has been agreed by the appellant and the Council is a planning obligation (agreement) in respect of the investigation and rectification of any problems relating to South West Water Limited's (SWWL) radio links and scanning telemetry system in the area⁴. The appellant, Council and SWWL are all signatories to this obligation. This obligation addresses the water company's concerns regarding the impact of the proposed development. It accords with the provisions of paragraph 204 of the National Planning Policy Framework⁵ ('the Framework') and I have taken it into account in determining the appeal.
7. To ensure the most efficient use of Inquiry time the appellant chose not to call its expert witnesses on noise and ecology. As a consequence, the proofs of evidence of these experts could not be tested. Whilst this reduces the weight to be given to this evidence, I note that it was produced by consultants with considerable professional expertise in matters of noise and ecology. I therefore disagree with the argument of the Rule 6 party that this should only be given "little, if any, weight". I have taken it into account in determining the appeal.

Main Issue

8. Whether the benefits of the scheme, including the production of electricity from a renewable source, outweighs any harmful impacts, having particular regard to: the effect upon the character and appearance of the area, including any cumulative impact from other permitted wind turbines within the area; the effect upon the living conditions of neighbouring residents, having particular regard to outlook and noise and; the effect upon nature conservation interests.

Reasons

Planning Policy

9. The development plan includes the Torridge District Local Plan (LP) adopted in 2004. The Council's decision notice includes reference to 'Saved'⁶ policies DVT2C (development in the countryside), DVT6 (local distinctiveness), DVT7 (design considerations), DVT11 (impact on amenity), ENV1 (conservation interests) and ENV5 (countryside and landscape conservation). There is agreement between the Council and the appellant that policies DVT6, DVT11,

⁴ SWWL's telemetry radio link for monitoring and raising alarms passes between two of the wind turbines.

⁵ This is an important material consideration in the determination of this appeal and carries very substantial weight

⁶ Direction issued on 20 September 2007 by the Secretary of State for Communities and Local Government under Schedule 8 to the Planning and Compulsory Purchase Act 2004.

- ENV1 and ENV5 are broadly consistent with the provisions of 'the Framework'⁷. However, the somewhat negative 'tone' of policies DVT2C and DVT7 create a tension with the positive growth emphasis of 'the Framework'. The supporting text to policy DVT7 also refers to "*urban design*", "*the quality of the urban environment*" and "*urban renaissance*". It is difficult to comprehend how this policy would be applicable to a windfarm. It is not determinative to the appeal.
10. I have also taken into account the provisions of 'Saved' LP policies ENV7 (nature conservation interests⁸), ENV10 (mitigation and enhancement for nature conservation), DVT13 (noise emissions and disturbance), ENV2 (setting of listed buildings) and ENV3 (setting of conservation areas). I agree with the appellant that policies ENV7, ENV10 and DVT13 (1) are broadly consistent with 'the Framework' and DVT13 (2) is more restrictive than the Government's planning policies. ENV2 and ENV3 are also at odds with 'the Framework' as they lack the balancing exercise set out in paragraphs 133 and 134.
 11. LP policy ECD9 relates to alternative and renewable energy development. However, this is not⁹ a 'Saved' policy and, as a consequence, it no longer forms part of the development plan. Whilst this policy is a material consideration that I have taken into account, the development plan is silent in respect of schemes for renewable energy. Paragraph 14 of 'the Framework' is therefore engaged.
 12. The Draft North Devon and Torridge Local Plan was published for consultation in 2013. This Plan is intended to cover the period up to 2031. However, it has not reached an advanced stage and has yet to be independently examined. This Plan is not relied upon by the Council and is not determinative to this appeal¹⁰.
 13. My attention has also been drawn to the Council's Wind Energy Policy 2010. One of the main aims of the document is to provide an engagement tool between the relevant parties. It includes recommended separation distances from settlements and dwellings which are intended to be a "*starting point for discussions*." Whilst this has been subject to a process of stakeholder consultation it does not form part of the development plan and does not comprise a Supplementary Planning Document. The Council has not identified any conflict with this document. It is not determinative to this appeal.
 14. In determining planning applications for wind energy development, Footnote 17 of 'the Framework' states that planning authorities should follow the approach set out in the National Policy Statement for Renewable Energy Infrastructure (EN-3), which should be read with the relevant sections of the Overarching National Policy Statement for Energy (EN-1). Amongst other things, EN-1

⁷ This identifies that the purpose of the planning system is to contribute to the achievement of sustainable development. At the heart of 'the Framework' is a presumption in favour of sustainable development.

⁸ Whiteleigh Meadow Site of Special Scientific Interest (SSSI) is identified in the LP as a Site of Nature Conservation Importance (SNCI). The SSSI is an area (81.9 ha) of unimproved Culm grassland with a rich botanical interest. Culm grassland also forms part of the UK national priority Biodiversity Action Plan habitat. It is also an area of 'Open Access Land'.

⁹ In January 2008 GoSW informed the Council that this policy was omitted in error from the Schedule of 'Saved' policies. The provisions of the 2004 Act do not allow this error to be corrected.

¹⁰ Some of the evidence base is relied upon by the Council and the appellant. This includes the 'Joint Landscape Character Assessment for North Devon & Torridge Districts' published in 2010 (LCA) which, in effect, supersedes the Torridge Landscape Assessment 1995 (this is referred to in the adopted LP but is not relied upon) and 'An Assessment of the Landscape Sensitivity to Onshore Wind Energy & Field-Scale Photovoltaic Development in Torridge District' published in 2011 (ALS). The LCA is the most recent assessment of the local landscape and provides a sound basis upon which to consider the proposals. The Council's and appellant's planning witnesses agreed that both the LCA and ALS should be given moderate weight in determining this appeal. These documents are important material considerations.

states that the Government is committed to increasing dramatically the amount of renewable generation capacity and EN-3 states that onshore wind farms will continue to play an important role in meeting renewable energy targets.

15. I have also taken into account the Government's 'Planning practice guidance for renewable and low carbon energy' (2013), as well as the Ministerial Statements¹¹ of 6 June 2013. In addition, I have had regard to the separate Ministerial Statement¹² of 23 March 2011.

Other Documents

16. In determining the appeal I have also taken into account the provisions of various Acts¹³, Directives¹⁴, Strategies¹⁵ and statements¹⁶ relating to renewable energy, including the 2007 energy white paper¹⁷. Amongst other things, these documents¹⁸ set out and identify progress towards achieving the legally binding target of reducing UK emissions by at least 34% by 2020 and 80% by 2050, as well as achieving the UK's obligation of 15% of energy consumption from renewable energy resources by 2020. They reflect the Government's commitment to renewable energy. I concur with the appellant that these are important factors to weigh in the planning balance. However, I also note the advice in the 2013 planning practice guidance that the need for renewable energy does not automatically override environmental protection or the planning concerns of local communities.
17. The SoCG also identifies other relevant documents¹⁹ in respect of renewable energy. Amongst other things, these identify a potential wind energy resource within Devon. However, these have not been produced by policy-making bodies and, as a consequence, only limited weight can be attached to them.

*Benefits of the Scheme*²⁰

18. The proposal would have a capacity factor of about 26% and a maximum installed capacity (total outage) of 7.5 MW. It would offset several thousand tonnes²¹ of carbon dioxide emissions a year and generate sufficient electricity for the domestic needs of many homes²². The Council has queried these figures²³ and I note that the appellant's calculations do not take into account a higher cut-in speed that could be necessary to safeguard nature conservation interests²⁴. Whatever the actual figures for electricity production and CO₂

¹¹ Secretary of State for Department for Communities and Local Government and the Secretary of State for the Department of Energy & Climate Change.

¹² 'Planning for Growth' The Minister of State for Decentralisation.

¹³ The Climate Change Act 2008.

¹⁴ Renewable Energy Directive 2009/28/EC.

¹⁵ Including the UK Renewable Energy Strategy (2009) and the UK Renewable Energy Roadmap and its updates.

¹⁶ Department of Energy & Climate Change Annual Energy Statement (2013).

¹⁷ 'Meeting the Energy Challenge' DTI (May 2007).

¹⁸ These are listed in the agreed SoCG as part of "Other Relevant Guidance".

¹⁹ These include various reports from Regen SW and the University of Exeter.

²⁰ At my request, the appellant listed the benefits of the scheme on a single sheet of paper. These matters had been identified within the evidence already before the Inquiry. The list merely set them out in a simple document for ease of reference. No party was prejudiced by the production of this list.

²¹ The appellant has calculated over 6,823 tonnes of CO₂ emissions/year based on 401g CO₂/kWh.

²² The appellant has also calculated that enough electricity would be generated to power the equivalent of 3,656 homes/year. (Based on data from the 'Digest of United Kingdom Energy Statistics 2013' and the 'Regional and local authority electricity consumption statistics: 2005 to 2011 Updated 28 March 2013'.)

²³ It has not provided any alternative calculation/assessment. Whilst there has been a move away from regional renewable energy targets, planning policies remain broadly supportive of renewable energy schemes.

²⁴ I refer to this matter below. There is also likely to be some very small adjustment in avoiding shadow flicker.

emissions, 'the Framework' states that even small-scale projects²⁵ provide a valuable contribution to cutting greenhouse gas emissions.

19. The proposal would assist in tackling climate change²⁶ and help meet national targets and ambitions for reducing greenhouse gas emissions. The Council has pointed out that the UK is on course to deliver its commitment to 15% of the UK's projected energy requirements from renewables. However, there is no guarantee that schemes which have been approved or consented elsewhere will proceed. Moreover, there is nothing within Government policy which suggests that targets are an end in themselves; nor that they should not be exceeded if acceptable schemes come forward. The ALS also states that the Council recognises the need to maximise renewable energy generation whilst ensuring important characteristics of the landscape are not unacceptably harmed.
20. The proposed development would increase the security of energy supply and contribute towards replacing the UK's dated fossil-based energy infrastructure. The appellant has also calculated that the proposal would provide an estimated £1.5 million construction spend²⁷ which could benefit local contractors. Between 10-20 short term construction jobs would be created and the equivalent of 1 full time job. I have already noted above the Ministerial Statement in respect of Planning for Growth.
21. The scheme would include ecological and ornithological mitigation measures²⁸ that would contribute towards maintaining and strengthening the ecological network. It would also result in the replacement of an existing 33kV electricity transmission line and part of an existing 11kV line across the site and, in so doing, would reduce the visual impact of these existing overhead lines. The adverse impacts of the scheme²⁹ would also be limited to a 25 year period³⁰.
22. The above 'package' of economic, social and environmental benefits is an important consideration that can be given very substantial weight in determining this appeal.

Character and Appearance

23. The appeal site³¹ comprises agricultural land³² that is bounded to the west by the A3079 and to the north by the A3072 Holsworthy to Hatherleigh road. It includes part of a ridge of land³³ that runs parallel to the A3072. The small settlement of Brandis Corner is located immediately to the north of the Holsworthy to Hatherleigh Road and there is a scatter of dwellings within the surrounding countryside³⁴. Whiteleigh Meadow SSSI abuts the south eastern boundary of the site and Cookworthy Forest abuts the southern boundary.

²⁵ Renewable or low carbon energy projects.

²⁶ Including 'in combination' effects with other renewable and low carbon energy schemes in combating the impacts of climate change on the landscape.

²⁷ Excluding economic multiplier effects by way of the spend circulating in the local economy, spend by outside contractors and income received by the landowner.

²⁸ I refer to these in more detail below.

²⁹ I set out these below.

³⁰ As this period of time amounts to one generation it is not a benefit to be weighed in the balance when considering the impact upon the living conditions of neighbouring residents.

³¹ This comprises 67.3ha but would have a developed area of about 2.2ha.

³² Predominantly grazing land between 150-179m above Ordnance Datum.

³³ This has a high point of 179 m AOD. The wind turbines would be sited to the west and south of this high point.

³⁴ I understand that the nearest dwellings to the proposed wind turbines are the single storey properties known as 'Cranmore' and 'Fairlawns'. These are situated approximately 500m away.

Character

24. The site lies within the 'Farmed Lowland Moorland and Culm Grassland' landscape character type (LCT) as defined in the above noted LCA³⁵. The key characteristics of this LCT include gently undulating landform with a plateau-like character in some places, long views across the landscape and beyond including views of Dartmoor³⁶, large blocks of conifer plantation, open areas of Culm grassland surrounded by medium-scale fields and cattle/sheep grazing with occasional arable fields. The special qualities³⁷ of this LCT include high levels of tranquillity and remoteness. The LCA's future 'Forces for Change' affecting landscape character include the effects of climate change upon Culm grasslands and increasing pressure for wind turbines on the elevated plateau.
25. The key characteristics of the 'Upper Farmed Wooded Valley Slopes' LCT include a strongly undulating landform of rolling hills and farmland, a pastoral landscape with some arable fields and small blocks of coniferous plantation. The special qualities are identified in the LCA as including an open landscape with important vantage points and uninterrupted vistas. The LCA's future 'Forces for Change' affecting landscape character of this LCT include uncertainty for the agricultural economy and increased demand for wind turbines on open ridgelines.
26. I note from the LCA's key characteristics that within the 'Farmed Lowland Moorland and Culm Grassland' LCT tourism/leisure uses and main roads dilute the perceptions of tranquillity and remoteness. During my site visits I was able to clearly hear road traffic noise along the main roads and noted other uses/activities³⁸ around the appeal site. Although such noise and activities are likely to be much reduced during parts of the day, this is not an especially tranquil or remote area of countryside. Even so, I did experience a greater sense of tranquillity and remoteness from the public right of way³⁹ across Whiteleigh Meadow.
27. This is also not an unattractive rural landscape and it includes pleasing contrasts between exposed ridges and more enclosed valleys. However, whilst all landscapes have value and those opposing the scheme do not wish to see this site developed in the manner proposed, there is no cogent evidence⁴⁰ to demonstrate that the appeal site is within a 'valued landscape' in the context of paragraph 109 of 'the Framework'. Nevertheless, the core planning principles of 'the Framework' include taking account of the character of different areas and recognising the intrinsic character and beauty of the countryside.
28. The Council's ALS identifies both of the above LCTs as being of medium-high sensitivity⁴¹ to large (76-110m high) wind turbines. Within the ALS⁴², the landscape strategy for wind turbines within both of these LCTs is for occasional

³⁵ The eastern most part of the appeal site lies within the 'Upper Farmed & Wooded Valley Slopes' LCT.

³⁶ At its closest point Dartmoor National Park is about 17.5 km from the site.

³⁷ As set out in the LCA.

³⁸ This included the rows of overhead power/electricity lines, the telecommunications mast sited on top of the ridge, farm and forestry operations and nearby business uses.

³⁹ This is shown in the ES and the 1:25,000 scale OS Explorer Map as a designated bridleway but on the ground is waymarked as a permissive path.

⁴⁰ The Council's landscape witness informed me that the site was not identified or designated as a valued landscape in any published document.

⁴¹ i.e. the key characteristics and qualities of the landscape are sensitive to change.

⁴² Outside the Area of Outstanding Natural Beauty (AONB) and not within the setting of the AONB. The site is over 18km from the nearest AONB.

single or small size clusters⁴³ of turbines comprising turbines that may be up to and including sizes in the large category and where they do not have a defining influence on the overall experience of the landscape.

29. The 'footprint' of the proposed development would not be unduly large. The agricultural use of the vast majority of the site would be retained and only a short section of hedgerow and a small number of trees would be removed as part of the proposed access works. This would not entail the loss of any important trees or species rich hedgerow and new landscape planting could be undertaken to off set these elements of the scheme. The proposal would maintain the existing field pattern and would not encroach into neighbouring areas of Culm grassland. The development would also be set back from the edge of Whiteleigh Meadow so as to reduce the risk of any harm or disturbance to this important site.
30. The proposed development would be sited below the top of the ridge⁴⁴ of land that runs parallel to the A3072 and would have a well-balanced and cohesive layout. Nevertheless, within a distance of about 1.5 km of the site the height of the wind turbines, anemometer mast and the movement of the turbine blades would contrast sharply with the form and scale of existing elements of the landscape and the largely unspoilt qualities of the surrounding countryside. This would entail a high magnitude of change to the character of the local landscape and result in a dominant and overtly man-made addition to this rural area. The motion of the turbine blades would also further dilute from the perception of tranquillity and remoteness, especially from Whiteleigh Meadow. In addition, the proposed access works, hardstandings and other associated infrastructure would detract from the character of the countryside. These works would however be in keeping with the scale and form of existing elements of the landscape. In comparison to the turbines and mast, the extent of this impact would be very limited and unlikely to extend beyond 0.5 km.
31. Between 1.5 km – 3 km of the site the form and height of the turbines and the mast, as well as the movement of the turbine blades, would entail a medium-high magnitude of change to the predominantly unspoilt rural character of the landscape. At these distances the topography of the landscape and the increase in distance from the site would diminish the scale and influence of these elements of the scheme. Whilst this change would be at odds with and harmful to the existing character of the local landscape, the wider landform (including tree cover/large blocks of woodland) would screen parts of the turbines and mast. At these distances the proposal would be a prominent feature within this part of the countryside and would be very different to the landscape qualities of the local area.
32. Between 3 km – 5km the turbines and mast would remain a noticeable feature of the landscape and would continue to detract from its rural character. However, the magnitude of change would be medium. At these distances many other man-made features and activities/movement across the landscape would be readily apparent. The scheme would be unlikely to erode any perception of remoteness or tranquillity. Beyond 5km the development would be unlikely to have anything other than a negligible effect upon the character of the landscape.

⁴³ Small-scale clusters are defined in the ALS as up to 5 turbines.

⁴⁴ The upper parts of the turbines would extend well above the top of this ridge and would tower above the telecommunication/radio mast. (I was informed that this mast is 15m high.)

33. I understand from some residents that when a previous anemometer mast was erected on the site the aviation warning lights were very noticeable and a matter of concern to some of those living nearby. Whilst the Ministry of Defence has requested that the turbines are fitted with aviation warning lights, these could be installed without being obtrusive or causing serious light pollution. Appropriate lighting would not harm the character of the area.

Appearance

34. The proposed wind turbines and mast would be visible from very many public roads and rights of way, including parts of the public domain many kilometres from the site. However, that is not to say that the development would be harmful when seen from the public realm. From many locations there would only be glimpsed or filtered views and beyond about 5 km the topography (including buildings and vegetation) and degree of separation from the site would result in no significant harmful visual impacts. There would be no harmful impact upon the setting of any designated landscape⁴⁵.
35. Amongst other things, I viewed the appeal site from the 18 different locations⁴⁶ identified in 'Volume II – Figures' of the ES. I concur with the findings in the Technical Appendix to the ES that as a result of the following: distance; landform; screening; containment; and expanse of view; the proposals would be visible (in part) from these viewpoints⁴⁷, but from 8 of these representative locations the scheme would be unlikely to have any significant or harmful effect upon the appearance of the area. This includes views towards Dartmoor. The slender form of the turbines and mast would allow for the retention of distant views towards this upland area which would remain the dominant skyline feature. There would be no interruption or adverse effect upon any important long views across the landscape.
36. When seen from the A3072 near Brandis Corner the turbines and mast would be immediately apparent and their form and height, as well as the movement of the turbine blades would be seen at close proximity on the skyline. Some of the access tracks⁴⁸ and associated infrastructure would also be apparent near the site entrance, whilst other elements of the scheme, including some lower sections of the turbines and mast, would be screened⁴⁹ by existing farm buildings. The impact of the scheme would detract from the appearance of the countryside. Views for most people travelling along the Holsworthy to Hatherleigh Road would however be glimpsed and transient in nature. From the A3072 near Stadsdon Bridge further to the east, the upper sections of the turbines and mast would continue to appear as conspicuous features within the landscape. However, the increase in distance would reduce the impact and intervening vegetation would provide further screening. From the evidence before me this does not appear to be an important vantage point.
37. Part of the development would also be visible from the A3079 to the west. The turbines and the mast would be in close proximity to this main road and the movement of the turbine blades would be evident to local residents. However, roadside planting/vegetation and the generally fast moving nature of traffic

⁴⁵ The Council has not expressed or identified concerns regarding the impact upon the National Park or the AONBs.

⁴⁶ I understand that these were agreed between the appellant and the Council as being representative viewpoints.

⁴⁷ Or from areas of the public realm very near to the agreed locations.

⁴⁸ I have already noted above that replacement planting would ameliorate the impact of the access works.

⁴⁹ From Brandis Corner, intervening vegetation and the ridge of the land would assist in screening some elements of the scheme, including most of the most southern turbine (T3) and sections of the other turbines and mast.

- would result in only glimpsed or transient views of the scheme for those travelling along this main road. Whilst the proposal would detract from these views there would be a small enhancement in removing some existing overhead lines across the site.
38. Cookworthy Forest includes car parking facilities and picnic tables. Some of the forest tracks are also used for leisure purposes⁵⁰. From within much of this commercial forest views of the development would be restricted by the enclosed nature of the coniferous plantations. There would however be views of all three turbines, the mast and some of the associated infrastructure from a section of one of the forest tracks. The turbines and mast would extend well above the ridge of land running parallel to the A3072 and would be a very prominent addition to this rural scene. The height, form and movement of the turbine blades would be at odds with this agricultural/forestry landscape. The extent of this visual harm would, to a limited extent, be diminished by the large scale of the landform and the wide expanse of view.
39. The greatest visual harm would arise from the public right way across Whiteleigh Meadow. From here, much of the turbines and the mast would be visible. The form, height and appearance of these elements of the scheme would appear as very conspicuous and intrusive elements in this largely unspoilt⁵¹ and somewhat wild rural scene. The movement of the turbine blades would also detract from the sense of tranquillity and remoteness that is experienced from this part of the public realm. This harm supports the Council's case and the arguments of those who have argued that permission should be withheld. However, this needs to be weighed in the overall planning balance. Furthermore, from all that I have seen and read this does not appear to be a popular route⁵².
40. In some other public views, including the minor roads north of Muckworthy and south west of Holemoor and Dunsland House, the turbines and motion of the turbine blades would 'draw the eye' and detract from the appearance of the rural landscape. At these distances from the site and with the influence of topography (including landform and vegetation) the proposals would cause limited harm to the visual qualities of the area. From the public footpath between Plymleigh and West Lake (Chilla) there is an open and extensive outlook towards the appeal site. From here, the height of the turbines would contrast awkwardly with the scale and largely unspoilt appearance of the countryside. 'Blade clash' would also be apparent accentuating the harmful visual impact of the scheme. However, this would occur at a considerable distance from the site and would form part of a wide panorama.
41. When moving through or across the countryside, the proposal would result in some harm to the character and appearance of the area but would not have a defining influence on the overall experience of the landscape.

⁵⁰ During my visits I noted information boards for orienteering and saw two people walking dogs within the forest.

⁵¹ Some existing overhead lines and the telecommunications mast on the ridge to the north are visible.

⁵² On my two separate visits to Whiteleigh Meadow I did not encounter any other users of this path. Whilst the situation may be different at the weekends and during the summer months, there is no clear path across this SSSI or anything to refute the statement in the ES that this view is experienced by a very limited number of people. The article from a local newspaper describing a walk by a journalist across Whiteleigh Meadow does not indicate any significant public use/value of this path/view. I also note that the photograph accompanying this article was taken looking towards the appeal site from inside Cookworthy Forest rather than from Whiteleigh Meadow.

Cumulative Impact

42. A number of other wind turbines⁵³ have been permitted within the wider surroundings. These have been considered as part of the ES and in other evidence submitted by the appellant. The appellant's approach to assessing any cumulative landscape and visual impacts of the scheme is consistent with the advice in the Government's 2013 practice guidance. Although not included as part of the reasons for refusal, the Council⁵⁴ and some interested parties have argued that the appeal scheme would result in adverse cumulative visual impacts. In particular, the Council has argued that when seen from north west of Stibb Cross (approximately 12.8km from the site) and Stourton Tor inside Dartmoor National Park (approximately 18.6km away) the character of these views would be altered in combination with previously approved schemes.
43. In some instances, such as public views near Stibb Cross and at Stourton Tor, the appeal scheme would be seen with some other wind turbines. However, the proposed turbines would be set well apart from these other developments. In the above noted distant views the scheme before me would form part of a wide rural panorama that includes very many landscape features (including landform and tree cover) and where there would continue to be an overwhelming sense of unspoilt open countryside. This is and would remain a landscape with occasional wind energy developments. Whilst this landscape, like many others, has a limited capacity for accommodating wind turbines, the addition of the appeal scheme could not reasonably be described as creating a 'windfarm' landscape. The proposal would not significantly change the overall perception of the existing rural scene and there would be no pronounced simultaneous or sequential cumulative impacts.
44. The above harm to the character and appearance of the landscape weighs against granting planning permission and is at odds with 'saved' LP policies DVT2C and ENV5. However, this 'small size cluster' of 'large' wind turbines would accord with the landscape strategy⁵⁵ of the ALS and some of the generic advice contained in a 2013 report⁵⁶ for the County Council. As I have also noted above, the landscape character of Culm grassland is at risk from climate change. On its own, this scheme would have an insignificant effect on addressing this and my decision does not turn on this matter. Nevertheless, in combination with other renewable or low carbon energy schemes the proposal could assist in safeguarding this important feature of the local landscape. There is also no policy presumption against wind turbines of this size and scale and some harm to the character and appearance of the countryside is an inevitable consequence of renewable energy developments. I attach moderate weight to the harm that I have identified in respect of this main issue.

⁵³ The appellant's updated plan shows 34 sites with turbines of various heights, including Glebe Farm (84m to tip) approx 2.3km to the west, Ratherton Farm (77m) approx 6.5km to the west and Galsworthy Farm (4x 100m) near Stibb Cross. I have also taken into account the permission at East Youlstone Farm (2x100m) near Crimp.

⁵⁴ Its written evidence is that there would be cumulative visual impacts and whilst these would not be significant they would be adverse and harmful.

⁵⁵ In so doing, it would maintain local vernacular and the sense of place and accord with 'saved' LP policy DVT6.

⁵⁶ 'Devon Landscape Policy Group Advice Note No.2: Accommodating Wind and Solar PV Developments in Devon's Landscape. Guidance on minimising harm to the distinctive character and special qualities of Devon's landscape through sensitive siting and design.' Prepared by LUC on behalf of Devon Landscape Policy Group Members.

Living Conditions

Outlook

45. The proposed turbines and mast would be visible from numerous residential properties. The outlook for the occupiers of 'Cranmore', 'Fairlawns', 'Little Copse' and 'View Farm' would be most affected by the scheme. With the exception of 'Cranmore'⁵⁷ and with the agreement of the respective owners, I viewed the appeal site from these properties. As part of my accompanied visit I also viewed the site from 'Woodlands'. In addition and on my own I assessed the likely impact upon other dwellings, including those at Brandis Corner.
46. 'Cranmore' lies to the north of the appeal site with its main views facing southwards towards the site. There would be views of the turbines from the windows of habitable rooms in south facing elevation of this property, including the conservatory and from parts of the south facing garden. The turbines would appear as the focus of view from this dwelling. However, one of the turbines (T3) and the mast would be set down below the ridge of land that runs parallel to the A3072 and another turbine (T1) would be at a slightly lower level. The landform and intervening vegetation⁵⁸ would filter these views⁵⁹. Whilst this 'screening' would be reduced during the winter months, the development would not result in any serious loss of outlook or any significant loss of amenity for the occupiers⁶⁰ of this neighbouring property.
47. I note that when the Council considered the application its officers advised that the impact upon the living conditions of the occupiers of 'Cranmore' "*would not become so unsatisfactory as to become unacceptable*". Whilst the Council has argued that the amenity of the occupiers of this property would be significantly harmed, its relevant witness did not argue that this property would become a significantly less attractive place in which to live⁶¹.
48. 'Fairlawns' lies to the west of the A3072 with main views facing to the east, west and north. There would be views of the upper parts of two of the turbines from the windows to habitable facing rooms⁶² within this property and views from parts of the garden. These turbines would appear as large scale elements and would change (adversely affect) the outlook from this property. However, they would occupy part of filtered⁶³ views towards the appeal site. Whilst this filtering would be reduced during the winter months occupiers are likely to spend less time in their garden at this time of year. This property also has a large rear garden and the largely unfettered views across the surrounding countryside to the north west would remain. On balance⁶⁴, the impact would not be overpowering or result in a serious loss of amenity.

⁵⁷ The Council has provided photomontages taken from this property. In addition to the Residential (Visual) Amenity Survey in the ES, the appellant has also provided detailed wireframes to assess the likely impacts. I have also taken into account the observations (including photomontages) in DTOG's March 2012 report.

⁵⁸ This includes a shelterbelt of tall trees to the south west.

⁵⁹ The turbines would be largely screened with only the tips of some of the blades projecting above the tree tops.

⁶⁰ I note that a previous occupier objected to the application. The property was sold during the course of the application which is now at appeal. The current occupant does not object to the proposals.

⁶¹ The Council accepts that the proposal would not fail the so-called 'Lavender test'. This 'test' is not contained within any relevant policy but it is based on the findings of an Inspector who determined an appeal for five 120m high wind turbines on a site in Kent (Enifer Downs Farm) in 2009 (Ref. APP/X2220/A/08/2071880). It is now widely referred to by parties when assessing the impact of schemes for wind turbines.

⁶² The main living room is dual aspect.

⁶³ Filtered by garden vegetation and trees.

⁶⁴ Both the Council's case officer and relevant witness reached their professional views "*By a narrow margin*".

49. 'Little Copse' is a single storey dwelling⁶⁵ adjacent to⁶⁶ 'Fairlawns'. As I saw during my accompanied visit there are views towards the appeal site from eastern facing windows to habitable rooms as well as views from the garden. The upper sections, including the blades, of two of the proposed turbines would be visible from these parts of the property. These views would be filtered by a tall garden hedge (coniferous) and roadside trees. The turbines would appear as a large scale element within the surrounding landscape and would adversely affect the outlook from parts of this property. However, the turbines would occupy only part of oblique views and would not be overpowering. There would also be other views to the west from the main living room and largely unfettered views across the surrounding countryside to the north west from the long rear garden. This change in outlook would not be serious or sufficient to justify withholding permission.
50. 'View Farm' is a two storey dwelling located approximately 840m from the nearest proposed wind turbine. There are views from some habitable rooms towards the appeal site as well as views from the garden and yard/stables. From parts of this property sections of all three turbines and part of the mast would be visible. The turbines would appear as large scale elements in the landscape and the motion of the turbine blades would detract from the largely unspoilt open views to the north from this property. However, the turbines would be set back a considerable distance from this dwelling with trees providing filtered views. The outlook to the north would not be unattractive or oppressive. Attractive open views would also remain to the east across the surrounding countryside/forest. Whilst I note that the occupiers spend much time with their animals in the yard/stables area the change in outlook would not result in a serious loss of amenity. I note that the Council's case officer advised that this would not be an unacceptable place to live and did not include it within the recommended reasons for refusal.
51. I understand why the residents of some of these properties consider that the proposal would unacceptably harm their outlook. I have no doubts that the occupiers of 'Fairlawns', 'Little Copse' and 'View Farm' would deem their properties to be less attractive after the turbines were erected. However, when dispassionately assessed, the changes in outlook would not be overwhelming or oppressive to warrant the dismissal of this appeal. None of these properties are likely to become widely regarded as unattractive or unsatisfactory places in which to live. A good standard of amenity (outlook) would be maintained for the occupiers of neighbouring residences. The proposal would accord with LP policy DVT11 and the fourth bullet point of paragraph 17 of 'the Framework'.

Noise

52. The Rule 6 party and some neighbouring residents are concerned that the operation of the proposed wind turbines could result in harmful noise disturbance. Noise is recognised as an important consideration in both the development plan and national policies, including the Noise Policy Statement for England⁶⁷ (NPSE). EN-3 advises that operational noise from onshore wind

⁶⁵ The property is occupied as two separate units within the same family.

⁶⁶ The appellant and Council agree that this property is about 545m from the nearest turbine.

⁶⁷ The aims of the Government's noise policy include avoiding significant adverse impacts on health and quality of life, as well as mitigating and minimising adverse impacts on health and quality of life.

farms should be based upon 'The Assessment and Rating of Noise from Wind Farms' (ETSU)⁶⁸.

53. The appellant and the Rule 6 party agree that ETSU is the appropriate method⁶⁹ for defining maximum permissible wind farm noise immission levels at noise-sensitive receptors. It is also agreed that the procedures in the Institute of Acoustics Good Practice Guide (May 2013) should⁷⁰ have been followed by the appellant for obtaining and analysing background noise data, defining the noise limits, and predicting wind turbine noise levels. There is also agreement that the appellant's background noise measurements provide a satisfactory basis for defining typical background noise levels at representative receptors and for deriving the ETSU maximum noise limits.
54. The appellant's assessment⁷¹ of operational noise reveals that the proposed wind turbines could, under some circumstances, such as downwind conditions when wind speeds are between 5-8m/s, be audible from some neighbouring properties⁷² above the prevailing background noise. For some of those currently living within this essentially quite rural area this could disturb and diminish their living conditions⁷³. However, that is not to say that the proposal would result in a significant adverse noise impact. The predicted noise levels at all receptors would be below the ETSU noise limits, with the exception of 'Fairlawns' where the predicted noise level at one specific wind speed (6m/s) during the day would be equal to the noise limit.
55. I note that in some appeals Inspectors have found, on the particular circumstances of the case, that a margin with the predicted noise limits would be appropriate. However, there is nothing in ETSU or other published policy/guidance to support this and in many other decisions Inspectors have relied on the ETSU limits. Planning conditions could also be attached to an approval. These would ensure that any noise disturbance does not exceed limits which the Government considers offers a reasonable degree of protection to wind farm neighbours⁷⁴ and ensure that significant adverse effects are avoided. In addition, the appellant, Council⁷⁵ and the Rule 6 party agree that the night-time fixed lower noise limit should be set at a value lower than the ETSU fixed limit of 43 dB_{LA90, 10 min} for some wind speeds. This would accord with the aim of the NPSE in minimising the effects on the quality of life for

⁶⁸ ETSU-R-97 published by the Energy Technology Support Unit for the Department of Trade and Industry in 1996. The Government is satisfied that this provides the appropriate standard of acceptable change for people living in the locality of wind farms.

⁶⁹ The Government's 2013 planning practice guidance states that ETSU should be used when assessing and rating noise from wind energy developments.

⁷⁰ The 2013 planning practice guidance accepts that this represents good industry practice and endorses it as a supplement to ETSU.

⁷¹ Based on an Enercon E70 turbine with a hub height of 64m (modelled with a mixed ground [G=0.5] factor) and a Nordex N80 turbine with a hub height of 60m (according to the ES this modelled with a hard ground [G=0] factor). The appellant's subsequent Noise Report applies an additional 0.7dB to the predicted noise levels for the Enercon turbine. The final turbine choice would be subject to a competitive procurement process by the appellant.

⁷² The Rule 6 party has identified about 35 properties where wind farm noise could be audible, depending on the type of wind turbine selected.

⁷³ The Rule 6 party's acoustic expert informed me that this was a matter of personal sensitivity where some people could find the noise annoying and some others may have difficulty falling asleep.

⁷⁴ Footnote 33 to EN-3 states that the Government is satisfied on the balance of subsequent scientific research that the key conclusions of ETSU and in particular the limits it recommends remain a sound basis for planning decisions. This National Policy Statement post-dates the revised 1999 World Health Organization (WHO) guidelines on noise and it is reasonable therefore to assume that the Government was aware of the WHO guidelines when reaffirming its support for the ETSU limits. In the unlikely event that noise levels were found to exceed prescribed limits the turbines could be operated at lower noise levels.

⁷⁵ The appellant and the Council initially agreed, as part of the SoCG, that the night time limit should be 43dB_{LA90, 10 min} for some wind speeds. This position was amended during the course of the Inquiry.

- some residents and is a reasonable compromise. The Rule 6 party's suggested limit of 38dB_{LA90, 10 min} could undermine the viability of the scheme and nullify the benefit of any permission. Limiting a permission in this way would be unreasonable.
56. There is nothing unusual about this site/scheme that would justify withholding permission on the basis that for one property there would be no margin between turbine noise and the ETSU limit for a single wind speed under one daytime condition. Under all other wind speeds and direction conditions, the margin between turbine noise and limits would be greater⁷⁶. In practice, the wind farm noise level would be lower for much of the time and at most locations. The proposal would be compliant with ETSU.
57. I concur with the findings of the Inspector who determined the appeal at East Youlstone (Ref. APP/W1145/A/12/2167981) that ETSU should not be applied uncritically. However, I also agree that the comparison with the 'marginal' and 'complaints likely' position of BS 4142:1997⁷⁷ would apply a supplementary test outside the remit of Government guidance and could undermine the balanced approach of the Noise Working Group. It would, in effect, introduce a simple test of audibility, rather than a threshold of unacceptable change to living environments. As my colleague found at East Youlstone, BS 4142:1997 would add an unintended constraint to wind energy development.
58. EN-3 advises that where, as in this instance, the correct methodology has been followed and a wind farm is shown to comply with ETSU recommended noise limits it can be concluded that little or no weight should be given to adverse noise impacts from the operation of wind turbines. Whilst I therefore respect the breadth of experience of the Rule 6 party's acoustic expert and welcome the extent to which he was willing/able to discuss and agree⁷⁸ noise matters with the appellant's acoustic consultant, I only give little weight to the noise concerns that have been advanced. In this regard, I note that the Council, having sought and obtained advice from the appellant's acoustic expert at application stage, did not withhold permission on the basis of noise concerns.
59. There is much uncertainty surrounding the matter of excessive Amplitude Modulation [AM] (blade 'swish' or 'thump'). However, new research⁷⁹ provides greater understanding of this matter. In this instance, there is agreement between the main parties that this appears to be a site where high wind shear occurs⁸⁰ and where the proposed turbines could be more prone than average to exhibiting excess AM. If this were to arise it could make wind turbine noise more noticeable and intrusive and result in a loss of amenity for some neighbouring residents. The evidence before me suggests that there could be a significant risk of excess AM. The agreed suggested condition (and Guidance Note) would therefore be necessary to avoid harmful noise disturbance.

⁷⁶ Whilst noise prediction is not an exact science, some comfort can be taken from the comments made by the Rule 6 party's acoustic expert who accepts that the appellant's assessment "*is competent and has been carried out in accordance with generally accepted procedures*" and "*provides a reasonably robust assessment of wind farm noise in accordance with ETSU-R-97 and current industry practice*". This expert also informed me that the appellant's noise predictions provided realistic estimates of noise levels.

⁷⁷ 'Method for rating industrial noise affecting mixed residential and industrial areas'.

⁷⁸ This greatly assisted with the smooth/efficient running of the Inquiry and saved much Inquiry time.

⁷⁹ 'Wind Turbine Amplitude Modulation: Research to Improve Understanding as to its Cause and Effect' Renewable UK (December 2013).

⁸⁰ The combination of high wind shear, nature of the local topography including the wooded areas nearby and the prevailing climatic conditions in the area could increase the risk of excessive AM.

60. The noise impact of the scheme would maintain amenity appropriate to the locality and would be unlikely to result in significant disturbance for neighbours. There would be no conflict with saved LP policies DVT11 and DVT13.

Nature Conservation Interests

61. In addition to the above noted SSSI, Dunsland Park SSSI⁸¹ is about 2km north of the site. There are also several County Wildlife Sites within about 2km, as well as some Ancient Woodland. However, there is nothing of substance to refute the findings in the ES that the proposal would be unlikely to have any significant effect⁸² on these sites of nature conservation interest. The development would accord with the provisions of 'saved' LP policy ENV7.

62. Some protected species⁸³ have been recorded in and around the appeal site. In particular, much activity by bats⁸⁴ and Barn Owls⁸⁵ has been recorded⁸⁶. A previous ES, prepared in connection with a different development on the site, identified a significant adverse effect on Noctule bats due to the potential for collision with operating wind turbines⁸⁷. Following subsequent survey work⁸⁸ and meetings and correspondence with Natural England (NE), a detailed mitigation strategy⁸⁹ has been advanced by way of an Ecological Management Plan (EMP). This would reduce potentially significant adverse effects on bats to an acceptable level⁹⁰.

63. The flexibility within the EMP would also enable the mitigation to be reviewed and, if necessary, amended to better safeguard bats. Both NE and the Council are content with the appellant's approach on this issue. The proposal would also provide an opportunity (through the EMP) to undertake some grassland habitat enhancement⁹¹ and dormouse habitat enhancement⁹². Overall, this

⁸¹ This includes some notable flowering plants, nationally rare lichen and some rare invertebrates.

⁸² The scheme does not require an appropriate assessment under the EU Council Directive 92/43/EEC on the 'Conservation of natural habitats of wild fauna and flora' (the Habitats Directive). Moreover, on the basis of all the evidence before me it would not, either on its own or in combination with other plans or projects, have an adverse effect upon the integrity of any protected site or the species for which the areas have been designated.

⁸³ At the beginning of the Inquiry the Council informed me that the proposal would be likely to affect bats, dormice, Nightjar and Skylark. However, the Council has not raised any concerns regarding the impact upon any protected species. Moreover, the SoCG that has been agreed by the Council and the appellant states that, subject to the use of appropriate planning conditions, the proposals are acceptable in respect of ecology and ornithology.

⁸⁴ Including Noctule, which are identified as being at high risk to wind turbine development. The surrounding area is of high value for foraging and roosting bats.

⁸⁵ The Barn Owl Trust (BOT) has advised that because of the size of the area over which Barn Owls range (350 ha in summer and 5,000 ha in winter) and the height for foraging (3-4m of the ground) appropriately positioned wind farms do not pose a significant hazard for Barn Owls. I also note that the BOT has yet to receive a report of a wind turbine causing a Barn Owl injury or fatality in Britain. BOT recommended the use of a monitoring condition in the event of planning permission being granted. In addition, the ES notes that if construction works commence before the bird breeding season begins then birds would have the opportunity of selecting a breeding site further away from the construction activities. This could be controlled as part of a Construction Method Statement. I also note that the windfarm has been designed to avoid the regular flight path of birds.

⁸⁶ On behalf of the appellant, a number of bat surveys have been undertaken (by experienced bat ecologists) over a period of several years and at times when bats are known to be active.

⁸⁷ I have also taken into account the advice in para 33 of the 2013 planning practice guidance concerning ecology.

⁸⁸ Including investigations to bat activity at height and in relation to wind speed. This showed that bat activity decreased as wind speed increased.

⁸⁹ Involving a combination of habitat management (including reducing the value of near-turbine habitats to bats), turbine curtailment (the 'cut-in' speed of the turbine would be set to 5m/s for two hours after sunset and two hours before sunrise between 1 April and 31 October during the operational lifespan of the windfarm) and monitoring (during the first two full years of operation to enable any future modifications to the 'cut-in' speed).

⁹⁰ I note the ruling in Eaton v Natural England and RWE NPower Renewables Ltd ([2012] EWHC 2401 (Admin)).

⁹¹ This could form part of and/or compliment the intended Nature Improvement Area for this part of the UNESCO North Devon Biosphere Reserve.

⁹² Hedgerow creation at the site entrance and 'gapping up' of existing hedgerows along the western boundary.

could assist in strengthening the ecological framework for the area. It would accord with the duty⁹³ to conserve biodiversity and 'saved' LP policy ENV10.

64. The EMP would not guarantee that there would be no bat fatalities and I note the Rule 6 party's concerns regarding the impact upon this protected species. However, DTOG's relevant witness, although familiar with the location of bat roosts and bat species within the area, is not a qualified ecologist. No cogent evidence has been produced to show that the appellant's detailed (and evidence-based) assessments are unsound or that the proposed mitigation would fail. Without wishing to be unkind or discourteous, DTOG's arguments on this issue appear to be based on an incorrect interpretation of the appellant's surveys and data/results and a misinterpretation of the Habitats Directive and Regulations⁹⁴. The approach is at odds with the ruling in Eaton. There is also no evidence to support DTOG's assertion that the wind turbines that have been permitted in the district are "*creating a barrier to wildlife*".

Other Matters

65. The Council informed me that the proposals would not affect the setting of any listed building⁹⁵. However, the appeal site forms part of the rural surrounds in which the late 19th century, two storey brick and slate hung Nos.1-6 Railway Cottages is experienced⁹⁶. The significance of this listed terrace lies primarily in its architectural qualities⁹⁷ and its historical association with the former Dunsland Cross railway station on the former Okehampton to Bude Branch line.
66. The upper parts of the wind turbines would be apparent above the intervening vegetation and, to a small extent⁹⁸, would intrude into the rural surrounds of this listed terrace. However, the nearest turbine would be over 500m away and would not significantly detract from an understanding of the significance of these cottages. The proposal would result in limited harm to the setting of the terrace and would be at odds with the provisions of LP policy ENV2. However, in the context of 'the Framework' this would amount to less than substantial harm⁹⁹. The proposal would not harm the setting of any other listed buildings.
67. There are some conservation areas¹⁰⁰ within the wider surroundings. However, from all that I have seen and read, there is no cogent evidence to demonstrate that the proposals would harm the setting/significance of these other designated heritage assets. The scheme would accord with LP policy ENV3.
68. There are also a number of Scheduled Monuments within the area. The ES does not identify any significant effects upon these heritage assets and the Council has not identified any harmful impact. The County Council's Archaeologist has recommended that a planning condition should be attached to any approval to safeguard archaeological interests.

⁹³ Section 40 of the Natural Environment and Rural Communities Act 2006.

⁹⁴ The Conservation of Habitats and Species Regulations 2010 (as amended). This consolidated the Conservation (Natural Habitats, & c) Regulations 1994.

⁹⁵ The appellant initially agreed with the Council on this matter. However, in response to my questions the appellant's planning witness accepted that the scheme would affect the setting of the Grade II listed Nos. 1-6 Railway Cottages.

⁹⁶ Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special regard to be given to the desirability of preserving the setting of listed buildings.

⁹⁷ In essence, the functional nature of the design of this terrace.

⁹⁸ The Council's conservation officer advised that the terrace is viewed against a back-drop of forestry plantation which makes an enclosed setting.

⁹⁹ The Council's conservation officer advised that an objection on listed building grounds could not be sustained.

¹⁰⁰ These include Holsworthy and Hatherleigh.

69. I note the concerns of some residents regarding health issues. As part of my accompanied visit I saw the relationship between the appeal site and a neighbouring dwelling where one of the residents has cerebral palsy. The motion of the turbine blades would be apparent from some parts of this property. Whilst I am not unsympathetic to these genuinely held concerns, there is no cogent evidence before me to demonstrate that the proposal would harm the health of any neighbouring residents. I also note that changes are proposed to the accommodation of the resident with cerebral palsy. It is unclear to me if this altered accommodation would have windows facing away from the turbine. This could reduce the risk of any "*unexpected surprise*" and limit the potential for any adverse reaction from this resident. A planning condition could also be attached to a permission to control shadow flicker¹⁰¹.
70. Like many parts of the countryside this area contains a range of businesses¹⁰², including a yoga school, and others that are dependent upon tourism. There are many wind energy schemes of this type throughout the country. If convincing evidence existed of harm to rural businesses/tourism I have no doubt that it would have been presented to me. Whilst I therefore note the concerns of a few business operators there is nothing before me to substantiate perceived fears regarding the impact of the development.
71. My attention has been drawn to the Human Rights Act 1998 and various Articles of the European Convention on Human Rights and Article 1 of The First Protocol. The appeal process is compatible with Article 6 and all parties to the proceedings have been afforded an opportunity to put their case and have not been put at a substantial disadvantage. I recognise that the proposal could result in an interference with the home and family life of some neighbouring residents and the peaceful enjoyment of their possessions. It could also affect property values. However, there is no convincing evidence to show that any fall in property values would be substantial, or would render any property 'unsaleable', or that the economic viability of any business would be threatened. The interference with the peaceful enjoyment of possessions and home and family life must also be balanced against the rights and freedoms of others in the community and the interests of the general population in respect of tackling climate change and the security of electricity supply. The proposal would not seriously harm neighbours and granting planning permission would not place a disproportionate burden on them or violate their human rights.
72. There are many letters of support and objection¹⁰³ in respect of the proposals. These include concerns expressed by most of the parish councils¹⁰⁴ that were consulted on the application, as well as concerns from the Ward Member and the local Member of Parliament. I have carefully considered all of these¹⁰⁵. Adequate consultation/notification was undertaken in respect of the proposals

¹⁰¹ The appellant informed me that the turbines would be pre-programmed to avoid operating at those times of the day (and under the relevant climatic conditions) when shadow flicker (as set out in table 13.2 of the ES) could occur.

¹⁰² The area is part of the Ruby Country Initiative, aimed at promoting a sustainable rural economy/tourism.

¹⁰³ Nearly all of the representations at appeal stage raise concerns regarding the perceived impact of the scheme. Whilst one interested party drew my attention to the postcodes of those objecting to the scheme I am not aware of any policy or guidance which requires different weight to be attributed to residents depending upon where they live in respect of a proposal. Many of the letters of support were from Torridge residents. The Council's planning witness informed me that it did not make a distinction between 'local' or other residents.

¹⁰⁴ Some of the responses from the parish councils also indicate some measure of support for wind farms and no objections/no comment made by some parish councillors.

¹⁰⁵ I heard evidence on many of the matters raised by interested parties. I also questioned the appellant's planning witness on those matters raised by the local MP which were not covered in cross examination.

and the application and appeal processes have afforded the local community the opportunity to be properly heard/listened to. However, local opposition or support for a proposal is not in itself a ground for refusing or granting permission. I also note that some people have raised concerns regarding the 'ambition' in the above mentioned Roadmap and payments/subsidies to wind energy operators. These are matters which go beyond the remit of this appeal.

73. I am aware of the concerns of some members of the local community regarding the increasing number of applications for wind energy schemes within the district and the argument that Torridge is 'already doing its bit'. However, given the wind resource within the district and the general policy support for renewable energy schemes, it is unsurprising¹⁰⁶ that this part of the country is subject to pressure for this type of development. Moreover, as I have found above, this is a landscape with some wind energy development and capacity for some additional development. It could not reasonably be described as a 'windfarm' landscape.
74. My attention has been drawn to many other appeal decisions in respect of wind energy schemes on other sites elsewhere in Torridge and the rest of the country. This includes two schemes for 126m high turbines on a site known as Treading Wind Farm in Lincolnshire which was dismissed by the Secretary of State in October 2013 (Refs. APP/D0515/A/12/2181777 and 2184954). Each case must however be determined on its own merits and the circumstances of these other cases are materially different¹⁰⁷ to the one before me.
75. In determining this appeal I have also taken into account the very many rulings that have been drawn to my attention. Many of these are 'fact sensitive' decisions. Furthermore, if I were to comment in respect of each of these cases it would considerably extend an already lengthy decision and, in all likelihood, would make it impenetrable for the public and those wishing to understand in clear and simple terms the basis for my decision.

Planning conditions

76. Conditions would be necessary to safeguard the character and appearance of the area (condition Nos. 3, 4, 5, 7, 8 and 9 listed below) and to safeguard nature conservation interests (Nos. 6, 12, 19-23). Separate conditions would be necessary to safeguard the living conditions of neighbouring residents¹⁰⁸ (Nos. 11, 24, 26, 27, 28 and 29). Conditions would also be necessary in the interests of highway safety¹⁰⁹ (Nos. 12-16) and aviation safety (Nos. 10 and 25). It would also be necessary to attach conditions to avoid pollution (Nos. 12 and 18) and to safeguard archaeological interests (No. 17). For the avoidance of doubt and in the interests of proper planning a condition would be necessary specifying the approved plans (No. 2).

¹⁰⁶ The introduction to the ALS recognises that Torridge District has good conditions to produce 'wind electricity'.

¹⁰⁷ In comparison to the scheme before me, the turbines at Treading would have been much taller (they would comprise "very large" turbines in the context of the ALS) and unlike the site at Dunsland Cross the turbines proposed in South Holland were in an area identified as "unsuitable" for this type of development. The site at Treading was also crossed by a byway that linked with other public rights of way that were well-used by riders and walkers. The impacts upon residential amenity were also found to be much greater than those that I have identified, with the windows of the main habitable rooms of many properties directly facing the proposed turbines.

¹⁰⁸ The Council informed me that it was content with the noise conditions/guidance notes that had been agreed by the appellant and DTOG. As the choice of turbine has yet to be made, two sets of noise tables would be necessary to allow for the different turbine types/hub heights of the candidate turbines. One set of these tables would 'fall away' when the choice of turbine is made.

¹⁰⁹ The revised wording of condition 16 (No.15 at the Inquiry) would not prejudice any party.

77. I agree with the Council that there is no exceptional reason or other adequate justification to warrant a five year start date for the commencement of development. A three year 'start date' would be appropriate (No.1). The Council's suggested condition in respect of micro-siting requires updated reports irrespective of whether a turbine is repositioned 0.5m or 20m. This would be unreasonable. The appellant's suggested condition (No. 6) would enable the Council to obtain revised reports and/or other relevant information if any micro-siting was deemed to increase the risk to nature conservation interests or be likely to have noise implications for neighbouring residents.
78. I have noted above that the turbines would be programmed to limit the risk of shadow flicker. A condition would however be necessary to ensure that in the unlikely event of shadow flicker arising the matter would be investigated and remedied (No. 24). Requiring the developer/wind farm operator to appoint a competent person to investigate this matter and submit a report within 21 days would be unreasonable. The appellant's suggested condition would meet the tests of Circular 11/95¹¹⁰.
79. I have also considered those additional planning conditions suggested by the Rule 6 party¹¹¹. It is very unusual to attach a planning condition requiring a bond or other financial provision to be put in place for the decommissioning of wind turbines. There is nothing before me to indicate that the developer and/or landowner would not, in due course, remove the turbines and the 'standard' conditions in respect of this matter would be enforceable. A condition requiring a bond/financial provision to be in place would be unnecessary. In addition, I am unaware of any condition requiring the rated power of turbines to be specified. There is nothing to indicate that the appellant intends erecting turbines with a lower rated power than proposed. As I have noted above, national planning policies state that even small-scale projects make a valuable contribution. A condition to this effect would be unnecessary. I have found above that a condition controlling external lighting would be necessary. Aviation safety lighting would need to meet MoD requirements. Finally, there would be scope within the Ecological Management Plan to address those matters raised in suggested conditions 13-16.

The Planning Balance

80. Having regard to all of the above, including the duty under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and the 2013 planning practice guidance, the benefits of the development would outweigh the harm to the character and appearance of the landscape, the less than substantial harm to the setting of Nos.1-6 Railway Cottages and the change in living conditions for some neighbouring residents. Furthermore, given that the development plan is silent on the issue of renewable energy schemes, the adverse impacts do not significantly and demonstrably outweigh the benefits.
81. The scheme has been designed to minimise the harmful impacts and mitigation measures (including radio links/scanning telemetry) could be secured by planning conditions and a planning obligation. This leads me to find that the proposals would accord with the provisions of 'Saved' LP policy ENV1. In the context of the 'non saved' LP policy ECD9, this would be an appropriately located renewable energy development. Moreover, after carefully considering

¹¹⁰ 'The Use of Conditions in Planning Permissions'.

¹¹¹ My reasoning is focused on those conditions which were discussed at the Inquiry.

all of the economic, social and environmental dimensions of the scheme I find that the proposal would comprise sustainable development.

82. I have found that the scheme would accord with some development plan policies and conflict with some others. It is not unusual when considering proposals to discover that planning policies pull in different directions. In this instance, the proposed development would accord with the overall thrust of the LP and be consistent with 'the Framework' when read as a whole. Having considered all matters, the planning balance tips in favour of granting permission. I therefore conclude that the appeal should succeed.

Neil Pope

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr P Wadsley of Counsel Instructed by the Solicitor to the Council
He called

Mr P Leaver BA (Hons), Dip.LD, Director, David Wilson Partnership
CMLI

Mrs B Francis BSc (Hons), MA Environmental & Sustainability Officer
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FOR THE APPELLANT:

Mr A Crean QC (*assisted by Mr* Instructed by Mr Hendley, Arcus Consultancy
A Gill)
He called

Mr M van Grieken FLI, BNT Principal and Director, LUC

Mr D Hendley MRTPI Principal Planning Consultant, Arcus Consultancy

Mr M Reid BSc, MIOA (spoke *Principal Acoustic Consultant, Arcus Consultancy*
only during the discussion in
respect of noise
conditions/guidance)

Mr M Corker (spoke only during *Appellant*
the discussion in respect of
conditions)

FOR THE RULE 6 PARTY (DUNSLAND TURBINES OPPOSITIONS GROUP):

Mr K Bodley Solicitor Advocate
He called

Mr R A Davis BSc (Eng), MIOA Robert Davis Associates

Mr I Buxton Wildlife Warden, Halwill Junction Nature Reserve

INTERESTED PARTIES:

Mrs T Clarke Resident

Mr S James Resident

Mr P Clarke Resident

LIST OF DOCUMENTS SUBMITTED AT THE INQUIRY:

Document 1	The appellant's Opening Submissions
Document 2	The Council's Opening Submissions
Document 3	Bundle of Judgements/Court Rulings
Document 4	Appeal decisions/review provided by Mr Leaver
Document 5	Mrs T Clarke's Statement
Document 6	Mr S James's Statement
Document 7	Mr P Clarke's Statement
Document 8	Appellant's publicity leaflet
Document 9	Listing description for Nos.1-6 Railway Cottages
Document 10	Turbine details of appeals referred to by Mr Davis
Document 11	Cross -section of turbine elevations drawing no. 012
Document 12	Appellant's Note in response to Inspector's questions
Document 13	Appellant's Notes - ecological enhancements/mitigation
Document 14	Figure 2 - Grassland Enhancement Areas
Document 15	Addendum (handwritten) to SoCG with Rule 6 party - noise
Document 16	Drawing 007 Rev B
Document 17	Noise condition agreed between appellant and Rule 6 party
Document 18	Suggested noise condition - Amplitude Modulation (AM)
Document 19	Summary of research in respect of AM (December 2013)
Document 20	Template Planning Condition on AM - Noise Guidance Notes
Document 21	Condition 36 Batsworthy Cross appeal decision
Document 22	Updated (typed) SoCG between appellant and Rule 6 party
Document 23	Plan - Topographical Range
Document 24	List of scheme benefits
Document 25	Suggested site visit itinerary
Document 26	Indicative route of proposed underground cables
Document 27	Update plan showing location of other wind turbines
Document 28	Extract from appeal decision Ref. APP/H1840/A/12/2171339

DOCUMENTS SUBMITTED AFTER 20 DECEMBER 2013

Document 29	The Rule 6 Party's Closing Submissions
Document 30	The Council's Closing Submissions
Document 31	The Appellant's Closing Submissions
Document 32	Revised suggested off site highway works condition

SCHEDULE OF PLANNING CONDITIONS

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development shall be undertaken in accordance with the following approved plans/details: i) site location plan (drawing ref. 001); site application boundary (ref. 002); iii) block plan (ref. 003); iv) typical wind turbine (ref. 004); v) typical turbine foundation (ref. 005a); vi) typical turbine foundation (ref. 005b); vii) typical crane hardstanding (ref. 006); viii) typical access track design (ref. 007B); ix) site access point (Ref. 008); x) typical control building and substation compound (ref. 009); xi) typical meteorological mast (ref. 010); xii) typical temporary construction compound (ref. 011); xiii) cross section of turbine elevations (ref. 012).

3. No development shall be commenced until full details of the turbine specifications including their make, model, power rating, external dimensions, colour and finish and foundations have been submitted to and approved in writing by the Local Planning Authority. The approved details shall comprise three bladed turbines no larger than the maximum dimensions submitted as part of the application. No part of the turbines, anemometer mast or control building shall carry any logo, lettering or external lighting other than as required for health and safety reasons or Condition 10 below. The turbines shall all be of the same specification. The development shall be carried out in accordance with the approved details.
4. This permission is for a period not exceeding 25 years from the date that electricity from the development is first exported to the electricity grid ("First Export Date"). Written confirmation of the First Export Date will be provided to the Local Planning Authority (LPA) within 14 days of the First Export Date. No later than 6 months prior to the permanent cessation of electricity generation at the site, a scheme for the removal from the site of turbines and associated works shall be submitted to the LPA. The scheme to be submitted shall include the dismantling and removal of each turbine and ancillary equipment, the meteorological mast, buildings and fencing and the removal of the turbine bases and foundations. The approved scheme shall be carried out and completed within 12 months of the date that the planning permission hereby granted expires, or within 12 months of the date of any earlier cessation of use, whichever is the earlier.
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 (LPA), then a scheme shall be submitted to the LPA 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. In the event that the LPA fails to approve the said scheme in writing within 12 weeks of the full and final version of the said scheme having been submitted, the developer shall be required to appeal against non-determination. The scheme shall be implemented in accordance with the approved details and timetable.
6. Prior to the commencement of development a scheme for the micro-siting of the turbines, shall be submitted to and agreed in writing by the Local Planning Authority. Such siting shall be not more than 20 m from the positions of the turbines shown on the approved plans and referenced below. The development shall be implemented in accordance with the approved scheme.

Number	Easting	Northing
1	240609	103447
2	240888	103336
3	241108	103160

7. No development shall commence until details of the switchgear control building, access tracks and meteorological mast, including locations, their

designs, the types and colours of materials to be used on their external elevations have been submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the approved details.

8. All electrical cabling on the application site between the wind turbines and the substation hereby approved shall be underground. Thereafter the excavated ground shall be reinstated to its former condition within 3 months of the commissioning of the wind turbine.
9. The blades of all turbines shall rotate only in the same direction.
10. No development shall commence until details of aviation warning lights to be fitted on the highest practicable point of each turbine have been submitted to and approved in writing by the Local Planning Authority. Upon erection of each turbine the lights shall be installed in accordance with the approved details and shall be retained in working order for the lifetime of the development.
11. The hours of operation during the construction phase of the development and delivery of construction materials or equipment to the site and associated with the construction of the development hereby permitted shall be limited to 0730 hours to 1800 hours on Mondays to Fridays and 0730 hours to 1300 hours on Saturdays. No work shall take place on Sundays or Bank/Public Holidays. Outside these hours, except in case of emergency, no works to implement the planning permission shall take place. The Local Planning Authority (LPA) shall be informed in writing of any emergency works within three working days of occurrence. Delivery of turbine and crane components may take place outside the hours specified subject to not less than two working days prior notice of such traffic movements being given to the LPA.
12. No development shall begin until a Construction Method Statement (CMS) describing all works, including temporary works, to be undertaken and pollution prevention measures to be implemented during construction phase, has been submitted to and approved by the Local Planning Authority. The CMS shall address the following matters:
 - i) a scheme for the provision and operation of vehicle cleaning measures at the site exit onto the public highway;
 - ii) the excavation, handling, storage, management and replacement of excavated soils and peat;
 - iii) details of all fuel, oil, concrete and chemical storage facilities together with details of how they are to be brought on to and removed from the site;
 - iv) details of the design and construction methods of the access tracks and pollution prevention measures to be implemented, to ensure that there are no polluting discharges from tracks or disturbed areas, including provision to ensure that no polluting discharge from haul roads and disturbed areas enter any watercourse;
 - v) details of the nature, type and quantity of materials to be imported on site for backfilling operations or construction of access tracks together with details of where and how much such materials are to be stored on site;
 - vi) the management of groundwater and surface water, with the surface water and drainage of this development designed in accordance with the

- Sustainable Drainage Systems (SuDS) principle where possible;
- vii) the management of foul water;
- viii) the construction period and the sequence of development;
- ix) the construction of on-site access tracks, wind turbine foundations and the erection of wind turbines and all other development to be carried out under this permission;
- x) all mitigation measures to protect wildlife (including vegetation and nesting birds), habitats and hydrology including a Sediment Control Plan;
- xi) a scheme for a detailed geotechnical investigation to fully determine the nature of the subsoil and bedrock geology in the locality of proposed infrastructure;
- xii) details of any stone excavation, storage and crushing arising from the construction;
- xiii) details of how any concrete mixing is to be carried out on site including details of the importation and storage of its raw materials (including water) and details of the washing of the plant, equipment and machinery to be used and how the washings would be dealt with;

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

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 (LPA). The Plan shall include:
- i) The timetable of the works;
 - ii) The hours of deliveries;
 - iii) Hours during which construction vehicles will be present at the site or in its vicinity;
 - iv) The routing of vehicles to and from the site;
 - v) Any road closures;
 - vi) The methods of traffic control at the site and/or at any other location if required;
 - vii) The number and sizes of vehicles visiting the site in connection with the development and the frequency of their visits;
 - viii) The compound/location where all building materials will be stored during the demolition and construction phases;
 - ix) Areas on or near the site where delivery vehicles and construction traffic will load or unload materials with confirmation that no vehicles will park on the public highway for loading, unloading or waiting for site entry;
 - x) The means of enclosure of the site during the construction works and any additional enclosures;
 - xi) Programme of surveys, mitigation works, repair, reconstruction and reinstatement of the highway network.

The development shall be carried out in strict accordance with the approved Plan unless otherwise agreed in writing by the LPA.

14. No part of the development hereby permitted shall commence until the visibility splays of 2.4m x 215m are provided at the site access. The area within these visibility splays shall thereafter be kept free of all obstructions, structures or erections exceeding 1.05m in height.

15. The site access road shall be hardened, surfaced, drained and maintained thereafter for a distance of not less than 10m back from its junction with the

public highway.

16. No development shall commence until details of the highway improvement works at the site access and at locations on the HGV route as set out in Technical Appendix A12.1 'Abnormal Loads Access Study' in Volume III of the Environmental Statement dated December 2011, have been submitted to and approved in writing by the Local Planning Authority. The approved highway improvement works shall be undertaken prior to the use of the HGV route by the abnormal loads vehicles.
17. No development shall commence until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the Local Planning Authority (LPA). The development shall be carried out at all times in strict accordance with the approved scheme, or such other details as may be subsequently agreed in writing by the LPA.
18. No development shall commence until a Private Water Supply Protection Plan (PWSPP) has been submitted to and approved in writing by the Local Planning Authority (LPA). This shall include details relating to:
 - i) The establishment of baseline data to adequately characterise the quality and quantity of water provided by any private water supply that may be affected by the development;
 - ii) The mitigation measures for the protection of private water supplies where a risk is identified;
 - iii) The facility to notify the developer of a concern about a possible deterioration in water quality or quantity arising from the development;
 - iv) The provision of alternative suitable and sufficient water supplies on a temporary and/or permanent basis in the event of any interruption or adverse change caused by the development in the quantity or quality of water previously enjoyed;
 - v) The arrangements for undertaking sampling, measurement and analysis of private water supplies before and during construction, up to 6 months after construction has been completed, during and after any water pollution or interruption incident that may arise during construction works and subsequently, and at other times at the request of the LPA.

The PWSPP, as approved, shall thereafter be implemented and maintained at the developers/operators own expense, unless otherwise first agreed in writing by the LPA.

19. No development shall commence until an Ecological Management Plan (EMP) has been submitted to and approved in writing by the Local Planning Authority (LPA). This shall provide full details of ecological mitigation and enhancements to be undertaken and details on the remit, structure and appointment of persons to an Ecological Management Committee to implement/oversee the EMP. In the event that works have not commenced within 12 months of the date of preparation of the submitted EMP, updated ecology surveys should be undertaken and a revised EMP incorporating the results of such surveys, shall be submitted to the LPA for approval prior to the commencement of works. Development shall be carried out in accordance with the approved EMP unless otherwise agreed in writing with the LPA.

20. An Ecological Clerk of Works (ECoW) shall be engaged to monitor works on site and ensure compliance with the Ecological Management Plan. Prior to the commencement of works on site contact details of the ECoW shall be submitted to the Local Planning Authority in writing. Where a subsequent ECoW is engaged, such details shall be submitted to the LPA.
21. No hedge or tree that is to be removed as part of the development hereby permitted shall be lopped, topped, felled or otherwise removed during the bird nesting period (beginning of March to end of August inclusive) unless otherwise agreed in writing by the Local Planning Authority (LPA) and no development shall be commenced where construction will take place during the main bird breeding season (1 March to 30 August) until details of the proposed mitigation measures for the protection of nesting birds during construction of the development, including pre-construction surveys, shall be submitted to and approved in writing by the LPA. The construction shall be carried out in accordance with the approved details.
22. The turbines shall be controlled so that their cut in wind speed will be no less than 5 m/s from the start of operation to cover the 2 hour period before sunrise and the 2 hour period after sunset between 1st April and 31st October (inclusive), unless otherwise agreed in writing by the Local Planning Authority (LPA). Bat activity will be monitored for at least 2 years from operation and the LPA will be informed in writing of its results. Any mitigation strategy which is in place will be readjusted, as agreed in writing with the LPA, to prevent any further casualties where monitoring indicates necessary.
23. Before the development commences, details of a plan to monitor the avoidance of the turbines by bats, dormice, nightjar and skylark shall be submitted to and agreed in writing by the Local Planning Authority (LPA). The development shall be carried out in accordance with the agreed plan. The results of all monitoring undertaken shall be made available to the LPA within 28 days of its completion.
24. Within 21 days from receipt of a written request of the Local Planning Authority (LPA), following a complaint to it alleging disturbance from shadow flicker at a dwelling that is lawfully occupied and lawfully existing at the time of this consent, a scheme for the investigation and alleviation of shadow flicker at that dwelling shall be submitted in writing for the approval of the LPA. The approved mitigation measures shall be carried out in accordance with the scheme thereafter any such measures being in place during the operational period of the turbines.
25. No development shall commence until the operator of the wind turbines has provided written confirmation to the Local Planning Authority (LPA) that the following details have been provided to the Ministry of Defence (MoD):
 - i) Date of commencement of construction and earliest possible date of completion of construction;
 - ii) The maximum extension height of any construction equipment; and
 - iii) The latitude and longitude of every turbine.In the event that the anticipated date of completion of construction varies from that which has been notified to the MoD, an update shall be provided in writing to the LPA and the MoD prior to construction extending beyond the date of which they have been notified.

26. No development shall commence until a baseline domestic television and domestic radio reception study has been undertaken in the area by a qualified television and domestic radio engineer and submitted to the Local Planning Authority (LPA). A mitigation scheme setting out the details of works necessary to mitigate any adverse effects to domestic television and domestic radio signals in the area caused by the development shall also be submitted to and approved in writing by the LPA before development begins. The mitigation scheme shall include: provision for investigating any claim by any person for domestic loss or interference of television and/or radio reception at their household within 24 months of the final commissioning of the wind farm and; details of any necessary mitigation works resulting from that investigation, including a timetable for their implementation. Any mitigation works shall be carried out in accordance with the approved mitigation scheme.
27. The rating level of noise immissions from the combined effects of the wind turbines (including the application of any tonal penalty), when determined in accordance with the attached Guidance Notes, shall not exceed the values for the relevant integer wind speed and turbine hub heights set out in, or derived from, the tables attached to this condition at any dwelling which is lawfully existing or has planning permission at the date of this permission and:
- i. 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 (LPA) on its request, within 14 days of receipt in writing of such a request.
 - ii. No electricity shall be exported until the wind farm operator has submitted to the LPA 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 LPA.
 - iii. Within 21 days from receipt of a written request from the LPA 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 LPA to assess the level of noise immissions from the wind farm at the complainant's property in accordance with the procedures described in the attached Guidance Notes. The written request from the LPA 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 LPA, the noise giving rise to the complaint contains or is likely to contain a tonal component.
 - iv. 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 LPA. 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 directions, power generation and times of day) to determine the assessment of rating level of noise immissions. 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 LPA under paragraph (iii), and such others as the independent consultant considers likely to result in a breach of the noise limits.

- v. 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 LPA 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 immissions resulting from the combined effects of the wind turbines when determined in accordance with the attached Guidance Notes shall not exceed the noise limits approved in writing by the LPA for the complainant's dwelling.
- vi. The wind farm operator shall provide to the LPA 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 LPA for compliance measurements to be made under paragraph (iii), unless the time limit is extended in writing by the LPA. 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 LPA with the independent consultant's assessment of the rating level of noise immissions.
- vii. Where a further assessment of the rating level of noise immissions 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 (v) above unless the time limit has been extended in writing by the LPA.
- viii. Once the LPA has received the independent consultant's noise assessment required by this condition, including all noise measurements and any audio recordings, where the LPA is satisfied of an established breach of the noise limits set out in the attached Tables 1a, 1b, 2a & 2b, upon notification by the LPA in writing to the wind farm operator of the said breach, the wind farm operator shall within 21 days propose a scheme for the approval of the LPA. The scheme shall be designed to mitigate the breach and to prevent its future recurrence. This scheme shall specify the timescales for implementation. The scheme shall be implemented as reasonably approved by the LPA and according to the

timescales within it. The scheme as implemented shall be retained thereafter unless otherwise agreed with the LPA.

a) Tables applicable for turbines with a hub height of up to and including 62m

Table 1a: Between 07:00 and 23:00 – Noise limits expressed in dB $L_{A90,10\text{ min}}$ as a function of the standardised wind speed (ms^{-1}) at 10 metre height as determined within the site averaged over 10 minute periods (applicable for turbines with a hub height of up to and including 62m)

	Standardised Wind Speed at 10 m AGL, ms^{-1}										
	2	3	4	5	6	7	8	9	10	11	12
	Noise Limit, dB, $L_{A90,10\text{ min}}$										
Bickford Cottage	35.1	35.3	36.1	37.4	39.1	41.1	43.3	45.7	48.2	48.2	48.2
Bickford Lodge	38.5	38.9	40.0	41.4	43.2	45.3	47.5	49.7	51.9	51.9	51.9
Cranmore	35.9	36.3	36.6	38.0	40.9	45.1	49.8	53.7	55.0	55.0	55.0
Fairlawns	35.0	35.0	35.0	35.9	37.5	39.5	41.9	44.7	47.7	47.7	47.7
Little Copse	35.0	35.0	35.0	35.9	37.5	39.5	41.9	44.7	47.7	47.7	47.7
Tembani	35.1	35.3	36.1	37.4	39.1	41.1	43.3	45.7	48.2	48.2	48.2
The Laurels	35.1	35.3	36.1	37.4	39.1	41.1	43.3	45.7	48.2	48.2	48.2
The Vale	35.0	35.0	35.0	35.9	37.5	39.5	41.9	44.7	47.7	47.7	47.7
View Farm	35.0	35.0	35.0	35.3	37.2	39.5	42.2	45.0	47.9	47.9	47.9
Woodlands	38.9	38.9	39.8	41.5	43.6	46.2	49.0	52.0	54.8	54.8	54.8

Table 2a: Between 23:00 and 07:00 – Noise limits expressed in dB $L_{A90,10\text{ min}}$ as a function of the standardised wind speed (ms^{-1}) at 10 metre height as determined within the site averaged over 10 minute periods (applicable for turbines with a hub height of up to and including 62m)

	Standardised Wind Speed at 10 m AGL, ms^{-1}										
	2	3	4	5	6	7	8	9	10	11	12
	Noise Limit, dB, $L_{A90,10\text{ min}}$										
Bickford Cottage	40.0	40.0	40.00	40.0	40.0	40.0	42.0	45.7	48.2	48.2	48.2
Bickford Lodge	40.0	40.0	40.0	40.0	40.0	40.6	44.2	47.7	50.7	50.7	50.7
Cranmore	40.0	40.0	40.0	40.0	40.0	41.6	47.1	51.7	55.0	55.0	55.0
Fairlawns	40.0	40.0	40.0	40.0	40.0	40.0	41.5	44.7	47.7	47.7	47.7
Little Copse	40.0	40.0	40.0	40.0	40.0	40.0	41.5	44.7	47.7	47.7	47.7
Tembani	40.0	40.0	40.0	40.0	40.0	40.0	42.0	45.7	48.2	48.2	48.2
The Laurels	40.0	40.0	40.0	40.0	40.0	40.0	42.0	45.7	48.2	48.2	48.2
The Vale	40.0	40.0	40.0	40.0	40.0	40.0	41.5	44.7	47.7	47.7	47.7
View Farm	40.0	40.0	40.0	40.0	40.0	40.0	42.0	45.0	47.9	47.9	47.9

	Standardised Wind Speed at 10 m AGL, ms ⁻¹										
Woodlands	40.0	40.0	40.0	40.0	40.0	43.0	48.2	52.0	54.8	54.8	54.8

b) Tables applicable for turbines with a hub height of greater than 62m

Table 1b: Between 07:00 and 23:00 – Noise limits expressed in dB L_{A90,10 min} as a function of the standardised wind speed (ms⁻¹) at 10 metre height as determined within the site averaged over 10 minute periods (applicable for turbines with a hub height of greater than 62m)

	Standardised Wind Speed at 10 m AGL, ms ⁻¹										
	2	3	4	5	6	7	8	9	10	11	12
	Noise Limit, dB, L _{A90,10min}										
Bickford Cottage	35.2	35.3	36.1	37.3	38.9	40.9	43.1	45.5	47.9	47.9	47.9
Bickford Lodge	38.5	38.9	39.9	41.3	43.1	45.1	47.2	49.5	51.7	51.7	51.7
Cranmore	36.0	36.3	36.6	37.9	40.6	44.6	49.4	53.5	55.3	55.3	55.3
Fairlawns	35.0	35.0	35.0	35.9	37.3	39.2	41.6	44.3	47.3	47.3	47.3
Little Copse	35.0	35.0	35.0	35.9	37.3	39.2	41.6	44.3	47.3	47.3	47.3
Tembani	35.2	35.3	36.1	37.3	38.9	40.9	43.1	45.5	47.9	47.9	47.9
The Laurels	35.2	35.3	36.1	37.3	38.9	40.9	43.1	45.5	47.9	47.9	47.9
The Vale	35.0	35.0	35.0	35.9	37.3	39.2	41.6	44.3	47.3	47.3	47.3
View Farm	35.0	35.0	35.0	35.1	37.0	39.3	41.8	44.6	47.5	47.5	47.5
Woodlands	38.9	38.9	39.8	41.3	43.4	46.0	48.7	51.6	54.5	54.5	54.5

Table 2b: Between 23:00 and 07:00 – Noise limits expressed in dB L_{A90,10 min} as a function of the standardised wind speed (ms⁻¹) at 10 metre height as determined within the site averaged over 10 minute periods (applicable for turbines with a hub height of greater than 62m)

	Standardised Wind Speed at 10 m AGL, ms ⁻¹										
	2	3	4	5	6	7	8	9	10	11	12
	Noise Limit, dB, L _{A90,10min}										
Bickford Cottage	40.0	40.0	40.00	40.0	40.0	40.0	41.8	45.5	47.9	47.9	47.9
Bickford Lodge	40.0	40.0	40.0	40.0	40.0	41.0	44.9	48.4	51.5	51.5	51.5
Cranmore	40.0	40.0	40.0	40.0	40.0	42.2	48.0	52.9	54.5	54.5	54.5
Fairlawns	40.0	40.0	40.0	40.0	40.0	40.0	41.2	44.3	47.3	47.3	47.3
Little Copse	40.0	40.0	40.0	40.0	40.0	40.0	41.2	44.3	47.3	47.3	47.3
Tembani	40.0	40.0	40.0	40.0	40.0	40.0	41.8	45.5	47.9	47.9	47.9
The Laurels	40.0	40.0	40.0	40.0	40.0	40.0	41.8	45.5	47.9	47.9	47.9

	Standardised Wind Speed at 10 m AGL, ms⁻¹										
The Vale	38.0	38.0	38.0	38.0	38.0	38.0	41.2	44.3	47.3	47.3	47.3
View Farm	38.0	38.0	38.0	38.0	38.0	38.0	41.4	44.6	47.5	47.5	47.5
Woodlands	38.0	38.0	38.0	38.0	38.0	42.4	47.6	51.6	54.5	54.5	54.5

Table 3: Grid References of the properties listed in Tables 1a, 1b, 2a and 2b

	Easting	Northing
Bickford Cottage	241086	103929
Bickford Lodge	241044	103989
Cranmore	240872	103873
Fairlawns	240406	102982
Little Copse	240409	102939
Tembani	241257	103952
The Laurels	241085	104023
The Vale	240530	102854
View Farm	240587	102494
Woodlands	240536	103990

Note to Table 3: The geographical coordinate references are provided for the purpose of identifying the general location of dwellings to which a given set of noise limits applies.

28. Following a written request of the Local Planning Authority (LPA), following a complaint to it considered by the LPA to relate to regular fluctuation in the wind turbine noise level (amplitude modulation), the wind farm operator shall at its expense employ an independent consultant, approved in writing by the LPA, to undertake a noise assessment in accordance with a scheme to be submitted to and agreed in writing by the LPA. In the event that the investigation confirms that the amplitude modulation is excessive according to the agreed assessment procedure then a scheme of mitigation, to be submitted to and agreed in writing by the LPA, shall be put into effect and subsequently retained for the life of this planning permission. The factors to be incorporated in the assessment and mitigation schemes are set out in Guidance Note 5 below.
29. Any wind turbine which, under particular wind conditions, is operated in a reduced noise mode during daytime hours (0700-2300), for the purposes of complying with the daytime noise limits set out in Tables 1a or 1b in condition 27 above, shall be operated in the same mode under those same conditions of wind during night hours (2300-0700).

Guidance Notes for Noise Conditions 27, 28 and 29 above.

These notes are to be read with and form part of the noise conditions. They further explain the conditions 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 ETSU-R-97 refers to the publication entitled

“The Assessment and Rating of Noise from Wind Farms” published by the Energy Technology Support unit (ETSU) for the Department of Trade and Industry (DTI). Local Planning Authority is abbreviated to LPA.

Guidance Note 1

- a) Values of the $L_{A90,10min}$ 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 as 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 LPA, 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 LPA 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 $L_{A90,10min}$ 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 LPA. 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 LPA in accordance with the noise condition shall be provided in comma separated values in electronic format.

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 (iv) of noise condition 27, 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 LPA 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 $L_{A90,10\text{-min}}$ 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 (iv) of noise condition 27, 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 $L_{A90,10\text{min}}$ data have been determined as valid 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 figure 17 on page 104 of ETSU-R-97.

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 LPA in its written protocol under paragraph (iv) of noise condition 27.
- 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 Condition 27 or the noise limits for a complainant's dwelling approved in accordance with paragraph (v) of noise condition 27, 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:
 - 1) 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 LPA in its written request under paragraph (iii) and the approved protocol under paragraph (iv) of noise condition 27.
 - 2) The wind farm noise (L1) at this speed shall then be calculated as follows where L2 is the measured level with turbines running but without the addition of any tonal penalty:

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

- 3) The rating level shall be re-calculated by adding the tonal penalty (if any is applied in accordance with Guidance Note 3) to the derived wind farm noise L1 at that integer wind speed.
- 4) If the rating level after adjustment for background noise contribution and adjustment for tonal penalty (if required in accordance with Guidance Note 3 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 LPA for a complainant's dwelling in accordance with paragraph (v) of noise Condition 27 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 Condition 27 or the noise limits approved by the LPA for a complainant's dwelling in accordance with paragraph (v) of Condition 27 then the development fails to comply with the conditions.

Guidance Note 5

Amplitude Modulation (AM) is the periodic variation in the level of the

aerodynamic noise created by the turbine, the frequency of the modulation (Hertz) being given by:

$$(rotor\ rpm/60) \times number\ of\ rotor\ blades.$$

Condition 28 addresses the situation where the level of AM as perceived at a dwelling is judged to be a contributor to a complaint concerning noise. In the event that the LPA considers it to be justified, Condition 28 requires the wind farm operator to put forward a scheme for investigating and assessing the noise at a complaint location, and, if mitigation is shown to be necessary, a further scheme for mitigating the effects of AM.

The investigation and assessment scheme shall take account of good practice and all information available at the time of the complaint relating to the assessment and control of the AM of wind turbine noise, and shall include at least the following elements:

- (i) The requirement for a complainant to maintain a record of the times at which the alleged AM incidents occur and the precise location(s) in the vicinity of a dwelling where the effect is observed.
- (ii) A methodology for measuring and assessing the severity of amplitude modulation and assigning an upper limit of acceptability, taking into account the frequency and duration of occurrence, the degree of modulation as measured using an appropriate metric, the absolute level of the wind turbine noise and other factors that have been demonstrated to be relevant.

If the degree of AM is rated as unacceptable according to the methodology in (ii) then mitigation is required: the extent of the required mitigation shall be determined in accordance with that methodology. In that event a mitigation scheme shall be devised and implemented. The scheme shall include a requirement for further measurements to confirm the effectiveness of the mitigation scheme.