



Department for  
Communities and  
Local Government

Jim Hartley  
1 Melmount Park  
Strabane  
County Tyrone  
BT82 9SU

Our Ref: APP/G0908/A/13/2191503  
Your ref: Lane Head Farm

16 April 2014

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, J P Watson BSc MICE FCIHT MCMI, who undertook a site visit on 10 September 2013 as part of his consideration of your client's appeal under Section 78 of the Town and Country Planning Act 1990 against the decision of Allerdale Borough Council ("the Council") to refuse planning permission for the erection of a single turbine 61 metres to blade tip and associated metering units, dated 22 June 2012, in accordance with application ref: 2/2012/0498.
2. The appeal was recovered for the Secretary of State's determination on 11 October 2013, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, following the Secretary of State's announcement on 10 October 2013 of his intention to consider for recovery appeals for renewable energy developments to enable him to consider the extent to which the new practice guidance (referred to in paragraph 7 below) is meeting the Government's intentions.

**Inspector's recommendation**

3. The Inspector recommended that the appeal be allowed and planning permission granted, subject to conditions. For the reasons given below, the Secretary of State disagrees with the Inspector's conclusions and recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

**Matters following receipt of the IR by the Secretary of State**

4. Following receipt of the IR, the Secretary of State wrote to the main parties on 5 March 2014 seeking their views on the implications, if any, of the judgment handed down by the Court of Appeal on 18 February 2014 in the case of *Barnwell Manor Wind Energy Limited v East Northamptonshire District Council, English Heritage, the National Trust and the Secretary of State for Communities and Local Government* ("the Barnwell Manor case") for his consideration of the impact of the

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appeal scheme on the Grade 1 listed Church of All Saints, Boltongate. He then wrote again to the parties on 17 March 2014 seeking views on the planning guidance published on 6 March 2014. On 25 March 2014, the Secretary of State circulated the responses to these two letters, inviting final comments. He has carefully considered all these representations in his determination of this appeal. They are listed at Annex A to this letter, and copies may be obtained on written request to the address at the foot of the first page of this letter.

### **Policy Considerations**

5. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan currently consists of the saved policies of the Allerdale Local Plan (LP), adopted in 1999; and the Secretary of State agrees with the Inspector (IR5) that the most relevant policy is LP Policy CO18.
6. In accordance with section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("section 66 of the LBA"), the Secretary of State has paid special regard to the desirability of preserving listed structures or their settings or any features of special architectural or historic interest which they may possess.
7. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ("the Framework" – March 2012) and the associated planning guidance (March 2014); the National Policy Statement (NPS) for Renewable Energy Infrastructure (EN-3); the Overarching NPS for Energy (EN-1); and the Written Ministerial Statements on 'Local Planning and onshore wind' (DCLG) and 'Onshore wind' (DECC).
8. In December 2013, Renewable UK published new research and a proposed planning condition covering the regulation of Other Amplitude Modulation, with accompanying guidance notes. However, this has not yet been reflected in an update to the current good practice guidance that accompanies ETSU-R-97 and, as it has not been endorsed by Government, the Secretary of State gives it very little weight and has not considered it necessary to seek the views of parties on it.

### **Main issues**

9. The Secretary of State agrees with the Inspector that the main considerations are those set out at IR8.

### **The setting of the Church of All Saints, Boltongate**

10. The Secretary of State has carefully considered the Inspector's assessment of the potential impact of the appeal scheme on the setting of the Church of All Saints, Boltongate (IR9-22) in the context of the terms of section 66 of the LBA and the Barnwell Manor case, and having regard to the comments received from parties in response to his letter of 5 March (see paragraph 4 above). He has had particular regard to the Inspector's appraisal of the extent to which the appeal proposal would alter the setting of the church (IR19) and acknowledges that the Inspector concludes that such change would be no more than modest (IR20). However, he also notes the Inspector's conclusion that LP policy CO18(ii) would not be engaged

because the appeal development would not be sympathetic to the church in scale, character, materials or detailing, and has gone on to consider his own statutory duty in respect of section 66 of the LBA.

11. Having regard to the judgment in the Barnwell Manor case, the Secretary of State takes the view that it does not follow that if the harm to heritage assets is found to be less than substantial, then the subsequent balancing exercise undertaken by the decision taker should ignore the overarching statutory duty imposed by section 66(1). He therefore sees a need to give considerable weight to the desirability of preserving the setting of all listed buildings. Accordingly, and also taking account of the fact that English Heritage maintain their objection to the appeal proposal on grounds of its adverse impact on the setting of the church, the Secretary of State gives substantial weight to his statutory duty to protect the setting of the Grade 1 listed building in the overall planning balance.

### **The effect on the character and appearance of the landscape**

12. For the reasons given at IR23-35, the Secretary of State agrees with the Inspector at IR36(a) that the appeal turbine would be significantly harmful to the landscape at most locations within 2km, and that this would be contrary to LP Policy EN19 and to paragraph 17 of the Framework; and he gives significant weight to that. He also agrees with the Inspector (IR36(c) & (d)), that the harm to the landscape at distances greater than 2km would not be significant and that the scheme would have no significant effect on the landscape of the National Park. Like the Inspector, he attributes limited weight to the additional harm which would be caused to the character and appearance of the locally listed parkland at Quarry Hill (IR33, IR34 and IR36(b)); and he also agrees with the Inspector (IR36(e)) that no evidence of harmful cumulative visual effect has been cited to which weight ought to be given.

### **The effect on visual amenity at residential properties in the area**

13. The Secretary of State has also carefully considered the effect of the appeal proposal on visual amenity as set out by the Inspector at IR37-48. He agrees with the Inspector (IR39) that it is not a function of the planning system to protect the view from an individual property for its own sake, but to avoid serious harm to living conditions which might otherwise lead to refusal of planning permission in the public interest. Consequently, he also agrees with the Inspector's conclusion at IR48 that there would be no property at which the appeal turbine would prevent the achievement of a good standard of residential amenity as required by paragraph 17 of the Framework.

### **Tourism**

14. The Secretary of State agrees with the Inspector (IR52) that little weight should be attributed to the appeal scheme's potential effect on tourism.

### **Planning balance**

15. The Secretary of State gives substantial weight to the generating capacity of the proposed turbine and the environmental benefits thereby offered as a contribution to the Government's priority for the need to support the delivery of renewable and low carbon energy (IR53 and IR55-58). However, against that, the Secretary of State also gives substantial weight to his statutory duty under section 66 of the

LBA with regard to preserving the setting of the Grade 1 listed Church of All Saints, Boltongate, as well as significant weight to the harm which the appeal proposal would cause to the landscape at most locations within 2km and limited weight to the harm caused to the character and appearance of the locally listed parkland at Quarry Hill. Taken together, he considers that these harms, which are also contrary to the provisions of the development plan, outweigh the acknowledged environmental benefits which the appeal scheme would provide.

### **Conditions (including those relating to the regulation of noise)**

16. The Secretary of State has considered the Inspector's reasoning and conclusions on the need for a noise condition (IR49-51& IR59), as well as his recommended conditions as set out in the Annexe to his report (pages 13-22). The Secretary of State is satisfied that the proposed conditions are reasonable and necessary and would meet the tests of paragraph 206 of the Framework. However, he does not consider that they overcome his reasons for dismissing the appeal.

### **Overall conclusions**

17. Having given careful consideration to the Inspector's advice and the comments received in response to his letters of 5 and 17 March, the Secretary of State concludes that factors weighing against the appeal proposal outweigh those in its favour so that there are insufficient material considerations to justify going against the development plan provisions relevant to this scheme.

### **Formal Decision**

18. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the erection of a single turbine 61 metres to blade tip and associated metering units, dated 22 June 2012, in accordance with application ref: 2/2012/0498.

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

19. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

20. A copy of this letter has been sent to Allerdale Council and to those who responded to the Secretary of State's letters of 5 and 17 March 2014. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

**Jean Nowak**

Authorised by the Secretary of State to sign in that behalf

## ANNEX A

### Correspondence received following the Secretary of State's letters of 5, 17 and 25 March 2014 (paragraph 4 above refers)

<b>Name / Organisation</b>	<b>Date</b>
Allerdale Borough Council	19 March 2014
	31 March 2014
J Harley (agent for appellant)	10 March 2014
	18 March 2014
	26 March 2014
David Colborn (Friends of Cumbria's Environment)	18 March 2014
	31 March 2014
Cllr John Havelock (Boltons Parish Council)	25 March 2014
	28 March 2014
Charles Woodhouse	18 March 2014
	28 March 2014
Susan Ross	30 March 2014



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

by **J.P. Watson BSc MICE FCIHT MCMI**

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

Date: **27 January 2014**

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Town and Country Planning Act 1990

Allerdale Borough Council

Appeal by Ms Mary Ruth Harker

Site visit made on 10 September 2013

Lane Head Farm, Boltongate, Wigton CA7 1DH

File Ref(s): APP/G0908/A/13/2191503

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**File Ref: APP/G0908/A/13/2191503**

**Lane Head Farm, Boltongate, Wigton CA7 1DH**

- 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 Ms Mary Ruth Harker against the decision of Allerdale Borough Council.
- The application Ref 2/2012/0498, dated 22 June 2012, was refused by notice dated 15 November 2012.
- The development proposed is erection of a single wind turbine 61 metres to blade tip and associated metering units.

**Summary of Recommendation:** That the appeal be allowed and planning permission granted, subject to conditions.

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**The Site and Surroundings**

1. This is a rural area. The appeal site is in a pastoral field at Lane Head Farm, 0.5km north of the village of Boltongate.<sup>1</sup> The field is at the top of a ridge and the appeal site is a little way to the north of the ridge with an extensive view to the west and to the north, across the Solway Firth and into Scotland. The countryside at the site is gently hilly; to the north lies the coastal plain and to the south is the Lake District. Boltongate is lower than the site and the land continues to fall through the village to a watercourse, Gill Beck. The ground cover is largely grassland punctuated by mature hedges with trees and with stands of trees here and there.
2. There are tall artificial features in the landscape: a television mast east of Sandale (the mast is some 3 or 4km to the east of Boltongate); another television mast near Brocklebank (somewhat further from Boltongate, and to the north-east of the Sandale mast) and three wind turbines (95 metres to the blade tip) at High Pow, about 2 km north-east of the appeal site.
3. Application drawing no. T7-PLAN-LOC-2 illustrates some of the surroundings of the area. The northern edge of Boltongate village can be seen on the southern edge of the drawing, and the text "Quarry Hill House" can be discerned at the drawing's western edge.

**Planning Policy**

4. The development plan consists of saved policies of the Allerdale Local Plan, adopted 1999 ("the LP").
5. Attention is drawn to LP Policy CO18, which says that:

*Development proposals which affect the setting of a Listed Building will only be permitted where:-*

- (i) *it does not have a seriously adverse effect on the character of the setting of the Listed Building; and*
- (ii) *the development is sympathetic in scale, character, materials and detailing.*

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<sup>1</sup> GoA page 1

*Subject to other policies of this Local Plan.*

6. The Council's decision notice relies on three formerly saved policies of the former Cumbria and Lake District Joint Structure Plan 2001-2016, and on LP Policy CO18. An Order to revoke the North West Regional Strategy came into force on 20 May 2013, and all Directions preserving policies in structure plans in that area have also been revoked.
7. The Council and the Appellant refer to the Cumbria Wind Energy Supplementary Planning Document ("the SPD"). With the revocation of the saved policies of the Cumbria Joint Structure Plan 2005-2016, the SPD's connection to the development plan was severed. Nevertheless, I attribute weight to technical guidance, specific to the area, that is taken from the SPD.

## **Appraisal**

### **Main Issues**

8. It seems to me that the main issues in this case are:
  - a) The effect the appeal scheme would have on the setting of the Church of All Saints, Boltongate;
  - b) The effect the appeal scheme would have on the character and appearance of the landscape;
  - c) The effect the appeal scheme would have on visual amenity at residential properties in the area;
  - d) Whether any other consideration is such as to outweigh harm associated with the appeal scheme so as to make its impacts acceptable.

### **The Setting of the Church of All Saints, Boltongate**

9. The church is a Grade I listed building. It is a listed building by virtue of its characteristics identified in the Listing Description. It stands in a churchyard in the village and there are buildings and vegetation between the church and the northern fringe of the village. There are two Grade II listed buildings in the village but there was no contention that the setting of either would be harmed, and it seems to me that they would not.
10. The Listing Description is on the case file. It describes the interior and exterior built form of the church but makes no reference to the setting of the building. The evidence of English Heritage in respect of the appeal scheme (given by letter dated 12 September 2012) is that "it is clear that the turbine has (sic) an adverse impact on the setting of the Grade I listed church. We therefore advise refusal of the application." English Heritage's representation does not describe how the appeal proposal would harm the setting of the church. The Council relies on English Heritage in this matter. There is no statement from any party regarding the significance or extent of the setting of the church, or of the harm that some contend would be caused.
11. The National Planning Policy Framework defines the setting of a heritage asset as the surroundings in which a heritage asset is experienced; and explains that elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or



may be neutral. It seems to me that the setting of the church has a number of elements relevant to this appeal, and that different elements of the setting make different contributions to its significance as a heritage asset. The elements of the setting to which attention is drawn in this appeal are the church's immediate context in the churchyard and village, the landscape in which the church is set when viewed from the north (near the appeal site), the landscape in which the church is set when viewed from the south (on the opposite side of the valley), and the area of countryside that can be seen from the church. There was no contention that any other part of the setting of the church would be affected by the appeal scheme, and it seems to me that the list is exhaustive in that respect.

12. I consider first the immediate setting of the church in the churchyard and village. Photomontages A to F look toward the appeal turbine from various locations in the churchyard. Photomontages A to D look away from the church and show various views from the path between the church door and the gate near the north-eastern corner of the churchyard. They show, in this series of views, that the turbine rotor would be concealed from view from those locations by buildings and vegetation. Photomontage E looks away from the church, north from the churchyard, through a gap between village buildings and shows the rotor to be screened by vegetation so that only a filtered view of the passing tips of the turning rotor would be visible. There would be harm in that insofar as the glimpsed rotor tips would, when experienced in the context of the medieval church and the other buildings of the village (which are more recent but traditional forms), be of a very different built form; but the harm would be very limited by virtue of the size and distance of the rotor tips, and the partial screening.
13. Photomontage F was taken from a point to the southwest of the church and is the only view that includes the listed building. From this viewpoint, the turbine would be concealed by a building and by vegetation. In the appellant's cultural heritage assessment further photomontages are presented in figures 14 and 16; they too show that views from the churchyard toward the turbine would be blocked by buildings. And as I walked around the village I found no part of the setting of the church within which the appeal turbine would be apparent.
14. It is clear to me that those parts of the setting of the church from which the significant features of the building (as identified in the Listing Description) are experienced and can be appreciated would not be affected by the appeal scheme, save as I have described. The parts of the setting to which I refer here are the churchyard and nearby public places in the village.
15. My attention was drawn to two viewpoints outside the village from which the church can be seen. The first was to the north, near the appeal site, on private land owned by the appellant between the appeal site and the church. Because of both the lack of public access and the impossibility of seeing the church from this viewpoint in the direct context of the appeal turbine I do not consider the setting of the church as experienced at the first viewpoint as likely to be changed by the appeal scheme in a way that would be perceptible to the public. The second viewpoint was from the lane to Prior Hall, south of the village and on the opposite side of the valley. The turbine would be visible from here, projecting above the ridge, as would the village buildings clustered around the church on the hillside below. The visual effect would be comparable to that shown in photomontage 4. The immediate setting of the church would be unaffected because the village and

the village's immediate environs would not change, but there would be a slight change in the character of the wider countryside in which the village is set.

16. My attention was also drawn to the church's parapet walk, to which the Listing Description refers. And the Council officer report draws attention to Pevsner's "The Buildings of England: Cumberland and Westmoreland (1967)" (the relevance of which has not been disputed) which goes beyond the National Heritage List in that he refers to "the suggestion of a pele tower in the treatment of the embattled parapet, within which much of the church sits, is characteristic of the fortified churches of the Border, such as are found at Newton Arlosh, and are a significant feature of ecclesiastical architecture of Cumbria and for an important part of its local distinctiveness". The parapet walkway is a popular viewing area with visitors.<sup>2</sup> It seems to me that views out from the parapet walk could be held to be views of part of the setting of the church.
17. By virtue of the elevated viewpoint and the rising land to the north of the village, there is visibility from the parapet walk over the village roofs and trees and up towards the turbine site. The parapet walk is a defensive part of the building, designed as a platform from which one may look out into the surrounding country. The country that is visible from the parapet walk is therefore part of the setting of the church.
18. I saw that the view north from the parapet walk toward the appeal site currently reaches to a group of trees on the skyline. From consideration of the site location plan (drawing T7-PLAN-LOC-2) and the longitudinal section submitted by an interested party (which is based on Ordnance Survey mapping and so has a degree of reliability) it is apparent that part of the turbine rotor and its hub would be visible in the distance from the church parapet walkway (the Council's officer report gives the distance from the turbine site to the church as 678 metres). It would form part of the setting of the church. Because of the panoramic nature of the view in question, the fact that there is no evidence that this is a designed view, the size of the appeal turbine rotor, its distance from the church and the proposed finite life of the appeal turbine, the harm to the setting of the church that would be associated with the changed outlook from the parapet walkway would be no more than localised and modest.
19. Where development would affect the setting of a listed building, special regard should be had to the desirability of preserving the setting of the listed building. I therefore summarise the extent to which the appeal proposal would alter the setting of the church:
  - i) Those parts of the setting of the church from which the significant features of the building (as identified in the Listing Description) are experienced and can be appreciated would not be affected by the appeal scheme; save that when looking away from the church from one of the several viewpoints in the churchyard, a filtered view of the passing tips of the turning rotor would be visible through intervening vegetation;
  - ii) There would be a slight change in the character of the wider countryside in which the village (including the church) is set; and,

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<sup>2</sup> Representation of Cllr Havelock, 25/9/13

- iii) There would be localised, modest harm associated with the changed outlook from the parapet walk.
20. I conclude that the change to the setting of the church would be no more than modest. There would not be a seriously adverse effect on the character of the setting of the listed building, and so LP Policy CO18(i) would not be engaged. Policy CO18(ii) would not be satisfied, because the appeal development would not be sympathetic to the church in scale, character, materials or detailing.
21. The National Planning Policy Framework (“the Framework”) considers at paragraphs 132 to 134 the circumstances in which development might be allowed even if it would harm the significance of a listed building:
- i) Significance can be harmed through development within its setting;
- ii) Consent should be refused where a proposed development would lead to substantial harm to or total loss of significance of a listed building (save in the circumstances identified in paragraph 133, which do not apply here);
- iii) Where a proposed development would cause less than substantial harm to the significance of a listed building, this harm should be weighed against the public benefits of the proposal.
22. It is therefore necessary to consider whether the appeal proposal should be regarded as likely to cause less than substantial harm to the significance of the listed building. It seems to me that, for harm to be substantial, the impact on significance would need to be so serious that very much, if not all, of the significance of the heritage asset would be drained away. That would not be the case here, since every characteristic of the listed building as identified by the Listing Description would remain unchanged. The harm to the significance of the listed building caused by the appeal proposal would therefore be less than substantial. The approach set out in Framework paragraph 134 should therefore be followed, and any other harm should be included in the balance.

### ***The Effect On The Character And Appearance Of The Landscape***

23. The Council’s second reason for refusal is:

“The proposal, by reason of its siting, design and elevated level, would constitute a prominent and incongruous feature within the landscape, and would cause unacceptable individual and cumulative harm to the landscape character and appearance of the locality. The proposal is therefore considered to be contrary to Policy R44 of the Cumbria and Lake District Joint Structure Plan 2001-2016 (Saved).”

24. My paragraph 6 has explained that the Structure Plan is now revoked. Framework paragraph 17 requires that planning should recognise the intrinsic character and beauty of the countryside. The Friends of the Lake District draw attention<sup>3</sup> to saved LP Policy EN19, which seeks to conserve and enhance the landscape.

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<sup>3</sup> Letter, 22/12/11

25. The site is in an area whose landscape character type is described as “Lowland Settled Plains”
26. The site is located in Landscape Character Type 12b “Rolling Fringe” as identified in the Cumbria Landscape Character Guidance and Toolkit. Such landscape was identified in the Cumbria Wind Energy SPD as having a low/moderate capacity to accommodate up to a small group of turbines (3 to 5 turbines, at least 95m high to the tip) and in exceptional cases a larger group of turbines. This landscape character type reflects a moderate/high sensitivity overall and moderate/high value as a largely undesignated landscape.<sup>4</sup>
27. The Council officers’ report contends, among other things, that:
- a) The design of the appeal turbine with its hub height of 35m and rotor diameter of 52m would give the turbine a squat appearance;
  - b) The three existing turbines at High Pow are at a level of approximately 155m AOD whereas the appeal turbine would be at 185m AOD, 2km away from the High Pow group and of different proportions; the High Pow turbines would therefore be visually disconnected from the appeal turbine. The proportions of the appeal turbine would add to the disjointed nature of its visual relationship with the High Pow turbines;
  - c) The appeal development would detract from the Rolling Fringe landscape and that of the Lake District fells to the south of the site, and when viewed from within the Lake District fells themselves;
  - d) The appeal scheme has potential to add to the effects of turbine groups at High Pow and Wharrels Hill, (but no such cumulative effect is identified by the Council).
28. The Council’s appeal statement contends that:
- a) Although the appeal scheme would be perceived as a stand-alone turbine, that would not mean that there would be no cumulative impacts with High Pow or Wharrels Hill;
  - b) Although the National Park Authority have not commented on the planning application, there could still be harm to the setting of the National Park;
  - c) There might be combined or sequential views of the appeal turbine from the A595 road, or from the A596 road which is 5.5km to the north.
29. The appellant’s landscape and visual impact assessment (“the LVIA”) contends, among other things, that:
- a) There would be no loss of key landscape features or elements. The landscape would be altered to a degree by the installation of the turbine but the landscape’s characteristics would not be significantly altered<sup>5</sup>;

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<sup>4</sup> LVIA, page 13

<sup>5</sup> LVIA page 20

- b) Appendix 4 (of the LVIA), a map of the zone of visual influence of the turbine, shows that the turbine would be widely visible to the north and west across Lowland landscape character areas 5a and 5b, and more limited visibility to the south. Visibility to the east is restricted by the rising land form. The turbine would be clearly visible from many viewpoints, particularly from receptors on higher ground.
  - c) The landscape magnitude of change will be moderate/high for some viewpoints within 1km, and there would be lesser changes further away. Potential significant visual effects would be within approximately 2km of the proposed turbine and most likely within 1km.
  - d) The ZVI map shows the zone of visual influence of the turbine to extend into the National Park, the northern boundary of which is some 3km south of the appeal site.
30. The ZVI map was generated using a "bare earth" representation of land form and therefore does not account for the effects of screening and filtering of views as a result of intervening features such as buildings, trees and hedgerows.<sup>6</sup> And it is clear from comparison of the ZVI map with my observations that the ZVI map records locations from which all or part of the appeal turbine would be visible.
31. I am not persuaded that the mere sight of the turbine or a small part of it, glimpsed at a distance, would give rise to significantly harmful visual effects or to harm to the landscape. Rather, for such harm to occur it is necessary for the turbine to occupy a large enough part of the view. That will depend on the proximity of the turbine to the landscape element in question, and the proportion of the whole turbine that is in view.
32. My observations in the field and the evidence of the photomontages together satisfy me that the LVIA's finding, that potential significant visual effects would occur only within approximately 2km of the proposed turbine, could reasonably form the basis of an assessment of the change to the landscape that the turbine would cause. Within that distance, the potential for significant changes to the landscape would be realised only where enough of the turbine to have such an effect would be in view. For example, I have identified in my paragraph 12 that the turbine would not be visible at all to an observer in the churchyard at Boltongate, which is within less than 1km of the appeal site; hence, that part of the landscape would not be affected by the turbine. It may be that there are other places within 2km of the site from which the turbine would not be visible, or would be visible to such a limited extent that there would be no significant harm to the landscape; but the evidence before me does not identify such places and so there is no rational basis from which I can conclude other than that they do not exist.
33. Attention is drawn to the historic parkland at Quarry Hill (see also my paragraph 44). Although not Registered, this site was identified in the text of the Allerdale Local Plan as being of local importance. Saved LP policy EN24 is intended to protect such landscapes, "particularly ... those included in the National Register of Parks and Gardens". Policy EN24 forbids development which would detract from the setting of such sites, and development which would adversely affect

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<sup>6</sup> LVIA para 1.2.6

their special character and appearance. The owner of Quarry Hill House reports the appeal site to be included in this local designation<sup>7</sup>, and the point is neither accepted nor disputed<sup>8</sup>. A public road crosses the designated parkland between the appeal site (to the east) and Quarry Hill (to the west); the designated parkland to the east has the character of farmland, whereas that to the west of the road is contiguous with the extensive gardens at Quarry Hill and seemed to me to be more carefully "landscaped" than that to the east. Here I consider the extra weight to be attributed to visual harm to the parkland by virtue of its designation and policy EN24.

34. During my visit I was able to view the parkland from a small mound in the garden, between the House and the turbine site, which acts as a viewpoint. The appeal turbine would stand on rising ground to the east of the viewpoint. Two TV masts can be seen to the east of the park in the same view, taller than the turbine would be but much further from the viewpoint so that their visual effect when viewed from there would approach that of the turbine. Nevertheless there would be harm to the character and appearance of the park by virtue of the incongruous form of the turbine and its motion of the turbine. Because the park is not on the National Register, and because of the presence of the TV masts, I attribute only limited weight to the effect the turbine would have on the park, in addition to that which I have identified in my paragraph 32.
35. The Council considers that wind turbine development in parts of the Borough has "reached a saturation point to the detriment of the visual amenity of the surrounding landscape and local communities", and draws attention to recent appeals at Great Orton (APP/G0908/A/12/2187146) and Flimby (APP/G0908/A/12/2187146), both of which it reports to have been dismissed on cumulative grounds. No evidence is brought to support the view that such a limit has been reached in the vicinity of the appeal site.
36. In respect of the appeal turbine's effect on the landscape I therefore find as follows:
  - a) By virtue of its form and incongruity in the landscape, the appeal turbine would be significantly harmful to the landscape at most locations within 2km of the appeal turbine. This would be contrary to LP Policy EN19 and to paragraph 17 of the Framework.
  - b) The character and appearance of the locally listed parkland at Quarry Hill would be harmed, contrary to LP Policy EN24. For the reasons given I attribute limited weight to that additional harm.
  - c) Such harm to the landscape as would accrue at distances greater than 2km would not be significant.
  - d) By virtue of item b) above, and the distance to the National Park boundary, the appeal scheme would have no significant effect on the landscape of the National Park.

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<sup>7</sup> Mr Woodhouse's letter, 14/9/12

<sup>8</sup> Grounds of Appeal, 3.12

- e) No specific instance has been cited of a harmful cumulative visual effect that would arise from the juxtaposition of the appeal turbine and other existing or consented development.

***The Effect On Visual Amenity At Residential Properties In The Area***

37. The decision notice draws attention to visual amenity at the following residential properties:

Well Head, Mealsgate;

The Close, Mealsgate;

Properties at Quarry Hill, Mealsgate; and

Properties in Boltongate.

38. The Council's representations, and the officer report, explain that in the Council's view insufficient information was provided with the planning application to allow proper evaluation of the proposal's effects on visual amenity at those properties. The Council does not say which effects relating to visual amenity at those properties it considers might be unsatisfactory, nor does it describe standards of visual amenity that it considers would distinguish acceptable from unacceptable conditions. The appellant provides a Landscape and Visual Impact Assessment, indicates (in the Grounds of Appeal) that the visual amenity at a dwelling is related to the magnitude of visual change there and contends (in the Planning Statement) that there would be no overbearing effects on residential amenity.
39. Framework paragraph 17 establishes the core planning principle that planning should seek to secure a good standard of amenity for all existing occupants of land and buildings. But it is not a function of the planning system to protect the view from an individual property for its own sake. With regard to residential amenity, the purpose is to avoid serious harm to living conditions which might otherwise lead to refusal of planning permission in the public interest. This is a more stringent test than simply measuring the visual change and can be expressed through such a question as "Would the proposal affect the outlook of these residents so as to become so unpleasant, overwhelming and oppressive that this would become an unattractive place to live?"
40. My accompanied site visit included residential properties at Well Head, The Close, the grounds of properties at Quarry Hill, Pattenfoot Cottage (some 1.8km north of the appeal site, and visited at the requested of an interested party), The Brooms and Avalon (properties on the north side of Boltongate) and the Old Rectory (a guest house toward the southern end of the village). On the basis of observations made and representations received my assessments of the effects the appeal scheme would have on visual amenity are as follows.
41. Well Head is a former farm house agreed to be 446 metres from the turbine site and to its north and east. There would be a direct view of the turbine, which would stand on land higher than that at the house. No photomontage was provided by the appellant, but the resident of Well Head provided photographs of the outlook from her home toward the appeal site<sup>9</sup> from windows serving rooms

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<sup>9</sup> Ms Lockett's e-mail 20/9/12

described at the site visit as a kitchen, a bedroom, a dining room and a study. In response the appellant points out that, in the opposite direction, Well Head looks directly at the High Pow wind turbines to the northeast<sup>10</sup>. There would clearly be a marked change in the outlook here but I am not satisfied that the turbine would be so overwhelming and oppressive as to change this to an unattractive place to live – even when the presence of the three turbines at High Pow is taken into account.

42. The Close is a working farm. Its house is reportedly 549 metres from the turbine and on lower ground. Habitable rooms in the house face south and the line of sight to the turbine would be to the south west. The turbine would be visible above intervening trees. The view would change but living conditions here would be little changed; this would remain a pleasant place to live.
43. Pattenfoot Cottage stands by the A595 some 1.8 km from the site and faces east of south, toward it. I looked out from a first floor bedroom and from a ground floor living room. The turbine would be in plain sight from both, on a hill and framed by the windows. The view would change but living conditions here would be little changed; this would remain a pleasant place to live.
44. Quarry Hill has three domestic properties: Quarry Hill House, Quarry Hill Cottage and Quarry Hill Courtyard Flat, all almost due west of the turbine site and less elevated. The resident of the House provided a drawing showing the appeal turbine site to be 808 metres from the House, 739 metres from the Cottage and 740 metres from the Courtyard Flat. There are extensive gardens, parkland, and tree planting at Quarry Hill east of the House and Cottage (and an orchard to the north, off the line of sight to the turbine). These would filter the views of the turbine, particularly when in leaf. The turbine would otherwise be in plain sight from the House, the Flat and the Cottage, as it would be from the parkland and from a meadow to the east. The turbine would change the view but living conditions here would be little changed; this would remain a pleasant place to live.
45. The Brooms is a house on the northern edge of the village of Boltongate. It has habitable rooms that face north across a lane towards the site, which is several hundred metres away. Views toward the turbine would be filtered to an extent by intervening vegetation. The outlook would change but it would remain neither overwhelming nor oppressive. This would remain a pleasant place to live.
46. Avalon is a bungalow at the man entrance to the village from the west, some 600 metres from the turbine site. The outlook would change but it would remain neither overwhelming nor oppressive. This would remain a pleasant place to live.
47. The Old Rectory is a short distance due south of the church, lower down the hillside, screened from the turbine site by the church and intervening vegetation, and in my view unlikely to be affected by the appeal scheme.
48. In summary, having visited all locations to which my attention was drawn in this context, I found no property at which the appeal turbine would prevent the achieving of a good standard of residential amenity. Framework paragraph 17 would therefore be satisfied.

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<sup>10</sup> Grounds of appeal, page 11



### **Other Matters: Noise**

49. Although the Council is satisfied that noise associated with the appeal scheme could be controlled by a planning condition, some interested parties remain concerned.
50. Footnote 17 of the Framework draws attention to the National Policy Statement for Renewable Energy Infrastructure ("EN-3"), which recommends the use of ETSU-R-97 *The Assessment and Rating of Noise from Wind Farms* in cases such as this. The appellant has undertaken no field measurements of noise but provides (in Table 3 of the Planning Statement and Environmental Report, and its Appendix D) an assessment of the noise immissions that would be caused by the turbine at various noise sensitive receptors. Apart from at the appellant's house, the assessment shows that none of those receptors would experience immissions from the appeal turbine greater than 34 dB  $L_{A90,10min}$ . Well Head is modelled to experience that noise level, and Well Head is also modelled by the appellant to experience noise from the High Pow wind farm. Because Well Head is located between the appeal turbine site and High Pow and because of the effect of wind direction on noise propagation, the cumulative turbine noise level at Well Head would not exceed 35 dB  $L_{A90,10min}$ . A planning condition limiting noise from the appeal turbine to an  $L_{A90,10min}$  of 35dB(A) up to wind speeds of 10 metres per second at 10m height based on the simplified procedure can therefore reasonably be imposed and, as described on page 66 of ETSU-R-97, would offer sufficient necessary protection of daytime amenity. A comparable night-time limit of 43 dB  $L_{A90,10min}$  would offer sufficient necessary protection of night-time amenity. ETSU-R-97 further recommends that both day- and night-time lower fixed limits may be increased to 45 dB(A) for properties where the occupier has some financial involvement in the wind turbine, as is the case at Lane Head Farm.
51. I am therefore satisfied that noise associated with the development could adequately be regulated by condition. I propose a condition of the form set out in Annex B of the Institute of Acoustics' *Good Practice Guide to the Application of ETSU-R-97 for the Assessment and Rating of Wind Turbine Noise*.

### **Other Matters: Tourism**

52. Cumbria Tourism<sup>11</sup> says that the unspoilt landscape and unique cultural heritage underpin the area's attractiveness for visitors; that the expansion of tourism in Allerdale is an important part of the economic development plan for the area, and that development which potentially threatens the viability of existing and future potential tourism businesses is of great concern to Cumbria Tourism and the West Cumbria Tourism Initiative. No example is given of a business that would be threatened by the appeal turbine, and there is no evidence of direct or inverse correlation between wind turbines and tourism. I attribute little weight to the scheme's effect on tourism.

### **Other Matters: Renewable Energy**

53. Attention is drawn to the 500 kW generating capacity of the proposed turbine. Using Ofcom's medium sized house usage, and DEFRA's factor for the carbon dioxide creation per kilowatt-hour, the appellant estimates the annual reduction

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<sup>11</sup> Letter, 24/8/12

in carbon dioxide emissions associated with the scheme to be just under 800 tonnes. The power generated is estimated to be enough for 400 medium-sized houses.

***Whether Any Other Consideration Is Such As To Outweigh Harm Associated With The Appeal Scheme So As To Make Its Impacts Acceptable***

54. In this appeal, I have found that the proposal would not comply with those parts of the development plan set out in LP Policy CO18(ii) [my paragraph 20] and LP Policies EN19 and EN24 [my paragraph 35]. The development would cause slight and modest harm to the setting of the church, a Grade I listed building. It would be significantly harmful to the undesignated landscape at most locations within 2km of the appeal turbine, and there would be harm to the character and appearance of the locally listed parkland at Quarry Hill; to which additional harm I attribute limited additional weight.
55. That harm falls to be weighed against the priority which is placed by Government on the need to support the delivery of renewable and low carbon energy.
56. Paragraph 93 of the Framework says that planning plays a key role in helping shape places to secure radical reductions in greenhouse gas emissions, and in supporting the delivery of renewable energy. This is central to the economic, social and environmental dimensions of sustainable development. There is a presumption in favour of sustainable development set out in the Framework, although this would not apply where any adverse impacts of a development would outweigh the benefits.
57. The Framework's paragraph 98 points out that those who make development control decisions should not require applicants for energy development to demonstrate the overall need for renewable energy. They should recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions.
58. Having regard to the importance of providing renewable energy as a dimension of sustainable development, I find that significant weight must be attributed to the need for renewable and low carbon energy development. I consider that the harm the appeal turbine would cause is outweighed by its wider environmental benefits. The appeal should therefore be allowed and planning permission granted, subject to conditions.

**Conditions**

59. I have described the need for a noise condition. The Council has suggested further conditions, should permission be granted. The conditions that I recommend are set out in the annexe to this report.

**Recommendation**

60. That the appeal be allowed and planning permission granted, subject to conditions.

*J.P. Watson*

INSPECTOR

## Annexe: Conditions

Should the Secretary of State be minded to allow the appeal and grant planning permission, the following conditions are suggested:

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
  - T7-PLAN-LOC-1 : Site Location (1 of 2)
  - T7-PLAN-LOC-2 : Site Location (2 of 2)
  - T7-PLAN-LAY – Site Layout
  - T-SPEC-DETAIL1 – Switch room and HV metering unit detail
  - 1000913 – Proposed Turbine Details.Reason: to define the permission.
- 3) This permission shall remain valid for a period of 25 years from the date on which electricity from the development is first connected to the grid. That date shall be notified in writing to the local planning authority within seven days of the event. Within 12 months of the cessation of electricity generation at the site or the expiration of this permission, whichever is the sooner, all development shall be removed and the land restored in accordance with a scheme to be submitted to and approved in writing by the local planning authority prior to any development commencing.  
Reason: To ensure the satisfactory long-term restoration of the site and to secure the removal of redundant development from the countryside.
- 4) No development shall take place until a scheme for the reinstatement of temporary working areas on the site has been approved in writing by the local planning authority. Within 6 months of the date on which electricity from the development is first connected to the grid the temporary working areas on the site shall be reinstated in accordance with the approved scheme.  
Reason: To safeguard the appearance of the site in the open countryside.
- 5) Unless agreed in writing by the local planning authority, if the turbine ceases to be operational for a continuous period of 6 months the development hereby permitted shall, within a period of 3 months from the end of the 6-month period (or within such longer period as may be agreed in writing by the local planning authority), be removed in its entirety from the site and the site shall either be restored to its condition before the development took place, or otherwise in accordance with a scheme that shall previously have been submitted to and approved in writing by the local planning authority.  
Reason: To safeguard the appearance of the site and to secure the removal of redundant development from the countryside.

- 6) No development shall take place until a construction method statement (including details of all on-site construction works, post-construction reinstatement, drainage, mitigation, and other restoration, together with details of their timetabling) has been submitted to and approved in writing by the local planning authority. Development shall take place only in accordance with the approved construction method statement. The construction method statement shall include measures to secure:
- a) Formation of the construction compound and access tracks and any areas of hardstanding, earthworks and re-grading associated with the access tracks, storage and handling of topsoils and soils;
  - b) Cleaning of site entrances and the adjacent public highway and measures to prevent mud and debris from the site extending on to the public highway;
  - c) Temporary site illumination measures;
  - d) Disposal of surplus materials;
  - e) The sheeting of all trucks taking spoil to/from the site to prevent spillage or deposition of any materials on the highway;
  - f) Temporary and permanent parking areas for construction vehicles, maintenance vehicles, equipment and component storage associated with the development.

Reason: In the interests of visual amenity and road safety, and to prevent pollution of the environment.

- 7) No development shall take place until a written haul route plan and scheme for temporary works signage has been submitted to and approved in writing by the local planning authority. Vehicles travelling to or from the site while development is taking place shall do so only in accordance with the approved haul route plan. Approved signage shall be provided prior to works commencing on site and shall be retained until the construction phase of development has been completed.

Reason: In the interest of highway safety.

- 8) Construction of any permanent areas of hardstanding shall not commence until the colour finishes of the surface materials to be used have been submitted to and approved in writing by the local planning authority. Development shall take place only in accordance with the approved details.

Reason: To ensure that the development has a satisfactory appearance.

- 9) No development shall take place until details of the external finishes of the turbine, switch room and HV metering unit have been submitted to and approved in writing by the local planning authority. Development shall be carried out only in accordance with the approved details.

Reason: To ensure that the development has a satisfactory appearance.

- 10) No development shall take place until a written scheme has been submitted to and approved in writing by the local planning authority setting out a protocol and methodology for dealing with the assessment of shadow flicker in the event of any complaint. The protocol and methodology shall include remedial measures to be taken to alleviate any identified occurrence of

shadow flicker associated with the development. The turbine shall be operated in accordance with the agreed protocol and methodology.

Reason: To maintain residential amenity, with regard to shadow flicker.

- 11) No development shall take place until a written scheme has been submitted to and approved in writing by the local planning authority setting out a protocol and methodology for dealing with the assessment of electromagnetic interference in the event of any complaint. The protocol and methodology shall include remedial measures to be taken to alleviate any identified occurrence of electromagnetic interference associated with the development. The turbine shall be operated in accordance with the agreed protocol and methodology.

Reason: To maintain residential amenity, with regard to electromagnetic signals.

- 12) No development shall take place until a scheme for the replanting of any hedgerows or boundary planting removed for the proposed access during construction has been submitted to and approved in writing by the local planning authority. The scheme shall include provision for the replacement of diseased or dead hedgerow or boundary planting, and a programme. Development shall be carried out only in accordance with the approved details.

Reason: to safeguard and enhance the appearance and landscape of the site.

- 13) No development shall take place until a surface water management plan covering water treatment and the means of drainage from all hard surfaces and structures within the site (including access tracks, buildings, turbine base, assembly platform and crane platform) has been submitted to and approved in writing by the local planning authority. The details to be submitted shall indicate the means of protecting groundwater, including private water supplies, and diverting surface water runoff. Development shall be carried out in accordance with the approved details.

Reason: To protect the local water environment from pollution.

- 14) No development shall take place until a scheme of aviation obstruction lighting has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme.

Reason: In the interest of air safety.

- 15) 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 (to this condition), shall not exceed the values for the relevant integer wind speed set out in, or derived from, the tables attached to these conditions at any dwelling which is lawfully existing or has planning permission at the date of this permission and:

a) The wind farm operator shall continuously log power production, wind speed and wind direction, all in accordance with Guidance Note 1(d). These data shall be retained for a period of not less than 24 months. The wind

farm operator shall provide this information in the format set out in Guidance Note 1(e) to the Local Planning Authority on its request, within 14 days of receipt in writing of such a request.

b) No electricity shall be exported until the wind farm operator has submitted to the Local Planning Authority for written approval a list of proposed independent consultants who may undertake compliance measurements in accordance with this condition. Amendments to the list of approved consultants shall be made only with the prior written approval of the Local Planning Authority.

c) Within 21 days from receipt of a written request from the Local Planning Authority following a complaint to it from an occupant of a dwelling alleging noise disturbance at that dwelling, the wind farm operator shall, at its expense, employ a consultant approved by the Local Planning Authority to assess the level of noise 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 Local Planning Authority shall set out at least the date, time and location that the complaint relates to and any identified atmospheric conditions, including wind direction, and include a statement as to whether, in the opinion of the Local Planning Authority, the noise giving rise to the complaint contains or is likely to contain a tonal component.

d) The assessment of the rating level of noise immissions shall be undertaken in accordance with an assessment protocol that shall previously have been submitted to and approved in writing by the Local Planning Authority. The protocol shall include the proposed measurement location identified in accordance with the Guidance Notes where measurements for compliance checking purposes shall be undertaken, whether noise giving rise to the complaint contains or is likely to contain a tonal component, and also the range of meteorological and operational conditions (which shall include the range of wind speeds, wind 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 Local Planning Authority under paragraph (c), and such others as the independent consultant considers likely to result in a breach of the noise limits.

e) Where a dwelling to which a complaint is related is not listed in the tables attached to these conditions, the wind farm operator shall submit to the Local Planning Authority for written approval proposed noise limits selected from those listed in the Tables to be adopted at the complainant's dwelling for compliance checking purposes. The proposed noise limits are to be those limits selected from the Tables specified for a listed location which the independent consultant considers as being likely to experience the most similar background noise environment to that experienced at the complainant's dwelling. The rating level of noise 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.

f) The wind farm operator shall provide to the Local Planning Authority the independent consultant’s assessment of the rating level of noise immissions undertaken in accordance with the Guidance Notes within 2 months of the date of the written request of the Local Planning Authority for compliance measurements to be made under paragraph (c), unless the time limit is extended in writing by the Local Planning Authority. The assessment shall include all data collected for the purposes of undertaking the compliance measurements, such data to be provided in the format set out in Guidance Note 1(e) of the Guidance Notes. The instrumentation used to undertake the measurements shall be calibrated in accordance with Guidance Note 1(a) and certificates of calibration shall be submitted to the Local Planning Authority with the independent consultant’s assessment of the rating level of noise immissions.

g) Where a further assessment of the rating level of noise immissions from the wind farm is required pursuant to Guidance Note 4(c), the wind farm operator shall submit a copy of the further assessment within 21 days of submission of the independent consultant’s assessment pursuant to paragraph (d) above unless the time limit has been extended in writing by the Local Planning Authority.

Table 1 – Between 07:00 and 23:00 – Noise limits expressed in dB  $L_{A90,10 \text{ minute}}$  as a function of the standardised wind speed (m/s) at 10 metre height as determined within the site averaged over 10 minute periods.

Location	Standardised wind speed at 10 metre height (m/s) within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
Lane Head Farm	45	45	45	45	45	45	45	45	45	45		
Well Head	35	35	35	35	35	35	35	35	35	35		

Table 2 – Between 23:00 and 07:00 – Noise limits expressed in dB  $L_{A90,10 \text{ minute}}$  as a function of the standardised wind speed (m/s) at 10 metre height as determined within the site averaged over 10 minute periods.

Location	Standardised wind speed at 10 metre height (m/s) within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
Lane Head Farm	45	45	45	45	45	45	45	45	45	45		
Well Head	43	43	43	43	43	43	43	43	43	43		

Table 3: Coordinate locations of the properties listed in Tables 1 and 2.

Property	Easting	Northing
Lane Head Farm	322905	541674
Well Head	323463	541747

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.

#### Guidance Notes for Noise Conditions

These notes are to be read with and form part of the noise condition. They further explain the condition and specify the methods to be employed in the assessment of complaints about noise immissions from the wind 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" (1997) published by the Energy Technology Support Unit (ETSU) for the Department of Trade and Industry (DTI).

#### Guidance Note 1

(a) Values of the  $L_{A90,10 \text{ minute}}$  noise statistic should be measured at the complainant's property, using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This should be calibrated in accordance with the procedure specified in BS 4142: 1997 (or the equivalent UK adopted standard in force at the time of the measurements). Measurements shall be undertaken in such a manner to enable a tonal penalty to be applied in accordance with Guidance Note 3.

(b) The microphone should be mounted at 1.2 – 1.5 metres above ground level, fitted with a two-layer windshield or suitable equivalent approved in writing by the Local Planning Authority, and placed outside the complainant's dwelling. Measurements should be made in "free field" conditions. To achieve this, the microphone should be placed at least 3.5 metres away from the building facade or any reflecting surface except the ground at the approved measurement location. In the event that the consent of the complainant for access to his or her property to undertake compliance measurements is withheld, the wind farm operator shall submit for the written approval of the Local Planning Authority details of the proposed alternative representative measurement location prior to the commencement of measurements and the measurements shall be undertaken at the approved alternative representative measurement location.



(c) The  $L_{A90,10 \text{ minute}}$  measurements should be synchronised with measurements of the 10-minute arithmetic mean wind and operational data logged in accordance with Guidance Note 1(d), including the power generation data from the turbine control systems of the wind farm.

(d) To enable compliance with the conditions to be evaluated, the wind turbine operator shall continuously log arithmetic mean wind speed in metres per second and wind direction in degrees from north at hub height for the turbine and arithmetic mean power generated by the turbine, all in successive 10-minute periods. Unless an alternative procedure is previously agreed in writing with the Planning Authority, this hub height wind speed, averaged across all operating wind turbines, shall be used as the basis for the analysis. All 10 minute arithmetic average mean wind speed data measured at hub height 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, which is correlated with the noise measurements determined as valid in accordance with Guidance Note 2, such correlation to be undertaken in the manner described in Guidance Note 2. All 10-minute periods shall commence on the hour and in 10-minute increments thereafter.

(e) Data provided to the Local Planning Authority in accordance with the noise condition shall be provided in comma separated values in electronic format.

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

#### Guidance Note 2

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

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

(c) For those data points considered valid in accordance with Guidance Note 2(b), values of the  $L_{A90,10 \text{ minute}}$  noise measurements and corresponding values of the 10- minute wind speed, as derived from the standardised ten metre height wind speed averaged across all operating

wind turbines using the procedure specified in Guidance Note 1(d), shall be plotted on an XY chart with noise level on the Y-axis and the standardised mean wind speed on the X-axis. A least squares, "best fit" curve of an order deemed appropriate by the independent consultant (but which may not be higher than a fourth order) should be fitted to the data points and define the wind farm noise level at each integer speed.

### Guidance Note 3

(a) Where, in accordance with the approved assessment protocol under paragraph (d) of the noise condition, noise immissions at the location or locations where compliance measurements are being undertaken contain or are likely to contain a tonal component, a tonal penalty is to be calculated and applied using the following rating procedure.

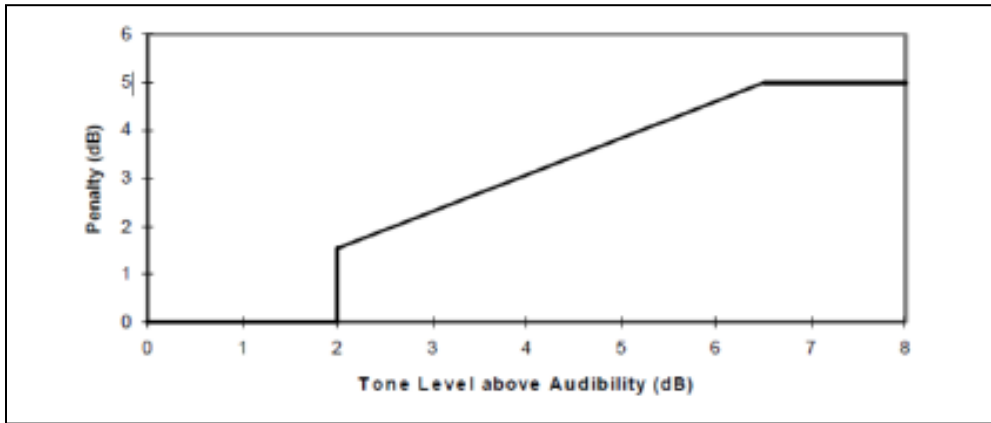
(b) For each 10 minute interval for which  $L_{A90,10 \text{ minute}}$  data have been determined as valid in accordance with Guidance Note 2 a tonal assessment shall be performed on noise immissions during 2 minutes of each 10 minute period. The 2 minute periods should be spaced at 10 minute intervals 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 used.

(e) A least squares "best fit" linear regression line shall then be performed to establish the average tone level above audibility for each integer wind speed derived from the value of the "best fit" line at each integer wind speed. If there is no apparent trend with wind speed then a simple arithmetic mean shall be used. This process shall be repeated for each integer wind speed for which there is an assessment of overall levels in Guidance Note 2.

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



#### Guidance Note 4

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

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

(c) In the event that the rating level is above the limit(s) set out in the Tables attached to the noise conditions or the noise limits for a complainant's dwelling approved in accordance with paragraph (e) of the noise condition, the independent consultant shall undertake a further assessment of the rating level to correct for background noise so that the rating level relates to wind turbine noise immission only.

(d) The wind turbine operator shall ensure that the wind turbine is turned off for such period as the independent consultant requires to undertake the further assessment. The further assessment shall be undertaken in accordance with the following steps:

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

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

$$L1 = 10\log[10^{L2/10} - 10^{L3/10}]$$

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

(h) If the rating level after adjustment for background noise contribution and adjustment for tonal penalty (if required in accordance with note 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 Local Planning Authority for a complainant's dwelling in accordance with paragraph (e) of the noise condition then no further action is necessary. If the rating level at any integer wind speed exceeds the values set out in the Tables attached to the conditions or the noise limits approved by the Local Planning Authority for a complainant's dwelling in accordance with paragraph (e) of the noise condition then the development fails to comply with the conditions.

Reason: to ensure an acceptable level of residential amenity.



## Department for Communities and Local Government

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

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

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

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

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

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

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

#### **SECTION 2: AWARDS OF COSTS**

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

#### **SECTION 3: INSPECTION OF DOCUMENTS**

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