



Appeal Decision

Inquiry opened on 4 February 2010

Site visits made on 10 & 11 February 2010

by **Paul Griffiths BSc(Hons) BArch IHBC**

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

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Decision date:
29 March 2010

Appeal Ref: APP/F2415/A/09/2109745

Land South-East of Low Spinney Farm, Ashby Magna, Leicestershire

LE17 5NB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Broadview Energy Developments Ltd against Harborough District Council.
- The application Ref.09/00174/FUL, is dated 10 February 2009.
- The development proposed is the erection of 4 no. 125m high wind turbines together with associated crane pads, access tracks, site compound, ancillary works, control building, meteorological mast and access to the public highway.

Preliminary Matters

1. The Inquiry opened on 4 February 2010 and also sat on 5, 9 and 10 February. Unaccompanied site visits were undertaken on the afternoon of 10 February and accompanied site visits took place the following day, largely in accordance with an itinerary prepared by the parties.
2. At the Inquiry I was assisted by another Inspector Richard Ogier BA MRTPI who took part in the proceedings. However, as the appointed Inspector, the decision on this case is mine alone.
3. The Council confirmed at the opening of the Inquiry that it would not present any evidence to support its putative reasons for refusal relating to noise and disturbance and cultural heritage matters. This intention regarding evidence became apparent only a short time before the Inquiry opened. The Council's revised position had been arrived at as a result of a decision taken at senior officer level and after the withdrawal by English Heritage (EH) of its objection to the proposal. I understand that the Council's decision was also informed by discussions on noise matters with its acoustic consultant. However, the Council and its noise consultant participated fully in the session on conditions.
4. Shortly after confirmation by the Council of its intention not to present any evidence to the Inquiry, a request was made on behalf of the 'Against Wind Farm at Low Spinney' Group (AWFALS) for an adjournment of the Inquiry. AWFALS felt that they had been placed at a disadvantage and sought opportunity to persuade the Council to change its mind about the submission of evidence. The Council confirmed that its position would not change. The appellant opposed any such adjournment, as appropriate prior notice should have been given of any application to adjourn.

5. After a brief adjournment to consider the matter I announced that whilst I recognized the difficult position AWFALS found themselves in, immediately before the opening of the Inquiry, I would not grant an adjournment on the basis requested, because, given the Council's position and the fact that it was not going to change, no benefit would result from an adjournment and the Inquiry would have been unnecessarily delayed.
6. The proposal triggered a need for an Environmental Impact Assessment (EIA) under the provisions of Statutory Instrument 1999/293. The originating application was accompanied by an Environmental Statement (ES) that deals with a wide range of matters. In the course of the application and in the lead up to the Inquiry the Council raised doubts about whether the ES covered issues around noise and cultural heritage, in particular, sufficiently. In its stance on cultural heritage matters, the Council was originally supported by EH. The appellant, without obligation, submitted further information on both issues and advertised that it had, informally.
7. The initial assessment of the original ES by the Planning Inspectorate was that it addressed all issues in a manner that met the requirements of the relevant regulations. I checked the ES upon receipt, before the Inquiry opened, and concurred with that initial assessment. EH withdrew its objection before the Inquiry opened. No convincing evidence was advanced by AWFALS or anyone else, to suggest that the ES should be found wanting. The Inquiry proceeded, therefore, on the basis that the ES met the requirements of the regulations. I have reached my decision on the basis of the information contained in it, the additional information submitted to supplement it, and the other documentation associated with the originating application.

Decision

8. I allow the appeal, and grant planning permission for the erection of 4 no. 125m high wind turbines together with associated crane pads, access tracks, site compound, ancillary works, control building, meteorological mast and access to the public highway on Land South-East of Low Spinney Farm, Ashby Magna, Leicestershire LE17 5NB, in accordance with the terms of the application, Ref.09/00174/FUL, dated 10 February 2009, subject to the conditions set out in Annex A to this decision.

Main Issues

9. These are first to consider the proposed development's impacts on: i) the character and appearance of the landscape; ii) the living conditions of local residents in relation to visual impact, noise, disturbance and shadow flicker; iii) recreational activities; and iv) other matters including cultural heritage. To the extent that these impacts may be harmful, I then need to weigh that against benefits that might flow from the proposed development.

Reasons

The Proposal

10. As set out in the Statement of Common Ground (SoCG), the proposal includes four wind turbines with a maximum generation capacity of 2-3MW. Each

turbine would be 125 metres high, measured to the blade tip in the vertical position.

11. The hub height would typically be 80 metres and the blades about 45 metres long. The turbines would be connected by underground cables to a control building that would house switchgear and transformers as necessary. When operating at full capacity, the proposal would deliver between 8 and 12MW of wind generated power to the local grid network.
12. In addition the proposal also includes a foundation and crane hardstanding area for each turbine, a permanent meteorological mast, a control building and site access tracks leading to the turbines and the meteorological mast. There would be a site compound in place for the duration of the construction period.

The Site and Surroundings

13. Again with reference to the SoCG, the appeal site lies on farmland between the villages of Dunton Bassett to the north-west, Ashby Magna to the north, and Gilmorton to the south-east. To the west of the site, the M1 motorway and the A426 run approximately north-south, with the M1 passing within 200 metres of the westernmost site boundary. Gilmorton Road bounds the northern and eastern flanks of the site and there is an unnamed road joining Gilmorton Road to the A426 Lutterworth Road to the west.

Planning Policy

14. The development plan includes the East Midlands Regional Plan 2009 (EMRP) or RSS8, and saved policies of the Harborough District Local Plan 2001 (LP). The EMRP refers to a Government target of 10% of UK electricity from renewable sources by 2010 and 20% by 2020. The UK Renewable Energy Strategy now suggests that renewables could provide more than 30% of our electricity by 2020, compared to 5.5% today. The EMRP Appendix 5 sets regional indicative targets for on-shore, installed capacity from wind of 122 MW by 2010 and 175 MW by 2020.
15. EMRP Policy 40 sets regional priorities for low carbon energy generation. It specifies matters to be particularly taken into account when establishing criteria for onshore wind energy. They include landscape and visual impact, the effect on the built environment including noise impacts, the number and size of turbines proposed, cumulative impact and a project's contribution to the regional renewables target and national and international climate change objectives. Policy 26 seeks to protect and enhance the Region's natural and cultural heritage. However, the policy notes that damage to natural and historic assets should be avoided wherever and as far as possible, and unavoidable damage must be minimized and clearly justified by a need for development in the location which outweighs the damage that would result. Policy 31 states that the region's natural and heritage landscape should be protected and enhanced by a range of actions. However this policy is in many senses a guide to how local authorities should approach Local Development Frameworks.
16. Of the saved LP Policies referred to in evidence, I consider EV/5 the most relevant. It seeks strictly to control development in the countryside and says that planning permission will be refused unless the development does not adversely affect the character and appearance of the countryside (criterion 2)

- or the amenities of residents in the area (criterion 3). Criterion 4 indicates that new buildings should be sited to minimize their impact on the landscape and on important views into and out of villages.
17. There was a brief discussion at the inquiry about whether wind turbines are 'buildings' for the purposes of Policy EV/5(4). The Town and Country Planning Act 1990 interprets 'building' as including any structure or erection. With that in mind, I heard nothing at the Inquiry to alter my view that the proposed turbines would be buildings for the purposes of Policy EV/5.
 18. No part of that policy, and no other saved LP policy to which my attention was drawn, specifically addresses issues relating to on-shore wind development.
 19. I have also had regard to Government advice in Planning Policy Statement 22: *Renewable Energy* (PPS22) and *Planning for Renewable Energy*, (the Companion Guide), Planning Policy Statement 1: *Delivering Sustainable Development* (PPS1) and the Annex on Climate Change, Planning Policy Statement 7: *Sustainable Development in Rural Areas* (PPS7), Planning Policy Guidance: *Planning and the Historic Environment* (PPG15) and Planning Policy Guidance: *Planning and Noise* (PPG24), amongst others.

Landscape Matters

20. The appeal site does not lie within any nationally, regionally or locally designated landscape. It is about 6.5 km away from the nearest locally-designated Area of Attractive Countryside, from which area Natural England (NE) is satisfied that the proposed turbines would be barely visible. Landscape characterization assessments place the site in regional terms within the Leicestershire Vales Joint Character Area and in district terms within the Lutterworth Lowlands Landscape Area, in which latter area NE is content to record the landscape as not one that could be considered 'sensitive'. I find no reason to disagree with that view.
21. However, I accept that the landscape around the appeal site is valued by local people, for qualities including its pastoral land use, gently rolling topography, broad and generally open vistas and permeation by hedgerows interspersed with trees. However, there are no local landscape features which could be described as of outstanding interest. The area around the appeal site is not remote or unusual in its landscape components. The M1 motorway to the west of the appeal site is a readily noticeable feature in visual and aural terms, the perception being of the passage of fast-moving traffic dipping into and out of cuttings.
22. In evidence, the appellant's landscape witness referred to the concept of 'valency'. In very simple terms, this suggests that because of the varying reactions people have to wind turbines in the landscape, ranging from the strongly positive to the strongly negative, it is wrong or misleading to conclude whether the impact of those turbines on the landscape is negative/harmful, positive/beneficial or neutral.
23. However, in response to my questions, the landscape witness, very fairly in my view, accepted that I had to approach the question of impact in an objective manner and, to that end, a precautionary approach was reasonable. One of the key principles of PPS7 is to protect the countryside for the sake of its intrinsic

character and beauty. The wind turbines proposed, and to a lesser extent, the meteorological mast would have a height much greater than anything else in the vicinity, and they would be clearly visible from a significant distance.

24. It is accepted that the proposal would define a new landscape type on the appeal site and its vicinity (within 800 metres of the turbines was referred to). In simple terms, there would be a change from a landscape without a wind farm to a landscape with a wind farm. As a result, the intrinsic character of this part of the landscape would be fundamentally changed. In simple, objective terms, it seems to me that an intervention that leads to this magnitude of change cannot be deemed protective of the intrinsic character and beauty of the countryside so affected. I recognise that PPS7 anticipates the sensitive exploitation of renewable energy sources but, bearing in mind the key principle of PPS7 referred to, I consider that the proposal must therefore be harmful to the character and appearance of the landscape of the appeal site itself and a relatively significant area around it.
25. Having said that, I take the view that the degree of harm would be assuaged by a number of factors. Firstly, the openness and relative expansiveness of the general landscape, the prominence of the sky, relatively long distance views, and the sense of space give the landscape a grand scale. This is not, in my view, an intimate landscape. I consider that, in this context, very tall man-made objects like wind turbines would not appear wholly incongruous.
26. Similarly, the influence of humankind on the landscape is almost all pervading in the influence of agriculture in cultivation, field boundaries, hedgerows, trees, and buildings and the settlements spread around the vicinity of the site. Most of all, there is the inescapable, large scale, presence of the M1 motorway, a relatively short distance to the west of the site. Again, given the context, it seems to me that the wind turbines and meteorological mast would not appear as wholly alien objects in the landscape.
27. Design is an important factor too. In my view, the proposed layout of the wind turbines and the meteorological mast gives a reasonable spread between them that would allow it to sit comfortably in its setting. There will be places where 'stacking' occurs in that turbines will overlap in a view. My attention was drawn to how this would transpire in views from around 'Longrange'. However, it seems to me that almost any layout of a group of turbines will throw up places where 'stacking' will occur. The view from around 'Longrange' is not significant in landscape terms so I do not consider this to be particularly harmful. Similarly, my attention was drawn to places where the turbines would be seen in juxtaposition with Churches. However, a wind turbine and a Church are legible as different objects with different functions. I do not consider that there would be any significant competition between them or any visual confusion as a result of the juxtaposition.
28. As individual objects, if carefully designed and proportioned a wind turbine or a meteorological mast can attain a degree of elegance as a sculptural object, notwithstanding their scale and consequent landscape impact. Similarly, a careful choice of colour can give them a recessive quality. These matters can be addressed through a condition, in the manner suggested.

29. As well as the wind turbines and the meteorological mast, the proposal includes associated infrastructure in the forms of tracks, hardstandings and the control building. However, there are already elements of this type present in the landscape used for the purposes of agriculture. No harmful incongruity would result from their presence, in my view.
30. My attention has been drawn to a number of projects at various stages of the planning process, in the vicinity of the appeal site. In my view, neither those constructed or permitted are sufficiently close to the appeal site to lead to any harmful cumulative impact.
31. Taking these points together, I consider that while the proposal would cause some harm to the character and appearance of the landscape, a combination of mitigating factors combine to mean that while the harm would not be completely extinguished, it would be assuaged to the point where it was not significant.
32. The way in which EMRP Policy 26 is worded means that an identification of some harm to the landscape does not necessarily trigger non compliance. Aspects of the layout and design mean the proposal would meet the requirements of criterion 4 of LP Policy EV/5. However, given that the proposal would cause some harm to the landscape it fails to comply with criterion 2.

Living Conditions

33. In the course of my site visits, I visited the highlighted viewpoints, a significant number of individual properties, identified by the parties, the general vicinity of the villages around the appeal site and walked a series of rights of way.
34. From these locations, the individual dwellings visited, and for that matter, others further afield, the wind turbines and to a lesser extent, the meteorological mast would have a clear visual presence. However, I agree with the general assessment of the appellant's landscape witness that because of the degree of separation, the often oblique relationship between the property or area and the turbine cluster, and, in some cases, the presence of intervening buildings or trees, their impact would not be dominant.
35. What would happen, it seems to me, is that the outlook or view from the viewpoint, property or area concerned would undergo a marked change. Change is not necessarily harmful and it is very important to differentiate between a change in a view and visual impact. It is a long-established planning principle that the right to a view is not inviolable. Again, I agree with the appellant's landscape witness that the properties closest to the site, and I take that to mean those within around 800 metres of it, are those where what could properly be termed a visual impact would occur.
36. 'Longrange' lies to the north-west of the proposed turbine cluster. In my estimation Turbines 1, 2 and 3 would register as the more prominent structures in the outlook from it. However, the orientation of Longrange is such that its relationship with the turbine cluster would be oblique. That, along with the degree of separation and the relatively limited field of view the closest turbines would occupy, would mean that their impact would not be dominant or oppressive and the living conditions of the occupiers would not be unduly affected.

37. Charnwood View (referred to elsewhere in the documentation as new build dwelling) is a two-storey dwelling to the north of the appeal site in an open location south of Ashby Magna. Oblique views of the proposed turbines in particular would be possible from the front windows of the dwelling, and direct views from its south gable windows and adjoining garden.
38. Having spent some time at the property, I consider that the visual impact of the cluster would not be dominant or oppressive because the primary orientation of the house and its garden does not face towards the position of the proposed turbines. The direct views possible from the south facing windows would not cause any particular difficulties, in my view, because these are not the primary windows of the room they serve. The primary windows face west and east. All this, coupled with the degree of separation, means that the visual impact would not be of such significance that the living conditions of the occupiers would be unacceptably diminished.
39. I also visited the cluster of dwellings to the south west of the proposed turbine cluster made up of Cotes-de-val, De Ville Farm and Penhill Farm. Again, the turbine cluster and the meteorological mast would be clearly visible from the dwellings and their environs and the lower level of the dwellings relative to the turbine positions would tend to magnify their visual impact.
40. However, the turbine cluster and the meteorological mast would have an oblique relationship with the orientation of the dwellings. This, coupled with the degree of separation would mean, in my view, that the visual impact would not be of an order sufficient to have any significant impact on the living conditions of the occupiers of the dwellings concerned.
41. The turbine cluster would occupy a relatively narrow field of view when viewed looking west from Gilmorton Lodge Farm. That, coupled with the degree of separation is sufficient, in my view, to mean that the visual impact of the proposed turbine cluster would not be domineering. As such, the living conditions of the occupiers would not be harmed to any significant degree by its presence. I reach a similar conclusion in relation to Home Farm.
42. Taking all these points together, I conclude that although the quality of views currently enjoyed by local residents would be eroded, this would nowhere be to such a degree as to give rise to a material objection in planning terms such that planning permission must necessarily be refused.
43. AWFALS fielded evidence from a recognised expert on sleep disorders who concluded that wind turbine noise can and does cause sleep disturbance and impair the health of those living close to wind turbines. Reference was made to ongoing scientific and medical research in the field. I accept that sleep disturbance and health effects as a consequence of the proposal could have a detrimental impact on the living conditions of local residents, if they were to occur, and this is a material consideration.
44. Linked to that, the use of ETSU-R-97: *The Assessment and Rating of Noise from Wind Farms* as a means of dealing with the potential impact of noise from the turbines proposed came in for some criticism in terms of its adequacy. Reference was made, for example, to the recent controversy surrounding research and recommendations put forward by the Hayes McKenzie Partnership.

45. In response to my questions, the suggestion from AWFALS was, put simply, that I should agree with them that ETSU-R-97 offers insufficient protection for local residents from the effect of noise and disturbance as a result of the proposal and, as a consequence, I should dismiss the appeal. I have considered very carefully the evidence adduced by AWFALS in this context.
46. However, paragraph 22 of PPS22 confirms the Government position that ETSU-R-97 should be used to assess and rate noise from wind energy development. I am not satisfied that the evidence put forward is sufficiently conclusive to allow me, as an Inspector, to disagree with or set aside the prevailing Government approach. It seems to me that unless and until Government guidance is modified or replaced, ETSU-R-97 remains the yardstick against which proposals like this must be assessed. If the emerging subject of the relationship between wind turbine noise and sleep disturbance or other effects, means that ETSU-R-97 needs to be modified or replaced, that, to my mind, is a matter for Government, not individual Inspectors, dealing with specific proposals.
47. The appellant has demonstrated that the proposal would operate within the parameters set out by ETSU-R-97 and conditions have been suggested that would ensure compliance. It was argued that the noise monitoring locations used to frame the condition are not representative because they do not take account of dwellings sited further away from the M1 motorway. However, I heard that the locations chosen comply with the ETSU-R-97 methodology. In my view, it is not necessary to go further than that.
48. The suggested conditions are both reasonable and enforceable and would ensure that the living conditions of local residents would not be affected to a degree beyond what ETSU-R-97 would allow. The Council, while it has suggested conditions that, it accepts, go beyond what ETSU-R-97 would require, does not suggest that the proposal could not operate within the parameters of ETSU-R-97. In that context, and notwithstanding the points raised, I do not consider that noise and disturbance from the wind turbines would affect the living conditions of local residents to an unacceptable degree.
49. Concerns have also been expressed about shadow flicker. Paragraph 76 of the technical annex on wind to the Companion Guide to PPS22 notes that flicker effects have been proven to occur only within ten rotor diameters of a turbine. Some properties might be affected. Shadow flicker, as a phenomenon, is predictable. As a consequence, there seems to me no good reason why a properly worded condition that sets out a protocol to be followed in the event of a complaint, that may involve the offending turbine(s) being shut down at certain times, cannot deal with this matter in a way that adequately protects the living conditions of local residents.
50. Taking all these points together I consider that the proposal would not harm the living conditions of local residents to an unacceptable degree whether through visual impact, noise and disturbance, or shadow flicker. The proposal complies, therefore, with criterion 3 of LP Policy EV/5.

Recreational Activities

51. Evidence from AWFALS and others referred to the potential impact of the proposal on walking, cycling, horse riding and countryside enjoyment generally. I accept that residents living in nearby villages, and others, use the

- countryside around the appeal site for a variety of recreational purposes. There are local footpaths, bridleways and other thoroughfares, including the so-called County road that runs through the appeal site, a bridleway connecting Gilmorton to Cotes-de-val to the south of the appeal site and a public track running northwards from Gilmorton to Willow Farm and beyond.
52. Some people might be deterred by the proposed wind turbines from using these and other routes. However, I find no strong evidence that this would be the case. Some might find the turbines an interesting feature to pass close to and in my view more would in time accept or at least tolerate them as part of the local landscape.
53. I find no convincing evidence that people would be deterred by the turbines from visiting the area on a wider basis for recreational purposes or as tourists and there would be no departure from the requirements of the development plan on this particular basis.
54. Representations were made at the inquiry on behalf of the Leicestershire & Rutland Bridleways Association and of the British Horse Society (BHS) about the potential of wind turbines to frighten horses being ridden nearby, with serious results. It was pointed out that the proposed wind farm did not comply with the suggestion of the BHS, mentioned in the Companion Guide to PPS22, that there should be a 200 metre exclusion zone around bridle paths to avoid wind turbines frightening horses.
55. Horses may be ridden along the route through the appeal site and on other roads around the appeal site. However, no specific evidence of any actual incident causing injury to, the death of, or other misfortune affecting horses or their riders near wind turbines was produced.
56. The PPS22 Companion Guide advises that whilst the exclusion zone could be deemed desirable, it is not a statutory requirement. The turbines in a largely open landscape would be visible for quite a distance from approaching bridleways and roads, and so there is less likelihood that horses would be subjected to any sudden visual images. The assertion that there could be perceptual effects on horses from the movement of rotor blades or shadow flicker was not supported by convincing evidence.
57. I do not in these circumstances consider the proximity of the proposed turbines to routes which may be used for horse riding to be a significantly harmful characteristic of the proposed development. I am satisfied that there would be no conflict with the development plan or its objectives on this account.

Cultural Heritage

58. Objections to the appeal proposal on cultural heritage grounds were raised by the Council at the application stage following consideration by EH of the ES which accompanied the planning application. EH considered the Chapter defective in relation to the methodology used to assess the potential impacts of the proposed wind farm on the setting of listed buildings, conservation areas and Scheduled Ancient Monuments.
59. In response, the appellant undertook, as a precautionary approach, an extended evaluation of the impact of the proposed turbines on the settings of

cultural heritage assets within an extended area around the appeal site. The results, together with the original scoping exercise, formed part of its evidence. As a result of those evaluations, EH withdrew its objection shortly before the opening of the Inquiry and the Council confirmed that in these circumstances it could not sustain its own objection to the appeal proposal on cultural heritage grounds.

60. The appellant's evidence concludes that the appeal proposals would result in no significant negative impact upon the setting of relevant historic assets. I have considered this conclusion carefully but nothing I saw on my site visits caused me to question it. I am satisfied that no material harm would be caused by the appeal proposal to any recognized cultural asset in the locality and that the settings of the conservation areas, listed buildings and Scheduled Ancient Monuments evaluated would be preserved. It follows that the cultural heritage objectives of EMRP Policy 26 and LP Policies EV/11(3) and EV/16 that deal with these matters would be satisfied.

Other Matters

61. Some concern was raised about driver distraction and in particular, the generally high speed traffic on the M1 motorway. However, it seems to me that the turbines would be visible from some distance away and would not come as a surprise to approaching drivers on any of the roads around the site, including the motorway. In this way, there would be no significant impact on highway safety. The access to the site for construction purposes appears to me to have been sensibly considered. Control of routing and other factors is possible through conditions and in this way, the construction process need cause no undue difficulties in terms of highway safety.

Benefits

62. A number of contributors made some rather strident criticisms of Government policy in relation to renewable energy and wind energy in particular. I accept that those views are sincerely held. However, as I have already set out, it is not for me as an Inspector to question Government policy. My role is to operate in its context. The Council and the appellant have agreed in the SoCG that an Inquiry into a specific proposal is not an appropriate forum for debating the merits of national policy as it relates to energy, renewable energy or climate change issues. In my view, that is the correct position to adopt.
63. Another criticism put forward is that off-shore installations are a less intrusive method of generating power from the wind. In very simple terms that may be the case but PPS22 is very clear that offshore renewable generation projects are not covered by the land-use planning system and the potential to generate substantial amounts of renewable energy from offshore projects should not be used as a justification to set lower targets for onshore projects. I accept that this advice is given in the context of setting regional targets but it seems to me that giving undue weight to offshore potential as a means of resistance to onshore schemes would make it very difficult, if not impossible, for the onshore targets set out in the EMRP to be met.
64. Government policy clearly treats climate change and its implications very seriously, as well as security of energy supply. There is a cascade of Government policy documents that have fed into PPS22 and the Companion

Guide and PPS1 and the Supplement on Climate Change. The Government has set out current thinking in The UK Renewable Energy Strategy. This outlines a suggested target of 30% of electricity supply from renewable sources by 2020.

65. As set out, Appendix 5 of the EMRP provides that the East Midland is to provide a minimum of 122W of installed capacity from on-shore wind by 2010 and 175MW by 2020. Based on the agreed figures submitted to the Inquiry, it is not disputed that there are deficits against both the 2010 and the 2020 targets. It is also apposite to note that the 2020 target, in particular, is very likely to be revised significantly upwards, given the nature of current Government thinking set out in the UK Renewable Energy Strategy.
66. Against this background I take the view that the 8 to 12 MW the proposal would provide would make a relatively small but tangible contribution towards the targets in the EMRP and wider Government policy. This, in my view, is a matter of significant weight.

The Balance

67. I have identified some harm in relation to the impact of the proposal on the character and appearance of the landscape. Against that must be balanced the significant benefit involved in the production of energy from a renewable source.
68. Key principle 1 of PPS22 states that renewable energy developments should be capable of being accommodated throughout England in locations where the technology is viable and environmental, economic and social impacts can be addressed satisfactorily. Given the limited nature of the harm identified, I am of the view that the impacts of the specific proposal before me have been satisfactorily addressed. To my mind, the significant benefits of the proposal clearly outweigh the limited harm it would cause.
69. In that context, while I have identified a failure to comply with LP Policy EV/5 criterion 2, the proposal would comply with EMRP Policies 40 and 26 and wider Government policy, nationally. I consider compliance with the latter to carry more weight.

Conditions

70. The Council took a full part in the discussions about conditions, and in the preparation of a series of lists of suggested conditions. I have considered the final version of that list that includes elements in the alternative, in the context of Circular 11/95: *The Use of Conditions in Planning Permissions*. I have also noted carefully the comments made by AWFALS during the discussion.
71. Firstly, I agree that given the number of pre-commencement conditions to be dealt with, and issues around turbine procurement, a five year commencement period is reasonable.
72. A condition is also required to secure the 25 year period for the permission. Given the 'temporary' nature of the scheme, a condition is necessary to deal with decommissioning and site restoration. Given their current presence on the site, the reference to badgers is reasonable.

73. A condition is required to deal with the removal of a turbine or turbines in the event of a failure to operate. I acknowledge the concerns of AWFALS about the wording of the suggested condition and the timescales. However, the central reason why I consider that wind turbines should be accommodated on the site is because of the benefits they bring in terms of the generation of energy from a renewable source. In that context, it seems to me reasonable to allow time and scope to deal with any operational difficulties.
74. Conditions are necessary to deal with the manner in which the development is to be constructed and the management of construction traffic. There was some discussion about the inclusion of the phrase 'unless otherwise agreed in writing' in the former suggested condition. Generally, I find this phrase imprecise and consider that its use should be kept to a minimum. If, following approval of the Construction Method Statement an improved means of construction is discovered then, if it was an improved method, and the Council and local residents agreed and were kept informed, then a breach of condition notice alleging a failure to accord with the originally approved method statement seems unlikely to be forthcoming. Details of wheel washing facilities can be included within this condition rather than as a separate one.
75. It is necessary to apply conditions to restrict the hours within which construction and deliveries can take place. I appreciate the concerns expressed by AWFALS about allowing work and deliveries on Saturday mornings. However, given that the main reason for permitting the development to go ahead is the benefits it brings in terms of the generation of energy from a renewable source, it is important that it is completed as soon as possible. Moreover, while I appreciate the scale of what is involved here, in general terms, there is nothing unusual about construction work taking place on a Saturday morning. In terms of deliveries, it is important to allow some logistical flexibility so that the turbines become operational as soon as possible. To that end, I have included scope for delivery outside the restricted hours with the agreement of the local planning authority.
76. I accept that a condition is required to secure a sustainable form of surface water drainage. A condition to deal with potential contamination has been suggested but there is no convincing evidence of any. In that context, the suggested condition seems to me unnecessary.
77. Conditions are required to secure details of the finish and colour of the wind turbines, external transformer units and the meteorological mast and to control signage. It is necessary to specify the height of the wind turbines, to ensure that the blades all rotate in the same direction, and to control any illumination and artificial lighting. Details of the control building need to be secured for approval and it is also necessary to set out restrictions on the cabling.
78. A series of highways related conditions have been suggested. I accept that these are necessary to deal with vehicle parking during the construction period and thereafter. Details of the temporary access to the site need to be secured as well as reinstatement. I note the comments about the manner in which reinstatement should take place. I have framed the condition to allow the local planning authority control over details. A condition is also required to secure repairs to the roads adjacent to the site made necessary by the development.

79. A condition is required to deal with micro-siting. In my view, an allowance of 30 metres is reasonable provided that another condition is applied to ensure that Turbine 3 and Turbine 4 do not end up closer to the public highway. An archaeology condition is necessary but I have adjusted that suggested to better reflect the standard form in Circular 11/95. A series of conditions are required to address the potential presence of protected species on the site.
80. It is necessary to apply a condition to deal with shadow flicker. I have simplified that suggested to make it more precise. Similarly, interference with television was discussed but I am content to leave the suggested condition largely as suggested because there is no evidence that there would be interference with digital television and a finite period is necessary to give the developer some surety. Details of various aspects need to be provided to the local planning authority for aviation purposes. These need to be secured by condition.
81. There was a significant amount of discussion at the Inquiry about the suggested noise condition and the alternative wording and additional conditions suggested by the Council. As I have set out, paragraph 22 of PPS22 confirms that ETSU-R-97 should be used. The Council accepts that its suggestions go beyond what ETSU-R-97 would require. In simple terms, bearing in mind the advice in Circular 11/95, I fail to see how these suggestions meet the test of necessity, therefore.
82. Similarly, a condition has been suggested by the Council to deal with amplitude modulation. My attention was drawn to decisions by Inspectors and the Secretary of State where such a condition has been applied. However, I would make two points. First, such a condition is not required for the proposal to comply with ETSU-R-97. Second, there is no evidence that amplitude modulation will cause difficulties on this particular site. In that context, it seems to me that the suggested condition fails the test of necessity.
83. I have noted the comments of my colleague Inspector who prepared the Swinford report (APP/F2415/A/09/2096369). I have also noted my colleague Inspector's redetermination at Den Brook (APP/Q1153/A/06/2017162). In the former case, it seems that, unlike the case before me, the condition dealing with amplitude modulation was agreed between the parties. In the latter case, the Inspector felt the condition was necessary and reasonable and was content to apply the condition in a precautionary fashion. I am not party to the evidence that was before the Inspector concerned. I have no convincing evidence that amplitude modulation will cause difficulties in the case before me. As such, I do not believe that the Inspector's conclusion on that case, justifies a similar one here. Finally, it seems to me unnecessary to apply a condition to require a scheme of mitigation in the event that the noise limits in the main condition are breached. That would be a matter for the Operator to deal with in the event of a breach.

Final Conclusion

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

Paul Griffiths

INSPECTOR

Annex A: Schedule of Conditions

- 1) The development hereby permitted shall begin not later than five years from the date of this decision.
- 2) The permission hereby granted shall endure for a period of 25 years from the date when electricity is first exported from any of the wind turbines to the electricity grid network (the 'First Export Date'). Written confirmation of the First Export Date shall be provided to the local planning authority no later than 1 calendar month after the event.
- 3) Not later than 12 months before the end of this permission, a decommissioning and site restoration scheme shall be submitted for the written approval of the local planning authority, such scheme to include the management and timing of any works and a traffic management plan to address likely traffic impact issues during the decommissioning period. The decommissioning scheme shall also include a specification for protected species surveys for badgers to be carried out by a suitably qualified ecologist in the last suitable season prior to decommissioning works commencing. A report detailing the results of the surveys shall be submitted to the local planning authority within one month of completing the final survey and any mitigation required as a result of the surveys shall be implemented in full before decommissioning works commence. The approved scheme shall be completed within 24 months of the expiry of this permission.
- 4) If any of the turbines hereby permitted ceases to operate for a continuous period of 12 months (unless such a cessation is due to the turbine being under repair or replacement) it shall be dismantled and removed from the site in accordance in a scheme which shall be submitted to and approved in writing by the local planning authority within 3 months of the end of that 12 month period and which shall provide for the removal of the relevant turbine and associated above ground works and the turbine foundation to a depth of at least 1 metre below ground. The approved scheme shall be implemented within 12 months of the date of its approval by the local planning authority.
- 5) No development shall take place until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the local planning authority. The CTMP shall include proposals for the scheduling, timing, and routing of movements, the management of junctions to and crossings of the public highway and other public rights of way, details of escorts for abnormal loads, temporary warning signs, temporary removal and replacement of highway infrastructure/street furniture, reinstatement of any signs, verges or other items displaced by construction traffic and banksman/escort details. Development shall be carried out in accordance with the approved details.
- 6) No development shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved CMS. The CMS shall address the following matters:
 - i) Details of the phasing of all construction works;
 - ii) Details of the construction and finish of all hard surfaces and tracks;

- iii) Details of the proposed storage of materials;
 - iv) Dust management;
 - v) Details of the proposed temporary site compound for storage of materials and machinery;
 - vi) Cleaning of site entrances, site tracks, and the adjacent public highway and the sheeting of all HGVs taking spoil or construction materials to or from the site to prevent spillage or deposit of any material on the highway;
 - vii) Details of vehicle wheel cleansing facilities and their operation;
 - viii) Pollution control measures, bunding of fuel storage areas sewage disposal, and discharge of foul drainage;
 - ix) Proposals for post construction restoration/reinstatement of the temporary working areas; and
 - x) Details of emergency procedures and pollution response plans.
- 7) Construction work shall only take place between the hours of 0800-1800 on Monday to Friday inclusive and 0800-1300 hours on Saturdays. No construction work shall take place on a Sunday or Public Holiday. Outwith these hours, work at the site shall be limited to emergency works and dust suppression. The local planning authority shall be informed in writing of any emergency works within three working days of occurrence.
- 8) The delivery of any construction materials or equipment for the construction of the development, other than turbine blades, nacelles and towers, shall be restricted to the hours of 0800–1800 on Monday to Friday inclusive and 0800–1300 hours on Saturdays. No deliveries shall take place on a Sunday or Public Holiday unless approved in writing by the local planning authority having been given a minimum of two working days notice of the proposed delivery.
- 9) No development shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles, has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 10) No turbine shall be erected until details of the design, finish and colour of the wind turbines, any external transformer units, and the meteorological mast have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details. No name, sign, symbol or logo shall be displayed on any external surfaces of the turbines or any external transformer units or the meteorological mast, other than those required to meet statutory health and safety requirements.
- 11) The maximum height of the wind turbines hereby permitted, when measured from the turbine base to the blade tip in the vertical position, shall be no greater than 125 metres.
- 12) All wind turbine blades shall rotate in the same direction. The turbines shall not be illuminated and there shall be no permanent illumination on the site other than lighting required during the construction period, during planned or unplanned maintenance, emergency lighting, or the PIR-operated external door light for the substation building door.

- 13) Construction of the control building shall not commence until details of the external appearance, dimensions, layout and materials of that building and any associated compound or parking area have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 14) With the exception of the connections within the on-site substation and between the substation and the overhead lines, all proposed cabling within the site shall be laid underground.
- 15) During the construction period, vehicle parking facilities shall be provided within the site and all vehicles associated with the development shall be parked within the site.
- 16) No development shall take place until details of parking spaces within the site for maintenance vehicles has been submitted to and approved in writing by the local planning authority. The parking spaces shall be provided in accordance with the approved details before the First Export Date and retained for their intended purpose thereafter.
- 17) No development shall take place until details of the temporary vehicular access to the site have been submitted to and approved in writing by the local planning authority. The temporary vehicle access shall be implemented in accordance with the approved details and shall remain for the duration of the construction period. Within one month of the commissioning of the final wind turbine, the temporary vehicle access shall be removed and reinstatement shall take place in accordance with a scheme that shall first have been submitted to and approved in writing by the local planning authority.
- 18) No development shall take place until a scheme to secure any repairs to the unclassified road between the site access and the junction with the A426 including 50 metres of the carriageway of the A426 to the north and south of the junction, rendered necessary by the development, including a visual/video survey, programme and methodology, has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details.
- 19) The turbines and access tracks may be microsited within 30 metres of the positions shown on the submitted drawings. A plan showing the exact position of the turbines and tracks established on the site shall be submitted to the local planning authority within one month of the First Export Date.
- 20) Notwithstanding the terms of condition 19, Turbines 3 and 4 shall not be microsited to a position closer to the public highway on the eastern boundary of the site.
- 21) No development shall take place until the applicant, or their agents or successors in title has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the local planning authority.

- 22) Prior to carrying out any construction works or any clearance of vegetation between 1 March and 31 July in any year a detailed checking survey shall be carried out for nests currently in use by birds by a suitably qualified independent ecologist . A report detailing the results of the checking surveys shall be submitted to the local planning authority within one month of the completion of the final survey and any mitigation required as a result of the surveys shall be implemented in full before the construction work or clearance commences.
- 23) No development shall take place until an ecological management scheme has been submitted to and approved in writing by the local planning authority. The scheme shall include a programme of implementation providing for the proportional replenishment of hedgerow loss with gapping up existing lengths and new hedgerow planting and proposed details of treatments for soil excavations during construction and decommissioning to ensure that badgers are not trapped. The scheme shall be implemented as approved.
- 24) No development shall take place until a specification for protected species surveys for badgers and water voles has been submitted to and approved in writing by the local planning authority. The surveys shall be undertaken by a suitably qualified ecologist in the last suitable season prior to site preparation and construction work commencing. A report detailing the results of the surveys shall be submitted to the local planning authority within one month of completing the final survey and any mitigation required as a result of the surveys shall be implemented in full before development commences.
- 25) No development shall take place until a detailed methodology and programme for the undertaking of a survey of tree limbs to be removed or trees to be felled to assess such tree limbs and trees for the presence of bats has been submitted to and approved in writing by the local planning authority. This shall be undertaken by a suitably qualified independent ecologist. Any mitigation required as a result of the survey shall be implemented before development commences.
- 26) Prior to the First Export Date, a scheme setting out a protocol for the assessment of shadow flicker in the event of any complaint being received, including the remedial measures to be taken, shall be submitted to and approved in writing by the local planning authority. Operation of the wind turbines shall take place in accordance with the approved protocol.
- 27) Prior to the First Export Date a scheme providing for the investigation and alleviation of any electro-magnetic interference to terrestrial television caused by the operation of the turbines shall be submitted to and approved in writing by the local planning authority. The scheme shall provide for the investigation by a qualified television engineer of any complaint of interference with television reception at a lawfully occupied dwelling which existed or had planning permission at the time permission was granted where such complaint is notified to the developer by the local planning authority within 12 months of the First Export Date. Where impairment is determined by the qualified television engineer to be attributable to the wind farm, details of the necessary mitigation works,

- including a programme, shall be submitted to and approved in writing by the local planning authority and implemented as approved.
- 28) Within 14 days of the commissioning of the final turbine, the developer shall provide written confirmation of the following details to the local planning authority:
- i) Date of completion of construction;
 - ii) The height above ground level of the highest obstacle; and
 - iii) The position of that structure in latitude and longitude.
- 29) The rating noise 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 values set out for the relevant integer wind speed in the tables attached to these conditions and:
- A: Prior to the First Export Date the wind farm operator shall submit to the local planning authority for written approval a list of proposed independent acoustic consultants who they will appoint to undertake compliance measurements in accordance with this condition. Amendments to the list of approved consultants shall be made only with the prior written approval of the local planning authority.
 - B: Within 21 days from receipt of a written request of the local planning authority following a complaint to it alleging noise disturbance at a dwelling which lawfully exists or has planning permission at the date of this permission, the wind farm operator shall at its expense employ an independent consultant approved by the local planning authority to assess the rating level of noise immissions from the wind farm in accordance with the procedures described in the attached Guidance Notes. The written request from the local planning authority shall include a statement as to whether, in the opinion of the local planning authority, the noise giving rise to the complaint contains or is likely to contain a tonal component.
 - C: Where a dwelling to which a complaint is related is not listed in the tables attached to these conditions, the wind farm operator shall submit to the local planning authority for written approval proposed noise limits, selected from those listed in the tables, to be adopted at the complainant's dwelling for compliance checking purposes. The proposed noise limits are to be those limits selected from the tables specified for a listed location which the independent consultant considers as being likely to experience the most similar background noise environment to that experienced at the complainant's dwelling. The submission of the proposed noise limits to the local planning authority shall include a written justification of the choice of the representative background noise environment provided by the Independent Consultant. The representative background noise environment and proposed noise limits shall be approved in writing by the local planning authority. The rating level of noise immissions resulting from the combined

effects of the wind turbines when determined in accordance with the attached Guidance Notes shall not exceed the noise limits approved in writing by the local planning authority for the complainant's dwelling.

- D: Prior to the commencement of any measurements to be undertaken in accordance with these conditions by the independent consultant acting on behalf of the wind farm operator, the wind farm operator shall submit to the local planning authority for written approval the proposed measurement location identified in accordance with the Guidance Notes where measurements for compliance checking purposes shall be undertaken. Measurements to assess compliance with the noise limits set out in the tables or approved by the local planning authority pursuant to paragraph C of this condition shall be undertaken at the measurement location approved in writing by the local planning authority.
- E: The wind farm operator shall provide to the local planning authority the independent consultant's assessment of the rating level of noise immissions undertaken in accordance with the Guidance Notes and paragraph B above within 2 months of the date of the written request of the local planning authority unless otherwise extended in writing by the local planning authority. The assessment shall include all data collected for the purposes of undertaking the compliance measurements and certificates of verification and calibration of the instrumentation used to undertake the compliance measurements as required by paragraph 1(b) of the attached Guidance Notes.
- F: The wind farm operator shall continuously log rainfall at the site and wind speed measured at 10 metre height and shall continuously log power production, nacelle wind speed, nacelle wind direction and nacelle orientation at each wind turbine all in accordance with paragraph 1(e) of the attached Guidance Notes. These data shall be retained for a period of not less than 2 years. The wind farm operator shall provide this information in the format set out in paragraph 1(f) of the attached Guidance Notes to the local planning authority on its request within 28 days of receipt in writing of a request. The 10 metre wind speed measurement location shall be submitted to the local planning authority for its prior written approval. Measurement of 10 metre wind speed shall be recorded in the approved location in accordance with the attached Guidance Notes.
- G: Where a further assessment of the rating level of noise immissions from the wind farm is required pursuant to paragraph 4(c) of the attached Guidance Notes, the wind farm operator shall submit a copy of the further assessment within 42 days unless otherwise extended in writing by the local planning authority. The further assessment shall also contain all raw noise measurement data obtained during the assessment.

TABLES OF NOISE LIMITS

Between 23:00 and 07:00 hours (noise level in dB L_{A90, 10min}):

Location (easting, northing grid coordinates)	Measured wind speed (m/s) at 10 metre height within the site averaged over 10 minute periods										
	2	3	4	5	6	7	8	9	10	11	12
L _{A90} Decibel Levels											
Ink Pot Cottage (455193, 290040)	58	58	58	58	58	58	59	59	59	59	59
Low Spinney Farm (455793, 289704)	54	55	56	57	58	59	60	61	61	61	61
The Retreat, Ashby Magna (456394, 290090)	43	43	43	43	45	46	48	49	49	49	49
Gilmorton Lodge Farm (456926, 289031)	43	43	44	46	48	49	51	52	52	52	52
Farm View (456842, 288544)	43	44	45	47	48	49	50	50	50	50	50
Cotes-de-Val (455381, 288632)	51	51	51	52	53	54	55	57	57	57	57
New build on Gilmorton Road (456235, 289880)	50	50	50	50	50	50	51	51	51	51	51

At all other times (Noise Level in dB L_{A90, 10min}):

Location	Measured wind speed (m/s) at 10 metre height within the site averaged over 10 minute periods										
	2	3	4	5	6	7	8	9	10	11	12
L _{A90} Decibel Levels											
Ink Pot Cottage (455193, 290040)	62	62	63	63	64	64	65	66	67	67	68
Low Spinney Farm (455793, 289704)	58	58	59	60	62	63	65	66	67	67	65
The Retreat, Ashby Magna (456394, 290090)	44	45	46	47	48	49	50	51	53	54	55
Gilmorton Lodge Farm (456926, 289031)	44	45	46	48	49	50	52	54	55	57	59
Farm View (456842, 288544)	44	45	46	48	49	50	52	53	54	56	57
Cotes-de-Val (455381, 288632)	55	55	56	56	57	58	58	59	61	62	63
New build on Gilmorton Road (456235, 289880)	53	53	53	54	54	55	56	57	58	59	61

Note: The geographical coordinates references set out in these Tables are provided for the purpose of identifying the general location of dwellings to which a given set of noise limits applies.

SCHEDULE OF GUIDANCE NOTES RELATING TO THE NOISE CONDITION

These notes are to be read with and form part of the noise condition. They further explain the condition and specify the methods to be deployed in the assessment of complaints about noise immissions from the wind farm. The rating level at each integer wind speed is the arithmetic sum of the wind farm noise level as determined from the best fit curve described in Note 2 of these Guidance Notes and any tonal penalty applied in accordance with Note 3.

Note 1

- (a) Values of the $L_{A90,10min}$ noise statistic shall be measured at the approved measurement location using a sound level meter of BS EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 standard (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using a 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). The sound level meter shall be calibrated in accordance with the procedure set out in Note 1(b).
- (b) The entire sensitivity of the acoustical and electrical systems which make up the sound level meter shall be checked during a compliance measurement survey which shall be accomplished by applying an acoustic calibrator conforming to BS EN 60942 (or the equivalent UK adopted standard in force at the time of the measurements) to the microphone to check the sensitivity of the sound level meter system before and after the period of measurements and at intermediate intervals on not less than 7 days. The difference in the noted sensitivities of the measurement system shall be recorded and the difference shall not exceed 1 dB during the compliance measurement survey period. The performance of the sound level meter shall have been verified to ensure it is operating in accordance with BS EN 60651/BS EN 60804 Type 1, or BS EN 61672-1 Class 1 standard (or the equivalent UK adopted standard in force at the time of the measurements) within the preceding 24 months prior to any periods during which data is obtained. The performance of the acoustic calibrator used to check the sensitivity of the acoustical and electrical systems which make up the sound level meter shall have been verified to ensure it is operating in accordance with BS EN 60942 (or the equivalent UK adopted standard in force at the time of the measurements) within the preceding 12 months prior to any periods during which data is obtained. Verification of the sound level meter and the acoustic calibrator shall be undertaken by a calibration laboratory which is accredited by the United Kingdom Accreditation Service to undertake such testing to ensure the verification results are traceable to national standards for sound in air defined by the National Physical Laboratory.
- (c) The microphone shall be ½" in diameter and shall be mounted at 1.2 - 1.5 metres above ground level, fitted with a two layer windshield or suitable equivalent system. The two layer windshield or suitable equivalent system shall be approved in writing by the local planning authority prior to the commencement of measurements. The microphone shall be fitted with the approved windshield and shall be placed outside the complainant's dwelling and be not more than 35 metres from it. The microphone shall be placed at least 3.5 metres away from the building facade or any reflecting surface except the ground. In the event that the consent of the complainant for access to his or her property to undertake compliance measurements is withheld, the wind farm operator shall submit for the written approval of the local planning authority details of the proposed alternative representative measurement location prior to the commencement of measurements. The measurements shall be undertaken at the approved alternative representative measurement location.

- (d) The $L_{A90,10min}$ measurements shall be synchronised with measurements of the 10-minute wind speed, wind direction, rainfall and power generation data from the turbine control systems of the wind farm.
- (e) To enable compliance with the noise condition to be evaluated, the wind farm operator shall continuously log the arithmetic mean nacelle orientation, arithmetic mean wind direction as measured at the nacelle and arithmetic mean wind speed, measured simultaneously at the nacelle and at 10m height, together with the arithmetic mean power generated during each successive 10-minutes period for each wind turbine on the wind farm. All 10-minute periods shall commence on the hour and in 10 minute increments thereafter synchronised with Greenwich Mean Time but corrected to reflect British Summer Time as necessary.
- (f) Data provided to the local planning authority in accordance with paragraph E, F and G of the noise condition shall be provided in comma separated values in electronic format.

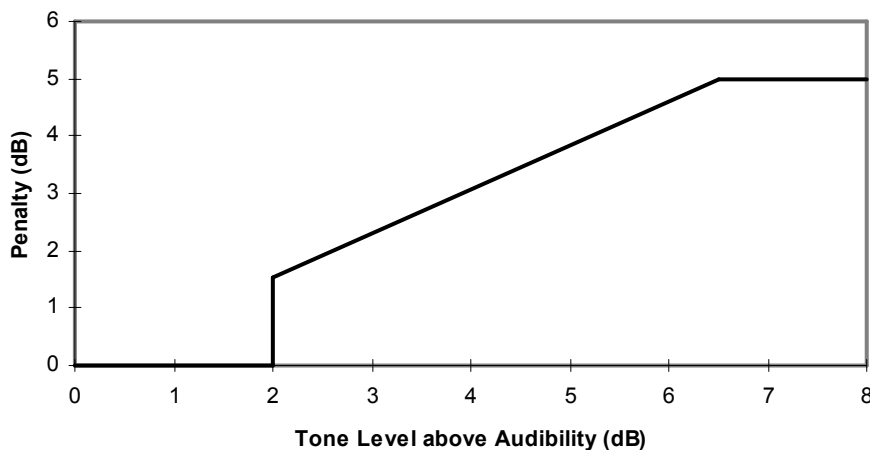
Note 2

- (a) The noise measurements shall be made so as to provide not less than 20 valid data points as defined in Note 2 paragraph (b).
- (b) Valid data points are those measured during the conditions specified by the local planning authority in its written request but excluding any periods of rainfall measured on the wind farm site. These specified conditions shall include the range of wind speeds, wind directions, times of day and meteorological conditions. In specifying such conditions the local planning authority shall have regard to those conditions which prevailed during times when the complainant alleges there was disturbance due to noise or which are considered likely to result in a breach of the limits.
- (c) A least squares “best fit” polynomial curve of an order deemed appropriate by the independent consultant shall be fitted to the data points and used to define the wind farm noise level at each integer wind speed.

Note 3

- (a) Where, in the opinion of the Local Planning Authority as advised to the wind farm operator in its written request under paragraph B of the noise condition, wind farm noise immissions at the location or locations where compliance measurements are being undertaken contain or are likely to contain a tonal component a tonal penalty shall be calculated and applied using the following rating procedure.
- (b) For each 10-minute interval for which $L_{A90,10min}$ data have been determined to be valid in accordance with Note 2 a tonal assessment shall be performed on noise immissions during 2-minutes of each 10-minute period. The 2-minute periods shall be regularly spaced at 10-minute intervals provided that uninterrupted uncorrupted data are available (‘the standard procedure’). Where uncorrupted data are not available, the first available uninterrupted clean 2-minute period out of the affected overall 10-minute period shall be selected. Any such deviations from the standard procedure shall be reported.
- (c) For each of the 2-minute samples the tone level above audibility (L_{uta}) shall be calculated in accordance with the audibility criterion given in Section 2.1 on pages 104-109 of ETSU-R-1997.

- (d) The tone level above audibility (L_{ta}) shall be plotted against 10 metre height wind speed for each of the 2-minute samples. For samples for which the tone level was below the audibility criterion or no tone was identified, a value of zero audibility shall be substituted.
- (e) A least squares “best fit” linear regression shall then be performed to establish the average tone level above audibility for each integer wind speed derived from the value of the “best fit” line. If there is no apparent trend with wind speed then a simple arithmetic mean shall be used.
- (f) The tonal penalty shall be derived from the average tone level above audibility of the tone according to the figure below.



Note 4

- (a) If a tonal penalty is to be applied in accordance with Note 3 the rating level of the turbine noise at each wind speed is the arithmetic sum of the measured noise level as determined from the best fit curve described in Note 2 and the penalty for tonal noise as derived in accordance with Note 3 above.
- (b) If no tonal penalty is to be applied then the rating level of the turbine noise at each wind speed is equal to the measured noise level as determined from the best fit curve described in Note 2.
- (c) In the event that the rating level of noise at the dwelling to which a complaint relates is higher at any wind speed than the limit(s) set out in the Tables attached to the conditions or the noise limits for a complainant’s dwelling approved in accordance with paragraph C of the noise condition, the independent consultant shall undertake a further assessment of the rating level to correct for background noise so that the rated level relates to wind turbine noise immission only.
- (d) The wind farm operator shall ensure that all the wind turbines in the development are turned off for such period as the independent consultant requires to undertake the further assessment. The further assessment shall be undertaken in accordance with the following steps:
 - (i) Repeating the steps in Note 2, with the wind farm switched off, and determining the background noise (L_3) at the assessed wind speed.

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

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

- (iii) The rating level shall be re-calculated by adding the tonal penalty (if any is applied in accordance with Note 3) to the derived wind farm noise L_1 at that wind speed.
- (iv) If the rating level after adjustment for background noise contribution at any integer wind speed lies at or below the values set out in the Tables attached to the conditions or at or below the noise limits approved by the local planning authority for a complainant's dwelling in accordance with paragraph C of the noise condition then no further action is necessary. If the rating level at any integer wind speed exceeds the values set out in the Tables attached to the conditions or the noise limits approved by the local planning authority for a complainant's dwelling in accordance with paragraph C of the noise condition then the development fails to comply with the condition.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Jack Smyth of Counsel	Instructed by the Head of Legal Services HBC
Adrian Eastwood MRTPI	Took part in discussion of conditions
Mike Stigwood	Took part in discussion of conditions

FOR THE APPELLANT:

David Hardy	Partner, Cobbetts LLP
LL.B(Hons) B.C.L.(Hons)(Oxon)	
He called	
Stephen Arnott	Principal Associate Consultant, TNEI Services Ltd
BSc(Hons) MIOA	
Dr Simon Colcutt	Managing Director, Oxford Archaeological
MA(Hons) DEA DPhil	Associates Ltd
FSA	
Ken Halliday	Director, Stephenson Halliday
BSc(Hons) MPhil MLI	
David Bell	National Director, Jones LaSalle
BSc(Hons) DipUD MRTPI	
MIHT	

FOR AWFALS:

Geoffrey Sinclair gave evidence and called	Environment Information Services
Dr Chris Hanning	Local Resident
BSc MB BS MRCS LRCP	
FRCA MD	
Tony Leatham	Local Resident
Candy Smith	Local Resident
Elizabeth Sheppard	Local Resident
Sara Helmer	Local Resident
Rose Brokop	Local Resident
Mike Wheildon	Local Resident
Mike Green	Local Resident
Peter Ward	Local Resident
Arthur Kerney	Local Resident
Jenny Sercombe	Local Resident
LLB(Hons)	

INTERESTED PERSONS:

Vicky Allen	Chair, Leicestershire & Rutland Bridleways Assoc.
Rosemary Hames	Gilmorton Parish Council
Mary Hodgson	Local Resident
Michael Maddock MSc MIMechE	Local Resident
Councillor Peter Fuchs	Ward Member HDC
Philip Baildon	Clerk of Ashby Magna PC
Councillor Rosita Page	Local and County Councillor

DOCUMENTS

- 1 Council's Letters of Notification
- 2 Appeal Decision APP/M0933/A/09/2099304 (Sillfield)
- 3 Appeal Decision APP/X1545/A/06/2023805 (Hockley Farm)
- 4 Appeal Decision APP/Y1138/A/08/2084526 (Bickham Moor)
- 5 Appeal Decision APP/X1118/A/08/2083682 (Land at Paul's Moor)
- 6 Appeal Decision APP/G2815/A/06/2019989 (Ellands Farm)
- 7 Copy of E-Mail dated 18 01 10 from Jon Humble, English Heritage
- 8 Copy of Report to Planning Committee 8 September 2009,
Supplementary Information
- 9 Submission of Mary Hodgson
- 10 Submission of Michael Maddock
- 11 Submission of P Baildon, Clerk to Ashby Magna Parish Council
- 12 Extract from NHS Choices Website entitled Wind turbine sound
'needs research'
- 13 Extract from the website of the Society for Wind Vigilance
- 14 Copy of Siting and Designing windfarms in the landscape by
Scottish Natural Heritage
- 15 Agreed Statement on Operational and Consented Schemes
- 16 Additional Third Party Representations (Charles & Danielle Holton,
Michael Myatt and Steve & Julie Nelson)
- 17 Submission of Roger Helmer MEP
- 18 Additional Evidence from Mr Leatham on wind speeds
- 19 Rebuttal to Mr Leatham's additional evidence on wind speeds
- 20 Copy of 'Noise and Wind Turbine Proposals' by David Forsdick
- 21 Statement of Councillor Peter Fuchs
- 22 Draft Conditions Version 1 (agreed appellant/Council)
- 23 Additional Conditions suggested by Council
- 24 Draft Conditions Version 2 (agreed appellant/Council)
- 25 Written Submission from Caroline Pratt
- 26 Draft Conditions Final Version (agreed, with alternatives,
appellant/Council)
- 27 Site Visits Itineraries