



Department for
Communities and
Local Government

Mr W Jackson
Shoreswood Farm
Ancroft
Berwick upon Tweed TD15 2NQ

Our Ref: APP/P2935/A/13/2195630

30 September 2015

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY MR W JACKSON
PROPOSED INSTALLATION OF AN 800KW WIND TURBINE AND ASSOCIATED
INFRASTRUCTURE AT SHORESWOOD FARM, ANCROFT, BERWICK-UPON-
TWEED, NORTHUMBERLAND TD15 2NQ
(APPLICATION REF: 11/02725/RENE)**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Richard McCoy BSc MSc DipTP MRTPI IHBC who made a site visit on 3 December 2014 to inform his consideration of your appeal against the refusal of Northumberland County Council ("the Council") to grant planning permission for the installation of an 800kw wind turbine and associated infrastructure at Shoreswood Farm, Ancroft, Berwick-upon-Tweed, Northumberland TD15 2NQ, application Ref 11/02725/RENE.
2. On the 11 December 2014 the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990 on the grounds that it involves a renewable energy development.

Inspector's recommendation and summary of the decision

3. The Inspector, whose report is enclosed with this letter, recommended that the appeal be dismissed and planning permission refused. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and recommendation, dismisses the appeal and refuses planning permission. All paragraph numbers, unless otherwise stated, refer to the Inspector's report (IR).

Matters arising following the closure of the inquiry

4. Following the close of the inquiry the Secretary of State wrote on 19 June 2015 to you, the Council and other interested parties inviting further information for the purposes of his consideration of the appeal. This matter was: the implications of the terms of the Written Ministerial Statement (WMS) of the Secretary of State on local planning of 18 June 2015 for the proposed scheme.
5. The Secretary of State has taken the representations into account in his consideration of this appeal, but as the responses were circulated to all the main parties he does not consider it necessary to summarise the responses here or attach them to this letter.

Policy and Statutory Considerations

6. In deciding the 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 includes the saved policies of the adopted Berwick upon Tweed Local Plan (LP).
7. The Secretary of State has had regard to his WMS of 18 June. The statement explained that the Secretary of State was setting out new considerations to be applied to proposed wind energy development. Subject to a transitional provision, the statement explained that the new considerations had immediate effect. Given its relevance to this case, the Secretary of State attaches substantial weight to the statement as the most recent expression of government planning policy for onshore wind development.
8. The statement includes a transitional provision for where a valid planning application for wind energy development had already been submitted to a local planning authority at the date on which the statement was made and the development plan does not identify suitable sites. In such instances, local planning authorities can find the proposal acceptable if, following consultation, they are satisfied it has addressed the planning impacts identified by affected local communities and therefore has their backing. In applying the transitional provision to this appeal proposal the Secretary of State has considered the representations reported in the Inspector's report and the correspondence referred to in paragraphs 4 and 5 above.
9. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ("the Framework") and the planning guidance published in March 2014; the National Policy Statements (NPS) for Energy (EN-1) and Renewable Energy (EN-3); the Community Infrastructure Levy (CIL) Regulations 2010 as amended and Planning Practice Guidance for Renewable and Low Carbon Energy (2013). The Secretary of State has also taken into account the Written Ministerial Statements on renewable energy published in June 2013 by the Secretaries of State for Energy and Climate Change and for Communities and Local Government; the Written Ministerial Statement on renewable energy published by the Secretary of State for Communities and Local Government in April 2014; and the English

Heritage/Historic England guidance entitled “*The Setting of Heritage Assets*” as updated in July 2015.

10. In accordance with section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, 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.

Main Considerations

11. The Secretary of State concludes that the main issues in this case are those set out by the Inspector at IR53, and the provisions of the Written Ministerial Statement on Local Planning of 18 June 2015.

Effect on the Scheduled Ancient Monument

12. Having given careful consideration to the Inspector’s findings with regard to the effect of the appeal scheme on the setting of the Duddo Stone Circle Scheduled Monument at IR54-62, and having taken into account the views of English Heritage and its updated guidance on the “Setting of Heritage Assets” referred to at paragraph 9 above, the Secretary of State agrees with the Inspector that the proposal would cause less than substantial harm to the significance of the Scheduled Ancient Monument.
13. The Secretary of State has given considerable importance and weight to the identified harm and to the desirability of preserving the setting of the Scheduled Monument. As such, he agrees with the Inspector at IR63 that the proposal is contrary to saved LP Policy C28 and that, pursuant to paragraph 134 of the Framework, the less than substantial harm to the setting of the Scheduled Monument needs to be balanced against the benefits of the proposed development.

Landscape and visual impact

14. The Secretary of State agrees with the Inspector, for the reasons given at IR64-67, that the proposal would result in significant localised harm to visual amenity and moderate harm to the landscape character in the immediate environs of the proposal. As such he agrees with the Inspector at IR68 that this would bring the proposal into further conflict with saved LP Policy C28.

Other considerations

15. For the reasons set out at IR69 the Secretary of State agrees that any cumulative impact with other wind turbine developments in the vicinity would be slight.
16. The Secretary of State agrees with the Inspector at IR70 that there is no substantive evidence that there would be any interruption of any private view which would render any property an unpleasant or unacceptable place to live.
17. For the reasons set out at IR71 the Secretary of State agrees that, subject to conditions that could be attached to any grant of planning permission, there would be unlikely to be any adverse effects in respect of noise or shadow flicker.

Benefits

18. The Secretary of State agrees with the Inspector at IR72 that the proposal would have benefits both through contribution to the generation of renewable energy, and through benefitting your farming business. In particular the Secretary of State recognises that, pursuant to paragraph 98 of the Framework, even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions.

Planning Balance and Conclusion

19. Having regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, the Secretary of State has concluded that the proposal does not accord with the development plan taken as a whole, in particular owing to the clear conflict with LP Policy C28. The Secretary of State has therefore gone on to consider whether there are any material considerations which might nevertheless justify allowing the appeal.
20. The Secretary of State agrees with the Inspector's conclusions at IR75 that the proposal would cause less than substantial harm to the significance of a heritage asset of considerable importance. He also agrees that there would be significant localised harm to the visual amenity of the landscape, and moderate to significant localised harm to its character. There would be no more than minor harm to visual amenity and character at greater distances. Against this the Secretary of State weighs the benefits from the reduction of greenhouse gases, the benefits to a farm business by way of a reduction in energy costs and income generation.
21. In addition, having applied the transitional provision set out in the June 2015 WMS, the Secretary of State is not satisfied that the planning impacts identified by affected local communities have been addressed. In their responses to the Secretary of State's letter of 19 June 2015, while a number supported the scheme, other members of the affected communities have repeated the concerns which they expressed previously about the planning impacts of the scheme. These include harm to the setting of the Scheduled Ancient Monument and the impact of the proposal on the landscape character and visual amenity, and it is clear from the IR that those planning impacts have not been addressed. This is demonstrated, in particular, by the Inspector's conclusions at IR61 and 67. As those planning impacts as identified by the affected communities have not been addressed, the proposed scheme would not meet the transitional arrangements set out in the WMS of 18 June 2015; and the Secretary of State gives significant weight to this non compliance.
22. Having weighed up all relevant considerations, the Secretary of State concludes that the factors which weigh in favour of the proposed development do not outweigh its shortcomings and the conflict identified with the development plan and national policy. He considers that there are no material considerations of sufficient weight which would justify allowing the appeal.

Conditions

23. The Secretary of State has had regard to the schedule of conditions at the annex to the IR. He is satisfied that the Inspector's proposed conditions are reasonable and necessary and would meet the tests of the paragraph 206 of the Framework.

However, he does not consider that they would overcome his reasons for dismissing this appeal.

Formal Decision

24. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your appeal and refuses planning permission.

Right to challenge the decision

25. 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.

26. A copy of this letter has been sent to the Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Philip Barber

Authorised by the Secretary of State to sign in that behalf

Report to the Secretary of State for Communities and Local Government

by Richard McCoy BSc MSc DipTP MRTPI IHBC

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

Date: 27 January 2015

Town and Country Planning Act 1990

Northumberland County Council

Appeal by

Mr W Jackson

Site visit made on 3 December 2014

Shoreswood Farm, Ancroft, Berwick-upon-Tweed, Northumberland TD15 2NQ

File Ref(s): APP/P2935/A/13/2195630

File Ref: APP/P2935/A/13/2195630

Shoreswood Farm, Ancroft, Berwick-upon-Tweed, Northumberland TD15 2NQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr W Jackson against the decision of Northumberland County Council.
- The application Ref 11/02725/RENE, dated 28 October 2011, was refused by notice dated 9 October 2012.
- The development proposed is the installation of an 800kW wind turbine and associated infrastructure.

Summary of Recommendation: That the appeal be dismissed.

Procedural Matters

1. The appeal was recovered for decision by the Secretary of State on 11 December 2014. The reason for the recovery was that the appeal involves a renewable energy development.
2. Planning permission was refused for the following reason:
 - *The proposed development would result in a significant and unacceptable impact on the setting of the Duddo Stone Circle Scheduled Ancient Monument due to the size and location of the wind turbine sufficient to outweigh the wider benefits of the proposed turbine in terms of renewable energy provision. The proposed development does not accord with Policies 32 and 40 of the Regional Spatial Strategy and Policy C28 of the Berwick upon Tweed Local Plan.*
3. This report contains a description of the site and its surroundings, an explanation of the proposal, identification of relevant planning policies and the gist of the submissions made in writing, followed by my conclusions and recommendation. A list of suggested conditions is appended.
4. This report supersedes the appeal decision issued on 20 January 2014 in respect of this development. The decision on that appeal¹ was quashed by order of the High Court. In order to advise and recommend to the Secretary of State on the re-determination of the appeal I have conducted my own site visit, the original site visit having been carried out on 10 December 2013.
5. The North East Regional Strategy, cited in the reason for refusing planning permission, has now been revoked. It no longer forms part of the development plan and its policies no longer have force.

The Site and Surroundings

6. The area immediately surrounding the appeal site is an agricultural landscape of farming fields. The turbine would be located in an agricultural field. A public right of way is located approximately 750m to the south west of the site. The nearest residential properties are located at the cluster of properties at Shoreswood Farm (approximately 640m to the north of the site). The nearest roads are the A698

¹ The decision was made by an Inspector to whom it had been transferred

located approximately 1km to the north-west of the proposal and a minor C road 490m to the north.

Planning Policy

7. The development plan for the area includes the saved policies of the adopted Berwick upon Tweed Local Plan (LP). The appeal site is located in an area defined in the LP as an 'Intermediate Area of Landscape Value' (IALV). Saved LP Policy C28 (the policy referred to in the Council's decision notice) in considering wind farm development within the IALV, gives particular regard, amongst other criteria, to the need to protect features and areas of heritage interest, and to consider landscape impacts. The Council also refers to LP Policy C29 in its representations. This deals with small scale renewable energy development designed to support individual premises. However, given the size of the proposed turbine it could be argued that neither of these policies is directly relevant since the proposal is not a wind farm, and is unlikely to be what was regarded as small scale when the LP was adopted in 1999. Nevertheless, the principles and criteria attached to Policy C28 are more applicable in this instance than those in Policy C29 and I have dealt with the appeal on this basis.
8. The National Planning Policy Framework (NPPF) states a presumption in favour of sustainable development at paragraph 14 and paragraph 93 makes clear that the provision of renewable energy infrastructure is central to the economic, social and environmental dimensions of sustainable development. The NPPF also states that even comparatively small scale projects can make a significant contribution to meeting national need.
9. This is reflected in Planning Practice Guidance (PPG) which states that increasing the amount of energy from renewable and low carbon technologies will help to make sure the UK has a secure energy supply, reduce greenhouse gas emissions to slow down climate change and stimulate investment in new jobs and businesses. It goes on to state that planning has an important role in the delivery of new renewable and low carbon energy infrastructure in locations where the local environmental impact is acceptable.
10. The PPG makes clear that there are no hard and fast rules about how suitable areas for renewable energy should be identified, but in considering locations, local planning authorities will need to ensure they take into account the requirements of the technology, and critically, the potential impacts on the local environment, including from cumulative impacts. The views of local communities likely to be affected should be listened to. The PPG clarifies that as the significance of a heritage asset derives not only from its physical presence, but also from its setting, careful consideration should be given to the impact of wind turbines on such assets. Depending on their scale, design and prominence a wind turbine within the setting of a heritage asset may cause substantial harm to the significance of the asset.

The Proposal

11. Proposed is the erection of a wind turbine that would measure around 50m to the hub and around 74m to the blade tip. The turbine would be connected to a new substation, measuring around 5m by 5m, and would stand on a concrete plinth with a base diameter of around 5.5m.

The Case for Mr Jackson

12. The sole reason for refusal alleges substantial harm to the setting of the SAM when viewed from the southern approach. The Assistant County Archaeologist considers the impact on views from the stone circle not to be sufficient to constitute substantial harm on its own and would not constitute grounds for refusal. The original grounds of appeal (March 2013) assessed whether the proposal would cause substantial or less than substantial harm to the setting of the stones. It was considered, in line with the English Heritage view, that any harm would be less than substantial.
13. The Council's Statement of Case (May 2013) did not prompt any change to the assessment in the Grounds of Appeal. As much of the Council's updated Statement of Case (October 2014) repeats their earlier statement, the assessment in the original Grounds of Appeal still pertains. The only change applies to public access to the stones with the expiration of the DEFRA-funded permissive footpath on 30 September 2014.
14. Previously the stones could be accessed from the north and south via DEFRA funded footpaths and the southern approach included the westward loop. This changed in October 2014 when access from the north was no longer available and the western loop was removed from the southern approach. The southern access remains as part of a permissive path which could be altered again in the future. The approach would not seem to have any historical significance with the Council noting that the arrangement of the stones would suggest a historical access from the east.
15. Penmar Farming Ltd commissioned an assessment of the effects on the stone circle from MJ Archaeology; *Duddo Stone Circle NHLE: 1006622 An assessment of significance and visual impact appraisal of the Shoreswood turbine proposal on the setting of the monument*. That document notes that the only public access is from the south and that all public access to the stones for the foreseeable future would be subject to the visible impact of the proposed turbine. It concluded that as a consequence the turbine would have a significant negative impact on public appreciation of the SAM's significance.
16. This was based however, on photographs taken by MJ Archaeology without reference to the accurate photomontages contained in the Grounds of Appeal. The photomontages show the clear visual separation between the stones and the proposal with intervening features identified such as trees, buildings and a line of wooden poles. The clear visual separation would be maintained notwithstanding the change to the permissive path.
17. The Council does not present any new assessment of the effect the proposal would have on the significance of the SAM, particularly with reference to the change to the permissive path. Instead, the matters set out in the Council's original Statement of Case are reiterated. Therefore, the assessment set out in the original Grounds of Appeal remains valid, namely that substantial harm would not occur to the setting of the SAM as a result of this proposal.
18. The Council's reason for refusal draws on the correspondence from English Heritage and the Assistant County Archaeologist. The former was not provided to

the appellant until after the decision notice was published and the latter just a few weeks before publication. Had the appellant been afforded early sight of these documents, the Council could have been provided with the analysis of the setting of Duddo Stones that is presented below, together with the accompanying photomontages. Since this analysis clearly demonstrates that the development would not cause substantial harm to the setting of the Duddo Stones (the sole grounds on which the refusal is based) this appeal would not have been necessary. It should also be noted that a previous appeal decision² states that substantial harm is not very far short of demolition or destruction and took account of the temporary and reversible nature of wind turbine proposals.

19. English Heritage concurs with the appellant's view that the important views from the Stones to the N, NW, W, S and SW would not be compromised. Furthermore, the Assistant County Archaeologist considers that the impact of the proposal would not be sufficient to constitute 'substantial harm' in the context of NPPF and, on its own, would not constitute grounds for refusal. Both English Heritage and the Assistant County Archaeologist have stated their belief that the development would impact on the visitor experience and perception of the Duddo Stones, as viewed from the south when approached via the permissive path. The appellant is not aware of any historical significance attached to the permissive access. Indeed, prior to 2004, it is likely that access to the stones would have been via the existing public right of way from the village of Duddo. With the landowner's permission, permissive access could be granted East/West from the public right of way.
20. English Heritage state that the turbine; *'would deflect the eye from the scheduled monument and would be a physical intrusion on what would be an uncluttered horizon and would thus have a harmful effect on one aspect of the setting of the monument. While it would not physically affect the stone circle itself, it would still impact upon the monument's wider 'significance''*. English Heritage considers, therefore, that the introduction of the turbine at Shoreswood would cause 'less than substantial harm' to the setting of the monument and its appreciation by observers when viewed from the official access to site.
21. The Assistant County Archaeologist gives an extensive account of the setting of the Duddo Stones and an assessment of the likely impact that the turbine would have on the visitor experience from the permissive path. This is based in large part on the photograph which accompanies his response, from the permissive path towards the Stones and his conjecture as to how the turbine would appear in that view. He compares his photo to the appellant's Landscape and Visual Assessment Viewpoint 2 – Duddo Stones. VP2 was taken from the stones and not from the approach to the stones.
22. It is unfortunate that neither English Heritage nor the Assistant County Archaeologist requested formal photomontages, since these provide a more effective means of assessing the views from the permissive path than the informal photograph taken by Assistant County Archaeologist and presented in his response. The appellant's Photomontages 1 and 2 are intended to present an accurate representation of the views towards the turbine and the Duddo Stones from locations along the DEFRA funded permissive path.

² Appeal Ref: APP/Q3305/A/12/2181741

23. In particular, Photomontage 2, which is taken from the same location as the Assistant County Archaeologist's photograph, demonstrates the clear visual separation that would exist between the Stones and the turbine. The turbine would appear to the east of Grievestead Cottage which, together with clumps of trees, would visually separate the turbine from the Stones. Trees to the west of the Stones obscure the horizon line and a wooden pole line is present in the foreground.
24. Both photomontages demonstrate that the introduction of a turbine at Shoreswood would not affect the ability to either appreciate the choice of location for the Duddo Stones or understand its function as a monument. The presence of the turbine would not cause substantial harm to the visitor experience and perception of the Duddo Stones, as the Assistant County Archaeologist argues.
25. Photomontage 3 demonstrates that the turbine would not be visible from the existing right of way from the village of Duddo, which would likely have been the primary access to the Stones prior to the 2004 permissive path.
26. In conclusion, the proposed development would not cause substantial harm to the setting of the Duddo Stone Circle and the less than substantial harm that would be caused to the setting of the Duddo Stone Circle would be balanced by the wider environmental, economic and social benefits arising from the proposal's contribution to the provision of higher levels of renewable energy. The proposed development would therefore accord with NPPF paragraph 134 and saved LP Policy C28, and would not conflict with the aims of national, regional and local policy related to cultural heritage.

The Case for Northumberland County Council

27. The application site lies approximately 2.4km to the north of the Duddo Stone Circle. The Duddo Stone Circle is located on the southern fringes of the Milfield Basin, one of the most important prehistoric landscapes in the country. It has a high profile as a locally promoted heritage site. The monument features in promotional leaflets identifying features of heritage interest and local distinctiveness and has been used as part of a wider campaign to promote awareness of the local historic environment. The monument is publically accessible and is signposted from the main road by brown 'heritage' signage. It is the only surviving hilltop stone circle in Northumberland.
28. The Duddo Stone Circle occupies an elevated position, is a prominent feature within the area and its setting is considered to make an important contribution to its significance. It is not necessary for visitors to have a detailed knowledge of the site or prehistoric monuments in general, though an encounter with the monument and its setting – the surroundings in which it is experienced – may be enhanced by an understanding of its significance and context. This information is provided on site by a modern interpretation panel, informed by the results of recent excavation and enabled by DEFRA funding. The sensitivity of the setting of the stones was recognised by the Inspector in dismissing the Toft Hill³ wind farm proposal.

³ Appeal ref: APP/P2935/A/08/2077474

29. Duddo Stone Circle is situated at a height of 70m AOD on a small hill on otherwise sloping ground on the valley of the River Till overlooking the Milfield Basin. This unique situation affords extensive and open views of the surrounding landscape, particularly towards the north and north-west (across the Tweed Valley) west (to the Eildon Hills) and the south and south-west (to the Cheviot Hills). The intervening landscape is predominantly agricultural, with large modern or historic intrusive development being notably absent. These open long distance views inform (but do not define) the setting of the monument.
30. The experience of visiting Duddo Stone Circle in its setting – the surroundings in which the monument is experienced – should be understood as a process of encounter. The monument can only be reached on foot with most visitors approaching via the signed permissive route from the south. Soon after visitors join the path, the stone circle appears on the skyline directly ahead, becoming increasingly prominent in the view as the visitor approaches along the linear path.
31. Towards the end of the journey, the visitor climbs the low hilltop and experiences the open view out from the stone circle. This encounter is particularly powerful when experienced via the direct linear route provided by the permissive (signed) footpath from the south. This process of encounter was clearly acknowledged by the Toft Hill Inspector in 2009, who noted that: *"...my own visits to the stone circle confirmed what many others have described; this is a serene and remarkable place. Its solitary position on a low knoll, the extensive and open views to the north, south and west, the fact that it can be reached only on foot, and the mystery surrounding its raison d'être, combine to give it a very special atmosphere"*.
32. Detailed descriptions of Duddo Stone Circle appear in a range of published sources⁴, many of which refer directly or indirectly to the setting of the monument – the surroundings in which the monument is experienced. Collectively, these accounts describe a 'setting' which is informed by the scale and form of the monument, the situation of the monument, the experience of approaching the monument and the properties of the outward view. Collectively, these accounts describe a monument which is conspicuous on approach, exploits local topography to maximise visual impact and which, upon arrival, displays a functional concern with the Till and Tweed Valleys and the Cheviot and Eildon Hills.
33. The Council considers that the appellant has under-assessed the impact of the proposed development on the setting, and therefore the significance of the impact on the Duddo Stone Circle. This under-assessment is derived principally

⁴ Hewat Craw, J. 1932. Duddo Stone Circle. History of the Berwickshire Naturalists Club Vol XXVIII (p84-86), Pevsner et al (1994, 257), Miket 2005, 'Archaeology in Northumberland, Volume 15: 2005, 'Duddo Stones' (p23), Burl 1995, A Guide to the Stone Circles of the British Isles, p70, Cope, J. 1998. The Modern Antiquarian: A Pre-Millennial Odyssey Through Megalithic Britain (276) Harper Collins (London), Cope, J. 1998. The Modern Antiquarian: A Pre-Millennial Odyssey Through Megalithic Britain (276) Harper Collins (London), Waddington 1999, 168, Hewat Craw, J. 1935. Duddo Stone Circle. History of the Berwickshire Naturalists Club Vol XXVIII (p84-86), Northumberland Rock Art: The Beckensall Archive, hosted by Newcastle University, Beckensall, S. 1994. Life and Death in the Prehistoric North. Morpeth: Butler Publishing (p12)

from the appellant's failure to fully understand the properties of the monument's setting, and consequently to afford sufficient weight to the impact of the development on the experience of approaching the monument from the south.

34. The Council's assessment of impact to the setting of Duddo Stone Circle is informed by the established definition of 'setting' as the 'the surroundings in which an asset is experienced'. English Heritage's published guidance⁵ on setting clarifies that an understanding of this experience should take account of views from, towards, through and across the asset. In the case of Duddo Stone Circle, an understanding of the monument's setting is informed by the experience of approaching or otherwise encountering the monument and the experience of looking out from the stone circle (the outward view).
35. The appellant's evidence confirms that the proposal would be intrusive in views towards the stone circle from the permissive path, significantly and adversely affecting the experience of visiting the monument. Specifically, when approaching the monument from the south, the turbine would break the skyline before the stone circle comes into view on the horizon. At present the tall upright stones of Duddo Stone circle are the first features to break the skyline, adding drama to the approach to the monument. As the visitor moves along the footpath and towards the monument, the scale and movement of the turbine would be a constant competing distraction, drawing the visitor's eye away from the monument. This harm would not be mitigated by the 'visual separation' which the appellant relies upon in lieu of mitigation. Whilst the visitor would still approach the monument via a direct linear route, the monument would be replaced by the turbine as the focus of the encounter.
36. The turbine would occupy a peripheral location in relation to the open outward views which contribute to the setting of the monument. The Council is of the opinion that the impact of the development on outward views from the monument would be greater than the 'low' impact suggested by applicant. However, it is considered that the impact on these outward views would not in itself be significant enough to warrant refusal of the application.
37. English Heritage guidance advises that 'setting' embraces all of the surroundings in which an asset can be experienced from or with, including the skyline. It advises that the construction of a high but distant building may extend what might previously have been understood to comprise the setting of an asset, particularly if the development is large-scale, prominent or intrusive. Identified development attributes with potential to harm the setting of heritage assets include its position in relation to key views, prominence, dominance or conspicuousness, potential to compete with or distract from the asset, introduction of movement and potential to change the skyline. These are all characteristics of the proposed development.
38. Guidance⁶ advises that, having regard to these and other relevant considerations, a proper assessment of impact will take into account the significance of the asset and the degree to which proposed changes will enhance or detract from that significance and the ability to appreciate it. The appellant's Appeal Statement has

⁵ English Heritage: The Setting of Heritage Assets (p19)

⁶ Historic Environment Practice Guide p122; English Heritage: The Setting of Heritage Assets p16

not been informed by any of the above guidance. Instead, the appellant argues that the impact of the development would be mitigated by its 'visual separation' from the monument and by clumps of trees on the horizon. The Council does not agree with this conclusion.

39. Having regard to the impact of the development on views towards the monument, and specifically the impact of the development on visitors approaching the monument via the southern permissive route, the Council has concluded that the proposed development would introduce a large intrusive structure into the setting of the monument. The moving turbine would break the skyline before the monument came into view and would continue to compete successfully with the stone circle as the visitor approached the monument. In the Council's opinion and having regard to the criteria set out in the appellant's assessment, the magnitude of impact experienced on the approach to the monument would be 'High', leading to a 'Major' significance of effect. It is considered that the proposal would have a very damaging effect on the appreciation of the Duddo Stone Circle from the main approach and that its setting would not be preserved.
40. Overall therefore, having regard to the agreed definition of 'setting' as the surroundings in which an asset is experienced, and taking into account the impact of the development on views from and views towards the monument, the Council has concluded that the impact of the development on the setting of Duddo Stone Circle would cause 'substantial harm' to the significance of the designated asset in the context of NPPF (paragraph 133).
41. The proposed turbine would result in substantial harm to the setting of Duddo Stone Circle SAM. Paragraph 133 of the NPPF advises that, in these situations, permission should be refused unless the public benefits of the proposal would outweigh that harm. If substantial harm is to be outweighed, the benefits must also be substantial. Significant weight does need to be given to the benefits of the proposal, however, the harm to the setting of the Duddo Stone Circle SAM is considered to outweigh these benefits. The proposal is consequently considered to be unacceptable.
42. The Council's opinion is that the appellant has understated the impact of the proposed development. In particular, the appellant's (October 2011) assessment did not adequately assess the impact of the development on views towards Duddo Stone Circle from the DEFRA-funded permissive footpath which approaches the monument from the south. The appellant's assessment instead focussed on the outward view from the stone circle despite having acknowledged that the Duddo Stone Circle occupies 'an elevated position' and is a 'prominent feature within the immediate area, particularly in views from the north and south'.
43. The Council does not agree the appellant's assertion that this proposal would be 'no more intrusive' than the 7-turbine Moorsyde⁷ wind farm scheme. Furthermore, the Council does not agree with the appellant's interpretation of 'substantial harm'. In this regard, the appellant refers to the Warren Farm appeal decision to suggest that 'substantial harm' to the significance of heritage

⁷ APP/P2935/A/08/2079520

assets can only occur in circumstances of demolition, or harm that falls not very far short of it.

44. Relevant policy is provided by Paragraphs 132-3 of the NPPF. Whilst the NPPF provides no definition of substantial harm, it is clear from the wording of Paragraph 133 (and relevant English Heritage guidance) that the threshold of substantial harm should not be equated only to total loss of significance or demolition. Specifically, paragraph 132 clarifies that significance can be harmed or lost through alteration or destruction of the heritage asset or lost through alteration or development within its setting. Similarly, English Heritage's guidance on The Setting of Heritage Assets clarifies that the Significance of a heritage asset derives not only from its physical presence and historic fabric but also from its setting.
45. Policy and guidance, therefore, clarify that the importance of 'setting' lies in the contribution it makes to the significance of a heritage asset. In some cases the contribution made by setting to an asset's significance will be negligible; in other cases it may make the greatest contribution to the significance of an asset. In cases where the setting of a heritage asset makes a significant contribution to its overall significance, it follows that a significant adverse impact to the setting of that asset may cause 'substantial harm' to that significance.
46. The appellant's Appeal Statement also refers to the Historic Environment Practice Guide. Paragraphs 91-95 of the Practice Guide clearly relate to consideration of applications to demolish heritage assets (buildings) and makes no reference to setting which is considered elsewhere in the guidance (paragraphs 113-124; p33-35). The appellant's assertion that 'substantial harm' should be equated only with demolition is not supported by the guidance.
47. The 'permissive' footpath has long been used by visitors to access the monument and was formalised via a DEFRA-funded stewardship scheme in 2004. Facilities along this route have been steadily improved through the provision of improved parking, signage and an interpretive panel. It is clear that the majority of visitors to the site approach the monument via the permissive route from the south, following the 'brown signs' from Duddo village.
48. The appellant has suggested that long-term maintenance of the permissive footpath is dependent on the renewal of DEFRA funding, suggesting that access may be curtailed if the stewardship scheme is not renewed. The present landowner has stated that they are committed to maintaining access to the monument irrespective of DEFRA funding.
49. English Heritage guidance on The Setting of Heritage Assets and the PPS5 Historic Environment Practice Guide both state specifically that the contribution made by setting to the significance of a heritage asset does not depend on public rights or the ability to access the setting at a given time, recognising that access may change over time and according to circumstance (The Setting of Heritage Assets p5, p8; PPS5 Practice Guide, p117).
50. Whilst it is accepted that the Shoreswood proposal would provide benefits through the generation of renewable energy, the Council does not consider that the benefit is sufficient to outweigh the harm to the Duddo Stone Circle. The proposed turbine would result in substantial harm to the setting of Duddo Stone Circle SAM. Paragraph 133 of the NPPF advises that, in these situations,

permission should be refused unless the public benefits of the proposal would outweigh that harm. Significant weight does need to be given to the benefits of the proposal, however, the harm to the setting of the Duddo Stone Circle SAM is considered to outweigh these benefits.

Written Representations

51. A number of representations were received by the Planning Inspectorate and by the Council, both in support and opposing the proposed development. Those in support stressed the environmental benefits of renewable energy, the need to support rural businesses and the reduction in fuel costs for the farm. Those opposing, including from Penmar Farming Ltd (with an attached Duddo Stones Visitor Survey), and Norham, Shoreswood, Duddo and Ord Parish Councils, raised concerns regarding the impact on landscape and visual amenity, tourism, and heritage assets along with concerns regarding the impact on living conditions and highway safety.

Inspector's conclusions

(Numbers in brackets denote source paragraphs)

Main considerations

52. Although the Council has not taken issue with the impact of the proposal on the landscape (2), this is a matter that has been raised by others (51) and is a legitimate and important consideration in this case.

53. Against this background I have identified the main issues as:

- (a) The effect of the proposed development on the setting of Duddo Stone Circle Scheduled Ancient Monument (SAM), and
- (b) The effect of the proposed development on the character and appearance of the surrounding rural area.

The effect on the SAM

54. The proposal would not have any direct physical impact on the Duddo Stone Circle as it would be some distance away (27). The principal impact would be on the experience of the SAM within its wider landscape context which relates to its setting.

55. The NPPF defines the setting of a heritage asset as the surroundings in which it is experienced. The extent is not fixed and may change as the asset and its surroundings evolve. 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. English Heritage guidance; *The Setting of Heritage Assets*, indicates that setting embraces all of the surroundings from which an asset can be experienced or that can be experienced from or within the asset. Setting does not have a fixed boundary and cannot be defined, in perpetuity, as a spatially bounded area or as lying within a set distance of a heritage asset.

56. The significance of an asset is defined in the NPPF as its value to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. In this instance, the interest in the main is

archaeological and historic. Significance derives not only from a heritage asset's physical presence, but also from its setting. Significance may be harmed by a development.

57. The relationship of the SAM with its setting has previously been considered during a wind farm inquiry in 2009 ref. APP/P2935/A/08/2078347, 2079520 & 2077474 (28). In that case, the Inspector expressed her observations of the circle as *"a serene and remarkable place" with "a very special atmosphere"*. I agree with that Inspector that *"the stone circle has high evidential, historical, aesthetic and communal value; the 4 categories of "value" set out in English Heritage's Conservation Principles"*. As a designated SAM, it is clearly of national importance. These values, when combined with its rarity, give the stone circle a high degree of significance.
58. The SAM is situated around 2.4km to the south of the appeal site (27). It is around 4000 years old and occupies a small rounded hill on the southern fringes of the Milfield Basin (27). I am informed that the area is one of the most important prehistoric landscapes in the country and Duddo is the only surviving hilltop stone circle in Northumberland (27). There are extensive views from the stone circle in most directions and I consider that the setting incorporates all of the visible landscape since these are the surroundings in which the stone circle is experienced. The proposal would fall within the setting of the SAM. Given the prominence of the heritage asset across the local landscape and from wider views from the public domain, I am satisfied that a large part of its significance is derived from its setting.
59. I observed that the approach to the SAM and views of it from surrounding countryside are mainly from lower ground which adds to its prominence as a skyline feature. The approach to the SAM has changed slightly from that which existed at the time of the previous Inspector's visit insofar as the revised footpath approach deletes the 'westward loop' around the field boundary and provides a near-continuous linear approach from the field gate at Duddo to the stone circle. Nevertheless, the proposed turbine, as a result of its scale and position, would be a stand out feature when seen both on the new approach to the SAM and from the stone circle itself. Those visiting the stones and contemplating their significance would be distracted by seeing the turbine, in particular its rotating blades, and this would not be mitigated by the intervening distance or presence of features such as buildings, trees and the line of wooden poles.
60. Elements of the significance of the stone circle encompass its historic, cultural and archaeological values. As a designated SAM it is clearly of national importance. These factors, when combined with its rarity, give the stone circle a high degree of significance. There is no question of any direct physical impact on the stone circle by the proposed development because it would be some distance away (20). The principal impact would be on the experience of the approach from the south and on the extensive views out over the landscape from it. Both of these elements relate to the setting.
61. A consequence of the Duddo Stone Circle having been erected at this location is the strong visual relationship with the surrounding landscape. Given that the setting of the stone circle is the surroundings in which it is experienced, which gives it a context and embraces present and past relationships with the

surrounding landscape, I consider that the proposal would be a very detrimental intrusion into this relationship. The proposed wind turbine would draw the attention and would appear as an incongruous vertical feature with rotating blades in the open, and generally uninterrupted, landscape. This would detract from the appreciation of the SAM in its wider context. Whilst it is appreciated that there are a number of electricity poles (16) in the vicinity and an existing turbine at Felkington Farm, these are not as tall as the proposed turbine. Moreover, their impact is materially less distracting than what is proposed and I cannot have regard to them as representing a precedent for what I clearly regard as harmful development.

62. The Council is concerned that the proposal would cause substantial harm (40) to the significance of the SAM. I note from the response of English Heritage (20) that it was considered that the proposal, as a development within the setting of a heritage asset, would cause less than substantial harm to the significance of the SAM as it would not compromise important views relating to the landscape setting of the stone circle to the north, north west, west, south and south west. I agree with this latter assessment and consider that the impact of the proposal would be restricted to the appreciation of the significance of the heritage asset by observers when both the stone circle and the proposed turbine were viewed on the southern access route and when viewed in the direction of the proposal from the SAM itself.
63. Accordingly, the proposal would be contrary to saved LP Policy C28. Under NPPF paragraph 134, this harm requires to be balanced against any benefits of the proposed development. However, before dealing with this balance, I turn firstly to the other material considerations in respect of this appeal.

Landscape and visual impact

64. The landscape around the appeal site is open and relatively large scale. It is classified as open rolling farmland in the Northumberland Landscape Character Assessment (4). Arable agricultural practices predominate in the locality, with substantial fields separated by low, intermittent hedgerows. The area has a pleasant and rural character of gentle undulations with far reaching views towards higher ground. In my judgement, it has a moderate sensitivity to change.
65. The turbine would stand out prominently and would be taller than the nearby telecommunications mast. However, the existing key characteristics of the landscape would generally remain. There would be little interruption of any appreciation of the scale or main features of the landscape, and any perceived change to its character would be quite localised. The impact on the character of the area would be moderate to significant, but only within a restricted area relatively close to the structure – in my estimation this would extend to no more than 1km. With greater distance the impact would quite quickly reduce to slight or negligible. At 4km the impact on landscape character would be slight.
66. Visually there would be a change, and users of the surrounding area, including recreational users of the local footpaths and caravan park, would clearly see the presence of the turbine. These 'receptors' are of high sensitivity to changes. From close by, the turbine would be a large and significant feature that would have a significant visual impact (though it must be noted that public access is limited in

the area immediately around the turbine site, the closest points being the highway to the north and public footpath to the west).

67. Nevertheless the development would stand out as an isolated and strident feature in the landscape. Hence there would be a significant visual impact at close quarters, including the closest public viewpoints, but again this would reduce with distance. In this regard, the large scale and simplicity of the existing arable fields would help to mitigate the visual intrusion of the development by assimilating what would be a similarly scaled and simple structure. However, the visual harm would be perceived over a greater area than the harm to landscape character, beyond 1km but not more than about 1.5km.
68. Accordingly, while the overall characteristics of the landscape would not be significantly altered by the proposal, given the significant localised harm to visual amenity and moderate harm to landscape character in the immediate environs of the proposal, I consider that there would be conflict with saved LP Policy C28.

Other considerations

69. In my judgement, the separation distances with other wind turbine developments in the vicinity, notably the smaller turbines at Felkington Farm and West Allerdean Farm would be such that each would be perceived as separate and distinct. In which case, any cumulative impact would be slight.
70. The turbine would be seen in views from private property. However I have no substantive evidence that there would be any interruption of any private view which would render any property an unpleasant or unacceptable place to live. Private views would change, but not to the extent there would be unacceptable harm to the living conditions of any resident sufficient to justify withholding planning permission.
71. There is also no substantive evidence that any neighbouring property would be adversely affected by noise or shadow flicker. Given that the distance to the nearest residential receptors, I consider that subject to conditions that could be attached to any grant of planning permission, there would be unlikely to be any adverse effects in these respects.

Benefits

72. The proposed wind turbine would have a rating of 800kW. The appellant has advised that the proposed turbine would generate approximately 2000MWh per annum per turbine (an annual saving of 900 tonnes of Co2). It would be likely to benefit the appellant's farming business as a result of a reduction in energy costs and in income generation. The NPPF at paragraph 98 recognises that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions. The development would contribute to the generation of renewable energy which would assist in meeting national targets that seek to reduce carbon emissions in order to tackle climate change.

Overall conclusion

73. The NPPF makes it clear that if a development would result in less than substantial harm, this harm should be weighed against the public benefits of the proposal. In this instance, the proposal would assist with achieving targets to reduce greenhouse gases. The NPPF, in stating that even small scale projects

can make a valuable contribution to cutting greenhouse gas emissions, advises that applications should be approved provided that impacts are (or can be made) acceptable.

74. In my judgement, the Duddo Stone Circle, as a SAM, is a heritage asset of considerable importance. NPPF paragraph 132 states that “when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting.” I have found that the setting of this SAM makes a considerable contribution to its significance. This includes the wider landscape setting which affords the heritage asset its serene and special atmosphere.
75. The proposal would cause less than substantial harm to the significance of a heritage asset of considerable importance by introducing an incongruous development within its setting. There would also be significant localised harm to the visual amenity of the landscape, and moderate to significant localised harm to its character. There would be no more than minor harm at greater distances. I consider that the environmental benefits accruing from a reduction in the emission of greenhouse gasses, the commitment to remove the turbine after 20 years following any grant of planning permission and the claimed possibility that the access to the SAM could change were the southern approach path to be closed would not outweigh the overall harm arising from the proposal. Accordingly, giving great weight to the conservation of the heritage asset, the proposal would conflict with paragraphs 132 and 134 of the NPPF, and saved LP Policy C28.

Conditions

76. The Council provided a list of conditions that it considers would be necessary if planning permission were to be granted (appended to this report). I have examined them in terms of the tests set out in the NPPF and the PPG. Conditions requiring decommissioning at the end of the 20 year period, or sooner if the turbine ceases to be productive, are necessary and reasonable in the interests of the appearance of the area. For the same reason it is necessary to confirm details of the turbine model and its finish, and to require cabling to be underground. In order to ensure that development is carried out in a manner which causes least possible disturbance and disruption conditions are necessary which deal with construction methods, goods vehicle sheeting and construction hours. For the protection of the amenity of the nearest residents conditions are necessary to limit noise, and to investigate any noise or interference problems perceived. For safety reasons it is necessary to require notification of the construction period and crane heights along with accurate positioning data.
77. The Council has raised a concern regarding the archaeological condition attached by the previous Inspector insofar as it places an obligation on the LPA to undertake the archaeological monitoring at their expense. The Council points out that it is neither resourced nor insured to undertake archaeological fieldwork (for reasons of being an advisor to the Council and not a fieldwork contractor). The Council that considers it could not therefore undertake this work. The Council suggests that there is a risk that Condition 17 could not be discharged and

suggests a conditions requiring the Appellant to carry out a programme of archaeological work following a Council supplied brief.

78. However, I do not consider that the archaeological condition set out below (Condition 17) would place an obligation on the Council nor is there substantive evidence to show that any such archaeological monitoring would be beyond the Council's resources. Rather, I consider that condition 17 would be a less onerous condition than that suggested by the Council, allowing access to a nominated archaeologist for the purposes of observing and recording any finds, thus permitting any such matters to be dealt with in a proportionate manner.

Recommendation

79. Having taken account of all of the matters raised in the representations, I recommend for the reasons given above, that the appeal should be dismissed.

Richard McCoy

INSPECTOR

ANNEX

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1:2500 Ordnance Survey Location Plan, Enercon Drawing E-48/S/49/3K/01 and 3R Energy Solutions Drawing No: 110/004 Site Layout Plan.
- 3) This permission is for a period of 20 years from the date the development first exports power to the electricity grid. The developer shall notify the Local Planning Authority in writing no later than 1 month after the making of such connection.
- 4) Decommissioning of the wind turbine shall not commence until a Decommissioning Method Statement covering all aspects of the decommissioning process has been submitted to and approved in writing by the Local Planning Authority. The statement shall be submitted to the Local Planning Authority no earlier than 12 months but not later than 9 months prior to any decommissioning taking place. Thereafter, the scheme shall be implemented in accordance with the approved Decommissioning Method Statement.
- 5) If the wind turbine hereby permitted ceases to operate for a continuous period of 12 months then, unless otherwise agreed in writing by the Local Planning

Authority, a scheme for the decommissioning and removal of that wind turbine generator and any ancillary equipment and structures relating to the turbine, shall be submitted to and approved in writing by the Local Planning Authority within 2 months of the cessation period. Decommissioning shall take place in accordance with the approved scheme.

- 6) No development shall take place until details of the selected wind turbine (if different from the candidate wind turbine) to be installed have been submitted to, and approved in writing by, the Local Planning Authority. Details of such equipment shall include the noise certification credentials, mode of operation, technical controls and location and distance from the nearest dwelling, shown on a scale plan. Development shall be carried out in accordance with the approved details.
- 7) No development shall take place until details of the colour and finish of the tower, nacelle and blades has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 8) All electrical cabling between the turbine and the on site connection building shall be installed underground.
- 9) No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. Thereafter the construction of the development shall only be carried out in accordance with the approved statement, or as otherwise agreed in writing with the Local Planning Authority. The construction method statement shall include measures to secure:
 - a) Details of the site compound including temporary structures, fencing, parking and storage provision to be used in connection with the construction of the development together with the reinstatement provision on completion of construction;
 - b) Any excavation works on site;
 - c) Cleaning of site entrances and adjacent public highway;
 - d) Details of the methods to be adopted to reduce the effects of noise occurring during the construction period to acceptable levels in accordance with BS 5228;
 - e) Disposal of surplus materials;
 - f) Vibration control during construction.

The Construction Method Statement shall be implemented and complied with during and for the life of the construction works associated with the development.

- 10) The hours of operation of the construction phase of the development and any traffic movements to or from the site associated with the construction of the development hereby permitted shall be limited to 08:00 to 18:00 Monday to Friday and 08:00 - 13:00 on Saturdays. No work or associated traffic movements shall take place on Sundays or Bank Holidays unless otherwise previously agreed in writing by the Local Planning Authority. Emergency works

may be carried out at any time provided that the Company/Operator retrospectively notifies the Local Planning Authority of the emergency within 24 hours.

- 11) All HGV's carrying spoil or construction materials to/from the site shall be sheeted to prevent spillage or deposit of any materials on the highway.
- 12) The noise emitted from the wind turbine, as measured in accordance with the guidelines stated within ETSU-R-97, at the curtilage boundary of any dwelling without a financial interest in the development, shall not exceed 35dB(A)L90,10min at wind speeds of up to 10m/s at 10m height. The measurements shall be made in accordance with the methodology detailed in "ETSU-R-97: The Assessment and Rating of Noise from Wind Farms" and the noise emission values for the wind turbine shall include the addition for any tonal penalty as recommended in the same document. Where wind speed is measured at a height other than 10m, the wind speed data shall be converted to 10m height and details of the conversion method used shall be provided to the Local Planning Authority.
- 13) The noise emitted from the wind turbine, as measured in accordance with the guidelines stated within ETSU-R-97, at any dwelling with a financial interest at the time of the complaint, shall not exceed 45 dB(A)L90,10min at wind speeds of up to 10m/s at 10m height. The measurements shall be made in accordance with the methodology detailed in "ETSU-R-97: The Assessment and Rating of Noise from Wind Farms" and the noise emission values for the wind turbine shall include the addition for any tonal penalty as recommended in the same document. Where wind speed is measured at a height other than 10m, the wind speed data shall be converted to 10m height and details of the conversion method used shall be provided to the Local Planning Authority.
- 14) Within 21 days from receipt of a written request from the Local Planning Authority following a written and justified complaint to it alleging noise disturbance at a dwelling, the wind turbine operator shall, at its expense, employ an independent consultant approved by the Council to assess the level of noise emissions from the wind turbine at the complainant's property in accordance with procedures described in "The Assessment and Rating of Noise from Wind Farms, ETSU-R-97" published by ETSU for the Department of Trade and Industry and submit a report on the consultant's findings to the Local Planning Authority. If noise levels are found to exceed those stated in condition 12 or 13, appropriate mitigation measures shall be included within the report and the measures as approved shall be implemented in accordance with a timescale also approved by the Local Planning Authority.
- 15) Any claim made to the Local Planning Authority within 12 months of the commissioning of the turbine that the operation of the turbine hereby approved has caused interference with television reception at those properties shall be investigated by the turbine operator and the results of the investigation shall be submitted to the Local Planning Authority within 2 months of the claim being made. The survey and the investigation shall be carried out by a qualified television engineer. If the engineer determines that impairment of the television reception has been caused by the turbine, such impairment shall be mitigated within 3 months of the engineer's report being submitted to the Local Planning Authority.

- 16) No later than 21 days prior to the commencement of the development, the applicant must notify the Local Planning Authority and the Ministry of Defence (copies of all correspondence sent to the Ministry of Defence must be copied to the Local Planning Authority) of the following in writing
- a) The date of construction and length of proposed build period;
 - b) The maximum height of construction equipment;
 - c) The latitude and longitude of each turbine.
- 17) The developer shall afford access at all reasonable times to any archaeologist nominated by the Local Planning Authority, and shall allow that person to observe the excavations and record items of interest and finds.



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.