



Department for  
Communities and  
Local Government

Mr Stephen Bate  
Hallmark Power Ltd  
Smisby Road  
Ashby-de-la-Zouch  
Leicestershire  
LE65 2UE

Our Ref: APP/Y3425/A/14/2222107

18 April 2016

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY HALLMARK POWER LTD  
LAND NORTHEAST OF COTWALTON DRUMBLE WOODS, COTWALTON, STONE,  
STAFFS, ST15 8SZ  
APPLICATION REFERENCE 13/19630/FUL**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, David M H Rose BA (Hons) MRTPI, who made a site visit on 17 March 2015 as part of his consideration of your company's appeal under section 78 of the Town and Country Planning Act 1990 against the decision of Stafford Borough Council (the Council) to refuse planning permission for 1no. 500kw wind turbine and associated infrastructure, including access track at land northeast of Cotwalton Drumble Woods, Cotwalton, Stone, Staffs, ST15 8SZ in accordance with application reference 13/19630/FUL dated 20 November 2013.
2. On 30 September 2015 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, because it involves proposals for significant development in the Green Belt.

**Inspector's recommendation and summary of the decision**

3. The Inspector 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. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

## **Procedural matters**

4. An application for costs was made by the appellants against the Council (IR1). This application is the subject of a separate decision letter.

## **Policy Considerations**

5. In this case the development plan consists of The Plan for Stafford 2011 – 2031 (adopted June 2014); and the Secretary of State agrees with the Inspector that the most relevant policies are those identified at IR15-17.
6. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework) published in March 2012 and the planning practice guidance first published in March 2014 (the guidance). He has also had regard to the Written Ministerial Statement (WMS) of June 2015, which concerns wind energy development and includes the transitional arrangements - which would apply in this case (IR5-7). As the WMS was issued after the date of the site visit, the Planning Inspectorate wrote to the Council and the appellant on 2 October 2015 inviting comments on it, and the comments received have been taken into account by the Inspector in assessing the overall planning balance.
7. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the appeal scheme or their settings or any features of special architectural or historic interest which they may possess. In accordance with section 72 of the LBCA Act, the Secretary of State has also paid special attention to the desirability of preserving or enhancing the character or appearance of a conservation area.

## **Main Issues**

8. The Secretary of State agrees that the main issues in this case are those identified by the Inspector at IR88.

### *The openness of the Green Belt*

9. For the reasons given at IR89-91, the Secretary of State agrees with the Inspector that the proposed turbine, by its very nature and scale, would represent encroachment in to the countryside and associated loss of openness contrary to one of the five purposes of the Green Belt, to which he gives substantial weight in the overall planning balance.

### *Landscape character and visual appearance of the area*

10. The Secretary of State agrees with the Inspector at IR92 that, in landscape character terms, the proposed turbine would not appear out of scale with the key elements of the landscape, it would not have a marked effect on tranquillity and its effect overall would be minor. However, for the reasons given at IR93-95, the Secretary of State agrees with the Inspector's conclusion at IR96 that, although the visual impact of the proposed turbine would be localised, moderate weight should be given to the harm caused by its adverse impact on the appearance of the countryside having particular regard to the proximity and extent of publicly accessible routes running from the south-west to the north-east of the site. The Secretary of State therefore also agrees with the Inspector's conclusion at IR139 that, for these reasons, the proposal would conflict with Policies N3 and N8 of The Plan for Stafford and with Spatial Principle 1 (see paragraph 18 below).

### *Heritage Assets*

11. For the reasons given at IR97-101, the Secretary of State agrees with the Inspector's overall assessment of the effect of the proposal on the Moddershall Conservation Area. He agrees that the prominence of the proposed turbine and the movement and distraction of its blades would have a serious adverse effect on the setting of the designated area, but that the degree of harm to the significance of the Conservation Area as a result of development in its setting would be 'less than substantial'. The Secretary of State also agrees with the Inspector that, for the reasons given at IR102, the impact of the proposed development on the significance of the Grade II listed Hayes House and former stables as a result of development in its setting would be 'less than substantial'. Overall, therefore, the Secretary of State agrees with the Inspector's conclusion at IR103 that moderate weight should be carried into the planning balance to reflect the identified harm to the heritage assets concerned.

### *Living conditions*

12. For the reasons given at IR104-108, the Secretary of State agrees with the Inspector's conclusion at IR109 that, overall, the absence of harm to living conditions is neutral in the overall planning balance.

### *Trees and hedgerows*

13. Similarly, for the reasons given at IR110-112, the Secretary of State agrees with the Inspector's conclusion at IR113 that the effect of the proposed scheme on trees and hedges would also be neutral in the overall planning balance.

### *Ecology*

14. The Secretary of State also agrees with the Inspector's conclusion at IR115 that, given the appellant's willingness to reduce maximum blade height and tip length to ensure compliance with the bat stand-off distance, any potential impact on bat populations at the local level is neutral.

### *Other matters*

15. Having carefully considered the Inspector's points at IR116-IR121, the Secretary of State agrees (IR122) that none of the issues considered tell against the proposal.

### *The benefits*

16. The Secretary of State agrees with the Inspector (IR123) that, although there are doubts about the precise output achievable by the proposed scheme, even-small scale projects provide a valuable contribution to cutting greenhouse emissions and that this merits significant weight in favour of the proposal. However, he also agrees with the Inspector at IR124-125 that, as the aspirations have not been quantified in a meaningful manner, no weight can be attached to any potential benefits of farm diversification.

### **Conditions**

17. The Secretary of State has considered the Inspector's reasoning and conclusions on conditions at IR126-134, as well as the conditions supplied by the local planning authority set out at Annex A to the IR and those recommended by the Inspector at Annex B to the IR. The Secretary of State is satisfied that the conditions proposed by the Inspector are reasonable and necessary and meet the tests of paragraph 206 of the Framework. However, he does not consider that they would overcome his reasons for dismissing the appeal.

## **Planning balance and conclusion**

18. The Secretary of State agrees with the Inspector's conclusions on the planning balance at IR135-140. He agrees that the proposal would conflict with Policies N3, N8 and N9 of The Plan for Stafford and would be at odds with Spatial Principle 1 of that Plan (IR139). He gives significant weight to the public benefit which would be derived from the generation of renewable energy but, against that, he gives substantial weight to the impact of the proposed scheme on the Green Belt and moderate weight to its landscape impact and its effect on designated heritage assets. He also gives significant weight to the failure of the proposal to address matters raised by the local community as this runs counter to the transitional arrangements set out in the WMS of June 2015.
19. Overall, therefore, the Secretary of State concludes that the proposal would be in conflict with the development plan taken as a whole and with the Framework when also read as a whole. Furthermore, he considers that the proposal would fall well short of clearly outweighing the harm to the Green Belt, the landscape and heritage assets so that the very special circumstances necessary to justify the development do not exist.

## **Formal Decision**

20. Accordingly, for the reasons given above the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your company's appeal and refuses planning permission for a 1no. 500kw wind turbine and associated infrastructure, including access track at land northeast of Cotwalton Drumble Woods, Cotwalton, Stone, Staffs, ST15 8SZ in accordance with application reference 13/19630/FUL dated 20 November 2013.

## **Right to challenge the decision**

21. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within six weeks from the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
22. A copy of this letter has been sent to Stafford Borough Council. A letter of notification has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

*Jean Nowak*

**Jean Nowak**

Authorised by Secretary of State to sign in that behalf

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

**by David M H Rose BA (Hons) MRTPI**

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

**Date: 3 February 2016**

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## **Town and Country Planning Act 1990 Appeal by Hallmark Power Ltd Stafford Borough Council**

Site visit made on 17 March 2015

Land northeast of Cotwalton Drumble Woods, Cotwalton, Stone, Staffs, ST15 8SZ

File Reference: APP/Y3425/A/14/2222107

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## **CONTENTS**

Preliminary Matters	page 1
The Case for Hallmark Power Ltd	page 4
The Case for Stafford Borough Council	page 13
Written Representations	page 15
Inspector's Conclusions and Recommendation	page 18
Annex A:	page 26
List of conditions supplied by the local planning authority	
Annex B:	page 28
Schedule of conditions recommended by the Inspector in the event of the Secretary of State deciding to allow the appeal	

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**File Ref: APP/Y3425/A/14/2222107**

**Land northeast of Cotwalton Drumble Woods, Cotwalton, Stone, Staffs, ST15 8SZ**

- 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 Hallmark Power Ltd against the decision of Stafford Borough Council.
- The application Ref 13/19630/FUL, dated 20 November 2013, was refused by a notice issued on 16 May 2014.
- The development proposed is the installation of 1no. 500kw wind turbine and associated infrastructure, including an access track.<sup>1</sup>

**Summary of Recommendation: The appeal be dismissed.**

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**Preliminary Matters**

**Application for costs**

1. An application for costs was made by Hallmark Power Ltd against Stafford Borough Council. This application is the subject of a separate Report.

**Reasons for refusal**

2. The reasons for refusal, in brief, were: -
  - 1) inadequacy of the landscape and visual impact appraisal (Stafford Borough Local Plan Saved Policies E&D1, E&D2 and E&D7; and The Plan for Stafford Borough (draft) Policy N8);
  - 2) inappropriate development in the Green Belt (Stafford Borough Local Plan Saved Policy E&D10);
  - 3) potential shadow flicker (Stafford Borough Local Plan Saved Policy E&D1(iv); and The Plan for Stafford Borough (draft) Policy N3);
  - 4) effect of access track on trees (Stafford Borough Local Plan Saved Policy E&D2(i)); and
  - 5) effect on setting of Moddershall Valley Conservation Area and Hayes House,<sup>2</sup> Grade II Listed Building (Stafford Borough Local Plan Saved Policy E&D19(a)(b)).

**Determination of the appeal**

3. The Secretary of State has directed that, in exercise of his powers under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990, that he shall determine this appeal so that he can consider the impact of the turbine on the openness of the Green Belt.

**Pre-application consultation**

4. The planning application pre-dated the pre-application requirements of the Town and Country Planning (Development Management Procedure and Section 62A Applications) (England) (Amendment) Order 2013. However, a consultation event was subsequently held with the local community.

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<sup>1</sup> Hub height of 50 metres and maximum blade tip height of 77 metres

<sup>2</sup> The listing extracts provided by the Council with the Questionnaire also include 'Former Stables to Hayes House' – Grade II (adjacent to the Hayes House) and 'Lodge of Hayes House' – Grade II (adjacent to A520). The Council's Committee Report refers to both Hayes House and its 'independently listed former stables'. References in this report to Hayes House are to be taken generally as including the former stables

### Written Ministerial Statement

5. The Secretary of State for Communities and Local Government issued a Written Ministerial Statement on 18 June 2015 under the heading 'Local Planning'. It sets out *'new considerations to be applied to wind energy development so that local people have the final say on wind farm applications .....'*.
6. Transitional provisions apply where a valid planning application had already been submitted to a local planning authority and the development plan does not identify suitable sites. In these *circumstances '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'*.<sup>3</sup>
7. As the Written Ministerial Statement was issued after the date of the site visit, the Council and the appellant were invited to respond.

### Site visit

8. I undertook an accompanied site visit with representatives of the local planning authority, the appellant, the landowner and his son and a group of local residents on 17 March 2015. I also made unaccompanied visits to the wider locality, including photo viewpoints identified as part of the planning application and the appeal, Oultoncross, Oulton, the Moddershall Valley Conservation Area and public rights of way to the south and east of the site.

### The proposal

9. The proposed three bladed turbine would have a hub height of 50 metres; a maximum overall height of 77 metres to blade tip; and a rotor diameter of 54 metres. It would stand on a 12 metre diameter foundation and it would be served by a temporary access track leading from Hayes Bank to an existing farm track and, thereafter, to a new permanent track to the turbine. The make, model and specification of the turbine would be determined following the grant of planning permission.

### The Site and surroundings

10. The appeal site is located approximately 2.0 kilometres to the north-east of Stone; one kilometre east of Oultoncross; one kilometre south-east of Oulton; and some 2.0 kilometres south of Moddershall. Dwellings at Cotwalton Farm and Home Farm are about 800 metres to the east of the site.
11. The landscape is undulating in form, rising north-eastwards from Stone towards and beyond the site. It comprises medium-sized fields, with well-defined hedgerows and hedgerow trees, and a notable presence of woodland. Electricity pylons and overhead lines, running east-west, pass a short distance to the north of the site.
12. A linear Conservation Area sweeps north-eastward from Stone, following the line of Longton Road (A520), to embrace the industrial heritage of the Moddershall Valley Conservation Area: -<sup>4</sup>

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<sup>3</sup> These provisions are to be read as applying to the 'decision maker' including an Inspector appointed on behalf of the Secretary of State or the Secretary of State as the case may be

<sup>4</sup> Extracts from Moddershall Valley Conservation Area Designation No. 76 (front pocket of appeal file)

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*'..... an area of unique industrial archaeological interest and importance set in most attractive scenery. It is significant historically both for its concentration of watermills within so limited an area and for its association with the early history and development of the pottery industry in Stoke-on-Trent ..... until the 1890's the valley formed an isolated community ..... the present main road (A520) was only constructed about the turn of the (20<sup>th</sup>) century ..... but even today it is possible, by leaving the main road, to recapture some of the sense of solitude that must once have surrounded these mills .....'*

13. Hayes House and the adjoining former stables, both Grade II Listed Buildings, lie to the east of Longton Road and nestle in verdant surroundings. The listing descriptions include: -

*'Hayes House - Early to mid C19. Large detached house to irregular plan. Cement rendered; 2 storeys; 3-window projecting bay at centre with open pediment; 9 windows overall, generally minus glazing bars; plain pilasters rising over 2 storeys; doorway to right, having plain Doric porte cochère [sic]<sup>5</sup> of 8 columns; The garden elevation of similar style but having a 3-light canted bay tiered over 2 storeys, and a 5-light bow window to ground storey; hipped slate roof with ornate stair lantern .....'; and*

*'Former stables – early to mid C19. Red Brick. One Storey with central portion of one storey and attic having pediment with brick modillion cornice; 2 round headed relieving arches containing attic storey windows, generally with glazing bars.'*

14. A Tree Preservation Order, made in May 1960, includes woodland and individual trees to the north of the proposed turbine site. The temporary access route to the site would pass through 'W15', an area of mixed broadleaved woodland.<sup>6</sup>

#### **Planning policy**

15. The Stafford Borough Local Plan 2001 has been superseded by The Plan for Stafford Borough 2011 – 2031 (adopted June 2014). The spatial vision includes the provision of sensitively delivered renewable energy schemes. Support for renewable energy projects is carried into Policy N3 where the proposal does not cause harm to residential amenity; the significance of heritage assets and their setting; and has limited adverse effects on the surrounding landscape and townscape character. Other considerations relate to noise, overshadow, flicker, public safety, designated sites and cumulative effects.
16. Spatial Principle 1 mirrors the National Planning Policy Framework's presumption in favour of sustainable development; and Spatial Principle 6 gives priority to supporting rural sustainability, including a sustainable rural economy and use of renewable energy sources.
17. Policy N8, relating to landscape character, adds nothing of consequence to the consideration of renewable energy schemes, given the all-embracing provisions of Policy N3. The consideration of the effects of development on heritage assets is set out in Policy N9, following the principles of the National Planning Policy Framework; and there are added statutory duties in relation to Listed Buildings and Conservation Areas.

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<sup>5</sup> porte-cochere

<sup>6</sup> The Tree Preservation Order includes 68 specific individual trees; 2 groups of trees; and 17 areas of woodland

## The case for Hallmark Power Ltd

### Planning policy

18. The National Planning Policy Framework, against a background of global requirements, makes plain that the benefits of renewable energy, whatever their scale, are material considerations that should be given significant weight in determining planning applications.
19. The Plan for Stafford Borough 2011 – 2031 is much more proactive than its predecessor in embracing sustainable development and encouraging renewable energy. Its key issues and challenges include: -  
*'Ensuring that the District can prepare and respond to climate change: Climate change is a significant challenge facing everyone and is likely to have a direct impact on local businesses and local communities in Stafford Borough through a greater risk of droughts, a greater risk of flooding and increased pressure on drainage systems, particularly in winter, and more challenging circumstances for agricultural production .....'*
20. The Plan's Spatial Vision states: - *'By 2031 Stafford Borough will have ..... addressed issues of climate change, including a reduction of carbon emissions and flood risk with sensitively delivered renewable energy schemes'*.
21. The following are of particular relevance: -
  - (a) Spatial Principle 1 carries a presumption in favour of sustainable development;
  - (b) Spatial Principle 6 seeks to achieve rural sustainability by protecting and enhancing its environmental assets and character whilst sustaining the social and economic fabric of its communities; and
  - (c) Policy N3 sets out support for the generation of renewable energy, qualified by considerations including residential amenity, heritage assets, landscape, noise, shadow flicker and arrangements for decommissioning.

### Scheme benefits

22. The benefits of the proposal would include: -
  - (a) the provision of energy from a renewable source, amounting to approximately 1.1 million kWh per year, the equivalent of providing electricity to 265 homes per year;<sup>7</sup>
  - (b) a suitable contribution to address climate change and meet national renewable targets, offsetting approximately 475 tonnes of carbon dioxide per year;
  - (c) appropriate farm diversification, leading to a reduction in farming costs;
  - (d) compliance with national and development plan policies; and
  - (e) no adverse impact on landscape character, residential amenity, heritage assets or ecology features.
23. The location was chosen to benefit from: -
  - (a) an on-site wind resource, with the NOABL<sup>8</sup> wind speed at 25 metres in height measuring 5.8 metres per second;

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<sup>7</sup> Based on a 'candidate' turbine

<sup>8</sup> NOABL - Numerical Objective Analysis Boundary Layer (a national wind speed database)

- (b) the availability of space on site, with an adequate separation distance from residential properties, ecology issues and other interests of acknowledged importance;
- (c) the ability of the surrounding landscape and built environment to have the capacity to absorb the development, in terms of visual and noise impact; and
- (d) convenient grid connection (underground) to the existing 11kv overhead electricity lines which run east-west across the field to the north of the proposed turbine location.

### **Landscape and visual impact**

#### *Landscape character and appearance*

24. The appellant undertook a landscape and visual impact appraisal<sup>9</sup> which was challenged by the Council but insufficient time was given for the appellant to respond before the application was reported to Committee. However, as the scheme was not development requiring an Environmental Impact Assessment, a formal Landscape and Visual Impact Assessment was not required. Nonetheless, the appraisal contained baseline information; it followed good practice; it was reliable and credible; and it should carry appropriate weight.

25. The characterisation of the landscape within which the appeal site is situated is described as the 'Settled Farmlands': -<sup>10</sup>

*'This is a landscape of strongly rounded or sloping landform with steeper slopes associated with narrow stream valleys draining the plateau area. Prominent broadleaved and conifer woodlands on the upper slopes begin to dictate the scale of the landscape and a smaller scale is associated with the narrow stream valleys and winding lanes leading up to the plateau. Hedgerow pattern contributes substantially to landscape character ..... The pastoral farming, together with a network of narrow, often sunken, lanes and clustered farmsteads lend the landscape a peaceful, rural feel ..... The area is widely viewed from adjacent units .....'*

26. The land to the north and east, the most relevant adjacent unit, is characterised as the 'Sandstone Hills and Heaths': -

*'This is a landscape of mainly intact, small to medium scale irregular fields superimposed on a rolling, lowland plateau landform incised by small steep sided valleys known locally as drumbles. The small-scale enclosed feel to this pastoral landscape is emphasised by the network of narrow, sunken, winding lanes and small hidden settlements .....'*

27. In terms of the local landscape, the turbine would be located within an area of farmland enclosed by woodland to the north-east of Stone.<sup>11</sup> The topography of the area is gently undulating, but generally higher than Stone. The turbine site is approximately 135 metres above Ordnance datum (AOD) on the undulating plateau. The land drops to the west to around 85 metres AOD at Stone. To the north and east, the land is more gently undulating, and typically between 140 metres and 280 metres AOD. Some extensive views are available from the higher land, particularly in a westward direction.

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<sup>9</sup> Landscape and visual appraisal (October 2013)

<sup>10</sup> Figure 2: Landscape Character Plan (front pocket of appeal file)

<sup>11</sup> The landscape and visual appraisal mistakenly describes its location 'to the north west of Stone'

28. The landscape comprises medium-scale agricultural fields enclosed by hedgerows with hedgerow trees. Woodland at Cotwalton Drumble Woods is a notable feature following a minor valley extending towards Oultoncross, a valley-side settlement to the north-east of Stone, where recent housing supplements the historic core. There are no major landscape detractors within the vicinity of the site.
29. The assessment of the proposal was aided by a series of viewpoint photo montages as follows: -<sup>12</sup>
- (a) Viewpoint A – view north from B5027 Uttoxeter Road (1.9 kilometres south of the site): -<sup>13</sup> the turbine blades would just be visible above the trees in the distance and the turbine would not be a notable element in the view;
  - (b) Viewpoint B – view south from byway south of Moddershall (850 metres north-east of the site): -<sup>14</sup> the view is relatively elevated; views from much of the path are restricted by tall hedges; the electricity lines are visible in the mid-distance; the turbine would be partially visible; and a notable new visual element;
  - (c) Viewpoint C – view south from footpath north of Moddershall (2.1 kilometres north of the site): -<sup>15</sup> represents a view down a minor valley north of Moddershall; the blade tips would just be visible above the trees; and the visual effect would be a minor, almost negligible, effect;
  - (d) Viewpoint D – view south from Fulford Road (500 metres north of the site): -<sup>16</sup> the view is from a more open section of the road; woodland is the dominant element; properties along Fulford Road have more restricted views; the turbine would be a similar height to the trees; and only visible between trees;
  - (e) Viewpoint E – view south from the footpath north of Oulton (1.65 kilometres north-west of the site): -<sup>17</sup> this is an open and elevated view from a public footpath; extensive views are possible; the turbine would be just one feature in the landscape; the open views would largely be unchanged; and the turbine would be seen mostly against the landscape rather than on the skyline;
  - (f) Viewpoint F – view north-east from Eccleshall Road, Stone (2.95 kilometres south-west of the site): -<sup>18</sup> a route into Stone from the west with a backdrop of rising countryside beyond the town; the turbine would just be visible (potentially slightly more visible from more open sections of the road); but buildings and vegetation would restrict views from residential properties;
  - (g) Viewpoint G – view north-east from path near Stonepark Farm (1.05 kilometres south-west of the site): -<sup>19</sup> a public footpath running north-east from Stone to Cotwalton; an undulating route with farmland and woodland; most of the turbine tower and blades would be visible but set down into the landscape; and
  - (h) Viewpoint H – view north-east from path near Pingle Lane, Stone (1.45 kilometres south-west of the site): -<sup>20</sup> the turbine would be screened by woodland on the skyline.

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<sup>12</sup> Figure 1: Photo Viewpoint Plan (front pocket of appeal file)

<sup>13</sup> Figures 5 and 5a (front pocket of appeal file)

<sup>14</sup> Figures 6 and 6a (front pocket of appeal file)

<sup>15</sup> Figures 7 and 7a (front pocket of appeal file)

<sup>16</sup> Figures 8 and 8a (front pocket of appeal file)

<sup>17</sup> Figures 9 and 9a (front pocket of appeal file)

<sup>18</sup> Figures 10 and 10a (front pocket of appeal file)

<sup>19</sup> Figures 11 and 11a (front pocket of appeal file)

<sup>20</sup> Figures 12 and 12a (front pocket of appeal file)

30. In terms of the effect of the turbine on landscape character, the Settled Farmlands Landscape Character Area is considered to be of medium landscape value, and to have a medium susceptibility to change, where the addition of a single turbine of modest size would have a low magnitude of landscape change across the wider character area. Effects on the Sandstone Hills and Heaths Landscape Character Area would be limited.
31. More locally, the turbine would be set within a local valley which would have the effect of reducing its presence in the wider landscape. Woodland would provide local screening; and the medium-scale fields in the vicinity of the turbine would be capable of accommodating a turbine of the dimensions proposed. The influence on landscape character would be more pronounced up to 500 metres from the installation with effects diminishing thereafter.
32. In visual terms, the wind turbine would have a moderate landscape effect over an area of up to 500 metres from the installation, with the effect reduced to the west by woodland. Beyond one kilometre the turbine would become a much less significant visual element in the landscape, leading to a minor landscape effect.
33. Residential properties in Stone and Oultoncross are unlikely to be affected due to topography and screening; and the degree to which it would be seen from homes in Oulton would depend on local screening and vegetation. Individual properties, closer to the site, include The Hayes, which is largely screened by woodland, and Home Farm, Cotwalton where views are largely restricted by roadside hedges.
34. There would be limited visibility of the turbine for road users. In terms of nearby public rights of way, users of the footpath, which links Home Farm, Cotwalton with Stone (running north-east to south-west approximately 340 metres to the south of the site), would not be walking directly towards the proposed turbine and would, thus, experience only oblique views. Furthermore, the footpath, in the direction of Stone, crosses a ridge with views diminishing even more.

*Cumulative effects*

35. An assessment has been undertaken of potential cumulative effects arising from other proposals in the locality.<sup>21</sup> It was found that combined effects would be most likely to occur with two proposed turbines at Stone Park Farm;<sup>22</sup> albeit the schemes would appear to be visually separate.

**Green Belt**

36. The generation of renewable energy is a special circumstance in that the electricity generated by the proposed wind turbine would be sufficient to power the requirements of 265 homes and would save at least 475 tonnes of carbon dioxide. The government's target is to reduce greenhouse gas emissions by at least 80% by 2050.

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<sup>21</sup> Appeal Statement – Landscape and Visual Impact (June 2014 ) (tagged on appeal file); Figures C1 – C4 (front pocket of appeal file)

<sup>22</sup> Appeal (APP/Y3425/A/14/2212769) dismissed 21 October 2015

37. The turbine is fundamental to the future of Woodhouse Farm, the landowner's farm; small farms are struggling; and the rental income generated would ensure that the farming legacy continues.
38. The landowner and his son, in support of the application, make the following points: -<sup>23</sup>
- (a) the family's roots in the valley can be traced back to 1136; Woodhouse Farm is one of the few remaining family farms in the area;
  - (b) dairy farming has ceased in the valley; Home Farm and Manor Farm have been split, sold and their barns have been converted to residential use; Woodhouse Farm has survived through diversification working under the Higher Level Stewardship Scheme;
  - (c) the turbine would provide an essential income supplement to allow continued farming in an environmentally sensitive manner and to avoid resorting to more intensive farming methods;
  - (d) the Green Belt serves to protect the countryside from the expansion of towns and cities and to preserve the countryside; the turbine would be a modern example of how the economic output of the land could be harnessed to ensure that the Green Belt survives for future generations; and
  - (e) the proposed location of the turbine would have minimal impact on the surrounding population due to natural screening from topography and trees; and it would be seen in a context of pylons and telegraph poles which have become an accepted feature in the Green Belt.
39. The main purpose of the North Staffordshire Green Belt is to prevent the outward expansion of the Stoke-on-Trent conurbation. The appeal site lies at the southern extreme edge of the Green Belt where a turbine would maintain openness and provide no conflict with its designated purposes. Comparison should be made with the effects of agricultural permitted development rights and the ability to erect tall silos, or large agricultural barns, which would have greater impacts on the openness of the Green Belt.
40. Although a number of Inspectors have determined wind turbines to be inappropriate development in the Green Belt, they have found that the economic issues of rural businesses can provide the very special circumstances to permit such development.<sup>24</sup>

#### **Shadow flicker**

41. The Council's Planning Officer raised the possibility of shadow flicker during consideration of the application; the appellant provided a qualified response; but no formal assessment was requested. A subsequent shadow flicker analysis confirms: -<sup>25</sup>

*Maximum theoretical shadow flicker ..... (at The Drumbles) is calculated to be 16.3 hours per year, between October – February. Allowing for winter sunshine hours of an average 20% and wind direction of 43%, this will reduce the shadow flicker occurrences to an actual level of 1.4 hours per year. This calculates at an average of less than 2 minutes per day, over the 46 days when shadow flicker may theoretically occur. Occupancy of the particular rooms and intervening vegetation will reduce this*

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<sup>23</sup> Tagged on appeal file

<sup>24</sup> APP/T2350/A/13/2193882 and APP/N4720/A/10/2121279

<sup>25</sup> Shadow Flicker Report (tagged on appeal file)

*figure still further. It is therefore considered that the amount of shadow flicker potentially experienced by occupiers of The Drumbles will be negligible and that residential amenity will not be materially affected'.*

42. As such, the reason for refusal has been addressed. However, if it is found that material harm would arise, a condition could be imposed setting a reduced maximum height of the turbine (e.g. blade length of 24 metres and tip height of 74 metres) to take The Drumbles outside the shadow flicker zone.

#### **Television reception**

43. The BBC Online Windfarms Tool, which provides imprecise guidance, indicates that that the proposed turbine might affect television at one dwelling for which there is no alternative off-air service and at up to some 1,600 homes for which there might be an alternative off-air service. However, this takes no account of the singularity or scale of the proposed turbine; many properties will already benefit from digital or satellite reception; and alternative transmitters are available. It is highly unlikely that any properties would experience television interference arising from the proposed development.<sup>26</sup>

#### **Noise**

44. The main guidance on wind turbine noise is set out in ETSU-R-97.<sup>27</sup> It can be demonstrated, from the predicted noise specification for the candidate turbine, that noise levels would be no more than 35 dB(A) at a distance of 515 metres from the turbine. As the nearest residential property, The Drumbles, is beyond this distance, the ETSU-R-97 simplified assessment method would be met; and there would be no need to relate noise levels to background measurements.<sup>28</sup>

#### **Trees**

45. At no time during the consideration of the application did the Council either confirm that any trees were the subject of a 1960 woodland area Tree Preservation Order or that specialist arboricultural information was required. A later Arboricultural Survey, Impact Assessment and Methodology for Tree Protection confirms:<sup>29</sup>
- (a) the proposed turbine would have no effect on field or hedgerow trees or on Drumble Wood;
  - (b) two Alders (T5 and T6) would need to be removed to facilitate the temporary access track; T5 has extensive stem damage and decay and requires removal. T6 could remain for more than 10 years but its retention would impose insurmountable constraints on the proposed transport route; retention of the stump would be consistent with coppicing or replacement planting could occur;
  - (c) T5 and T6 are at a lower elevation than Cotwalton Lane; crown lifting and reduction works to hedgerow trees would be entirely compatible with agricultural practice;
  - (d) widening of existing gateways and limited loss of hedgerows is exempt from any notification requirements; and removal will be prohibited between 1 March and 31 July (inclusive);

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<sup>26</sup> Planning Statement: paragraphs 9.10.1 – 9.10.3 (tagged on appeal file);

<sup>27</sup> The assessment and rating of noise from wind farms

<sup>28</sup> Planning Statement: paragraphs 9.11.9 – 9.11.13 (tagged on appeal file); ETSU-R-97: page 66

<sup>29</sup> Arboricultural Survey Appendix II Plan (and enlargements in front pocket of appeal file)

- (e) crown raising works to the woodland either side of The Hayes would be minimal and within normal highway maintenance specifications for unobstructed access and exempt from any planning requirements where permission has been given for the proposed installation and the temporary access; and
  - (f) other individual trees recorded on the site would not impose constraints as they can either be avoided or protected.
46. In summary, subject to the mitigation, management and protection recommendations set out in the specialist report, the turbine and the delivery of components would not have an adverse effect on protected trees. The reason for refusal can be addressed by way of appropriate conditions.

### **Heritage assets**

#### *Moddershall Valley Conservation Area*

47. The Conservation Area was first designated in 1979. It has a distinct linear character following the Scotch Brook between Moddershall and Stone. The valley is deeply incised and, because of its physical containment, views within the designated area are generally channelled along the valley by the steep, sometimes vertical valley sides. Similarly, there are limited views of the Conservation Area from the surrounding countryside. Therefore, the surroundings in which the Conservation Area is experienced are very much limited to the valley itself; and the surrounding countryside makes little contribution to the area's character, appearance or significance.
48. The special architectural and historic interest of the area, which justified its designation, relates specifically to its industrial archaeology of a series of water mills, harnessing the energy provided by the Scotch Brook. The surviving mills, both individually and collectively, contribute to the overall significance of the area. For example, Ivy Mills in the heart of the valley shows a typical range of mill buildings incorporating the mill, mill cottage, access bridge and large chimney stack which encapsulates the more industrial character and appearance of the designated area.
49. The views at the northern entrance to the Conservation Area, at the junction of Longton Road and Moddershall Lane, also show the typical character and appearance of the Conservation Area, with a clear view southwards along the upper part of the valley alongside the A520. This view shows the typical rural valley sides, with small fields and hedgerows with mature trees, but with small groups of buildings in the foreground in the valley bottom. Whilst these are now mainly in residential use, they were originally mill buildings associated with the Lower Moddershall flint mill.
50. From this location, it is likely that the upper part of the proposed wind turbine would be seen as a feature above the skyline and in direct context with the Scotch Brook valley. However, this would be a limited and localised view, in terms of the Conservation Area as a whole, with no resultant harm to the attributes of the designated area. Moreover, in many ways, the erection of a new industrial structure to harness a natural form of energy would complement the character of the Conservation Area.

*Hayes House (Grade II)*

51. The application is supported by a professional heritage statement and an additional photomontage has been prepared illustrating the relationship of the turbine with Hayes House.<sup>30</sup> The latter confirms that the turbine would be offset to the east; views from the rear of Hayes House are generally orientated southwards; and the turbine would only be visible at a very oblique angle. Furthermore, the rising land immediately to the east of Hayes House, coupled with the tall trees forming Cotwalton Drumble Woods, would substantially obscure views of the turbine.

52. The heritage statement confirms: -

*'..... given the layout of Hayes House and the nature of the local topography it is considered that there would be no views between the turbine and Hayes House, and the proposed turbine will not harm the surroundings in which Hayes House can be experienced. The development will therefore preserve its setting ..... the proposed turbine would have no impact on the wider setting of Hayes House and any non-visual associations with the Moddershall Valley'.*

*Summary*

53. In all aspects, the heritage statement confirms that the proposed wind turbine would be in accordance with the development plan and the National Planning Policy Framework, which seek to preserve heritage assets and their setting. Additionally, for the purposes of sections 66(1) and 72(1) of the Listed Buildings and Conservation Areas Act, respectively, the setting of the Listed Building would be preserved and the proposal would preserve the character and appearance of the Conservation Area.

**Highway matters**

54. Public concern about the impact of the turbine on motorists and other users of the local highway network is not well founded as there are few main routes passing through the area; Hayes Bank is lightly used; and the A520 runs through a deep valley with vegetation aligning the route.

55. The application was supported by a Traffic Management Plan which identified an abnormal load route.<sup>31</sup> Locally, this would pass through Stone heading north-east to Hayes Bank and thereafter to the site access. The route of the new temporary access road across agricultural land would run parallel with Cotwalton Lane before joining an existing field access track.

56. The report identifies several options which might require the temporary removal of street furniture, road/verge strengthening and trimming of overhanging vegetation.

**Response to representations**

57. Although several hundred objections were received to the application, many of these appear to have been as a result of an orchestrated campaign by a local anti-turbine group (Communities Against Turbines). They are typified by unsubstantiated, spurious and unsustainable comments; limited understanding of the scheme; opposition to the principle of wind turbines; and from people unaffected by the proposal.

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<sup>30</sup> Heritage Statement and photomontage/wireframe of turbine in relation to Hayes House

<sup>31</sup> Tagged on appeal file

58. It is disappointing that several representations have sought to belittle both the appellant and the landowner, particularly questioning the professional integrity of submitted reports. Three points in particular merit comment: -
- (a) although there was no obligation on the appellant to undertake pre-application consultation, a public exhibition was held, on the advice of the Planning Officer, in February 2014. The event was intended to be an information exercise and not a public meeting; however, it was overrun by local residents who insisted on a question and answer session; and claims of inadequate or deficient information were made despite the application having already been validated by the Council;
  - (b) there was clearly a large groundswell of anti-turbine opinion in the area at the time of the application; many objections followed 'round-robin' letters boosted by a petition; opposition to the appeal (by volume of responses) equates to only 2.4% of the original opposition; and
  - (c) despite the untimely death of the Planning Officer, it has been necessary to refer to his involvement in the case for completeness.
59. On other matters raised: -
- (a) with the nearest public right of way being some 330 metres to the south of the turbine, it is highly unlikely that there would be any adverse risk from ice throw; and a risk assessment could be required by condition;
  - (b) there is no policy requirement for a two mile buffer between turbines and dwellings;
  - (c) the author of the statement submitted on behalf of Campaign Against Turbines has prepared many statements for anti-turbine groups; he has no clear professional standing; assertions are unsupported and inaccurate; the appellant is not required to demonstrate need; shadow flicker cannot occur on open land; and the claims about impacts on the setting of the Moddershall Conservation Area are based on inaccurate viewpoint images;
  - (d) the appellant acknowledges that the turbine would have a significant impact on users of the nearest public footpath to the south; but such impacts would be of short duration and should not cause adverse harm to walkers; and
  - (e) concerns about ecology appear to flow from Natural England's recommended '50 metres bat stand-off' distance; the ecology appraisal was based on a 74 metres tip height turbine (which would have met the 'requirement') with the later introduction of a 77 metres candidate turbine; the matter could be resolved by a condition requiring a lower maximum height;
60. Whilst Planning Practice Guidance confirms that, as with other types of development, it is important that planning concerns of local communities are properly heard in matters that directly affect them, it reiterates the National Planning Policy Framework's signal that all communities have a responsibility to help increase the use and supply of green energy. Local opinion should be but one element when making a balanced assessment of all of the material planning considerations.

**Other matters**

61. The Committee minutes show that 2 Councillors had been lobbied by the applicant and an objector. As the landowner had known both of these members for a significant period of time, each one should have declared a personal, if not prejudicial, interest and declined to take part in the proceedings.

### **Conditions**

62. The appellant accepts, with one exception, the Council's suggested conditions. In this regard, it would be appropriate, and consistent with national guidance, for the noise condition to follow ETSU-R-97 criteria, as opposed to background noise levels, as the machine would be sufficiently far away from the nearest residential properties to achieve compliance.

### **The planning balance**

63. The appellant acknowledges that the proposed turbine may have certain conflicts with development plan policy, for example relating to the Green Belt and the impact on landscape quality. However, those conflicts would be limited in nature and extent; and they would be outweighed by the benefits of renewable energy and the economic benefits to the farming business.

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## **The case for Stafford Borough Council**

### **Introduction**

64. The development plan, at the point when the application was determined, was the Stafford Borough Local Plan 2001. This has now been replaced by The Plan for Stafford Borough 2011 – 2031.

### **Landscape and visual impact**

65. The landscape and visual impact appraisal submitted with the application was deficient in so far as: -
- (a) it lacked adequate detail on the likely effects of the development on public and visual amenity;
  - (b) it was poorly argued;
  - (c) it lacked summary tables for the assessment; and
  - (d) it made no reference to residual effects.
66. Given the above deficiencies it was not possible to gauge whether the proposal would meet the aims, set out in the development plan and the National Planning Policy Framework, for new development to respect and enhance its surroundings.

### **Green Belt**

67. The appeal site is located in the North Staffordshire Green Belt. Paragraph 91 of the National Planning Policy Framework indicates that elements of many renewable energy projects will comprise inappropriate development within the Green Belt; and developers will normally need to demonstrate that very special circumstances exist if projects are to proceed. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
68. Although the proposal would occupy a small footprint, the development would, when viewed as a whole, reduce the openness of its surroundings. In the absence of any claimed special circumstances, at application stage, the proposal would constitute inappropriate development.

### **Shadow flicker**

69. The shadow flicker zone of the proposed turbine would be 540 metres with potential effects on residential properties within 130 degrees either side of north. The nearest dwelling, The Drumbles, lies approximately 535 metres away with possible shadow flicker effects to the house and its garden. Intervening deciduous woodland would be unlikely to provide a substantial barrier all year round.
70. The appellant failed to undertake a proper analysis, prior to the submission of the application, and provided no satisfactory measures to mitigate impacts despite the requirements of Policy N3 and its specific reference to minimising shadow flicker. As such, the development could give rise to adverse living conditions.

### **Trees and ecology**

71. The route to the turbine, from the public highway, would entail the construction of a temporary access track which would pass close to trees the subject of a Tree Preservation Order. However, the appellant failed to submit an arboricultural impact assessment to support its claim that none of the trees would be affected by the project. Without such an assessment, it was not possible for the local planning authority to properly ascertain the likely impact of the track on the trees, their long term viability and the effect of any losses on the amenity of the area.

### **Heritage assets**

72. The proposed turbine, a tall, modern and alien feature, would be located less than 500 metres from the boundary of the Moddershall Valley Conservation Area and within 650 metres of Hayes House (a Grade II Listed Building).
73. It is highly likely that the proposal would be viewed against the backdrop of both heritage assets and could, potentially, adversely affect their respective settings. Without an appropriate heritage assessment, the appellant failed to demonstrate that the development would safeguard the settings of these assets.
74. The Council's reference to saved Policy E&D19 was justified, even though the appeal site lies outside the Conservation Area, in that it would be visible from the designated area. Moreover, successor policies N8(c) and N9, consistent with paragraph 132 of the National Planning policy Framework, seek to conserve the settings and views of, or from, heritage assets and rely on the submission of sufficient information for assessment.

### **Highway considerations**

75. The highway authority raised no objections on highway safety grounds subject to suggested conditions (abnormal load timing restrictions; submission and approval of details of off-site highway works; and reinstatement of temporary verge strengthening and removed boundary treatments). The construction period would be of short duration and subsequent maintenance would be limited and periodic.

### Noise

76. Although the Council's Environmental Health Officer (EHO) expressed reservations about the use of the ETSU-R-97 assessment methodology, and sought assessments based on site specific background noise levels, the former is recommended by government and it would be inappropriate to refuse planning permission on the basis of the EHO's comments.

### Written Ministerial Statement

77. The Plan for Stafford Borough, in Policy N3, is broadly supportive of renewable energy generation, subject to the consideration of site specific impacts. However, it does not identify particular areas as being suitable for wind energy generation; and the renewable energy opportunities map in the Plan merely identifies areas of 'sufficient' wind resource without implying acceptability for wind energy generation projects. In any event, the appeal site lies outside any of the identified areas.
78. It is considered that the proposal does not have community backing in that a significant number of representations (approximately 300 letters of objection), covering a number of concerns, were submitted before the receipt of the appeal. These coincide with the Council's objections on the grounds of landscape and visual impact; the effect on the setting of the Moddershall Valley Conservation Area; loss of Green Belt openness; shadow flicker; and effect on trees within a Tree Preservation Order.
79. On this basis, the proposal would be contrary to the transitional arrangements outlined in the Written Ministerial Statement and repeated in the revised Planning Practice Guidance (paragraph 014).

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### Written Representations

80. The officer's Committee Report records objections from: -
- (a) Stone Rural Parish Council: - site within the Moddershall Valley Conservation Area; visual intrusion; noise; inadequacy of public consultation;
  - (b) Stone Town Council: - impact on setting of heritage assets; Green Belt; adjacent to a site of biological importance; adjacent to a site of regional geological interests; and adjacent to a registered ancient woodland;
  - (c) Hilderstone Parish Council: - impact on unspoilt countryside; Conservation Area; noise; and doubt that it would bring direct financial or energy benefits to local communities; and
  - (d) the Deputy Leader of Staffordshire County Council reporting representations from several constituents.
81. It also summarises the content of other representations: -<sup>32</sup>
- (a) negative impact on Moddershall Conservation Area and historic buildings;
  - (b) application material contains contradictions, omissions, inaccuracies and speculation; poor public consultation;

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<sup>32</sup> Representations contained in two blue folders

- (c) inappropriate development in the Green Belt; contrary to development plan policies; potential cumulative effects with other proposals;
- (d) adverse impact on local residents and visitors; effect on tourism; loss of rural ambience, tranquillity, trees and hedgerows; adjacent to areas of biological importance, regional geological interest and ancient woodland; potential adverse effect on wildlife;
- (e) noise impacts and health effects; doubt about ETSU-R-97; possible vibration; impact on daylight and sunlight; strobing or flickering;
- (f) Human Rights with particular reference to the right to peaceful enjoyment of possessions, home and land;
- (g) distraction to road users; access route via A520 would be a problem; property devaluation; precedent; safety concerns;
- (h) County Council policy statement suggests separation of 2 miles from residential properties;
- (i) proposal is speculative and profit driven; power generation is unreliable; subsidies are out of proportion with employment created; no perceived local benefits; proposal does not represent farm diversification; and
- (j) views of the local community should prevail.

82. Supporting comments included: -

- (a) sustainable energy; need to reduce dependence on fossil fuels; well placed for connection to the grid;
- (b) little visual impact; no public footpaths near the site; proposal would not be audible; and
- (c) positive impact of turbine would outweigh any short term misgivings.

83. Representations at appeal stage, in addition to the points raised above, include: -<sup>33</sup>

- (a) further information about Communities Against Turbines, letters of representation and petition; and criticism of appellant in citing correspondence with the Council's Planning Officer (deceased) in relation to the handling of the planning application;
- (b) the area contains a number of designated heritage assets, in addition to those referred to by others, with numerous former mills which contribute to the Conservation Area;
- (c) no reference is provided to support the claimed wind speed at the site and the NOABL database is unreliable for estimating the true wind speed; this undermines the estimation of the likely power generation and overstates greenhouse gas savings; the benefits would be small and there is no over-riding need for a turbine of industrial proportions to be located at a site where there is little demand for the electricity;
- (d) the candidate turbine might be a 900kW turbine which is artificially restricted to 500kW in order to take advantage of the better financial deals available for 500kW output or less;
- (e) safety concerns surrounding ice throw;
- (f) potential pollution from surfacing of access track;

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<sup>33</sup> Contained in red folder attached to appeal file

- (g) no study of shadow throw (shadows on the ground), as opposed to shadow flicker, and the effect on farmers as they work neighbouring land;
  - (h) impact of aviation lighting on a dark night sky;
  - (i) no consideration of amplitude modulation; and a condition should be imposed to control it in the event of permission being granted; and
  - (j) criticism of the appellant's ecological appraisal in terms of content and transparency of data; and shortfall in 'bat stand-off distance' between the turbine and field boundary hedgerows.
84. A letter from Sir William Cash, Member of Parliament for Stone, includes the following points: -
- (a) reduction in the openness of the green belt and the absence of very special circumstances to outweigh the harm arising from inappropriate development;
  - (b) negative impact on heritage assets, wildlife, birds, bats and trees;
  - (c) the site is adjacent to an area of biological importance; adjacent to an area of regional geological interest; and alongside registered ancient woodland;
  - (d) negative visual impact for constituents in Stone, Cotwalton, Oulton Village, Kibblestone, Moddershall, Airdale Spinney and the adjacent hillside views and lower valley area;
  - (e) the very tall, overtly engineered, structure would be visually intrusive, isolated and conspicuous;
  - (f) the noise generated would be especially intrusive in this rural area;
  - (g) wind energy is unsustainable without massive subsidy; the subsidy goes to the land-owner and developer; the mechanism for payment increases the price of electricity to all consumers; and
  - (h) there would be no economic benefit for the local community and the devastation that the proposal would have on the local environment would far outweigh any perceived benefits.
85. Expression of support was also submitted, based on historical power generation in the valley; and the need to counter global warming.
86. The Ministry of Defence requests the imposition of a condition on any grant of permission requiring notification of the dates on which construction starts and ends; the maximum height of construction equipment; the latitude and longitude of the turbine to be erected; and a condition requiring the turbine to be fitted with visible 25 candela omni-directional red lighting at the highest practicable point.

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## **Inspector's Conclusions and Recommendation**

87. The references in brackets [*x*] are to the principal paragraphs in my report of the cases from where my conclusions are drawn.

### **The main considerations**

88. The main considerations are the effects of the proposal on: - the openness of the Green Belt; the character and appearance of the landscape; heritage assets; living conditions; trees and hedgerows; ecology; and whether any harm, by reason of inappropriateness, or any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development. [*2, 3*]

### **The openness of the Green Belt**

89. The proposed turbine would have a modest footprint. However, its height and blade sweep would provide the true representation of its scale and define the extent to which it would impinge on the openness of the Green Belt. The construction of a permanent access track would also combine to add to loss of openness. [*68*]
90. It is said that the proposed site lies at the extreme southern edge of the Green Belt and that the main purpose of the North Staffordshire Green Belt is to prevent the outward expansion of the Stoke-on-Trent conurbation. However, the proposed turbine, by its vary nature and scale, would represent encroachment into the countryside and associated loss of openness contrary to one of the five purposes of the Green Belt. The National Planning Policy Framework confirms that when considering any planning application substantial weight should be given to any harm to the Green Belt. [*38(d), 39, 67*]
91. Moreover, although it is claimed that agricultural permitted development rights would allow the construction of tall silos or agricultural barns on the appeal site, with a more marked, comparative, loss of openness, there is nothing to suggest that such development is intended. As such, mere conjecture, without foundation, provides no real basis to undermine the tangible harm that would arise from this, specific, development proposal. [*39*]

### **Landscape character and appearance**

92. The proposed turbine would be located on an area of rising and undulating plateau within the 'Settled Farmlands' Landscape Character Area. The local landscape consists of medium-scale agricultural fields enclosed by hedgerows with hedgerow trees. Woodland at Cotwalton Drumble Woods, to the immediate west, is a notable feature following a minor valley that extends west towards Oultoncross. The area to the north (in the Sandstone Hills and Heaths) has greater variation, albeit the more open areas share similar field patterns and mature field boundaries. In landscape character terms, the proposed turbine would not appear out of scale with the key elements of the landscape; it would not have a marked effect on tranquillity; and its effect overall would be minor. [*25, 26, 30, 31*]
93. Moving on to the appearance of the landscape, the landscape and visual appraisal acknowledges that the turbine would inevitably have an adverse effect within approximately one kilometre of the site as it would be a new

visual element resulting in a medium magnitude of change with a moderate landscape effect over an area of up to 500 metres. It is said that the effect would be reduced to the west where existing woodland would provide a degree of screening. [32]

94. Be that as it may, a public bridleway, some 850 metres to the north-east of the site, runs along markedly higher ground (Viewpoint B). Whilst outward views are precluded along part of its route, the proposed turbine would be seen from its more open sections as a striking vertical feature, emphasised by the movement of its blades, in a series of broad, attractive countryside vistas and longer distance views. The proposed turbine, even with the line of nearby pylons and transmission lines, and the presence of trees, would have a marked, adverse, effect on the appearance of the rural landscape. [29(b)]
95. A public footpath, across open fields, runs broadly to the south of the site for a distance of some 2.0 kilometres in the range of 0.3 – 1.0 kilometre from the proposed turbine (Viewpoint G). The machine would inevitably become the focus of views along the route with its dominant scale self-evident in comparison with nearby trees and pylons. Whilst hedgerows, trees and topography would often provide an element of foreground screening, the hub and blades of the turbine, in views from the south-west, would break the skyline afforded by the backdrop hillside with added emphasis to its impact. In views from the south-east, with a predominant setting of sky, the proposed turbine would also be perceived to have an imposing presence. [29(g), 34, 59(d)]
96. Although the visual impact of the proposed turbine would be localised, its adverse impact on the appearance of the countryside would be especially marked having particular regard to the proximity and extent of publicly accessible routes running from the south-west to the north-east of the site. Moderate weight attaches to this harm. [11, 27, 28, 29]

#### **Heritage assets**

##### *Moddershall Valley Conservation Area*

97. The Moddershall Valley Conservation Area is an extensive linear Conservation Area, running north-eastward from the direction of Stone, which embraces a series of water mills along the Scotch Brook. The designated area also includes the greater part of the small settlement of Moddershall. Topography and industrial archaeology, related to the early development of the pottery industry in Stoke-on-Trent, are important characteristics. [12, 47, 48, 72]
98. Views into and out of the Conservation Area are restricted by landform and tree cover. However, the Heritage Statement confirms that it is likely that the upper part of the proposed turbine would be visible above the skyline in views at the junction of Longton Road and Moddershall Lane with a clear view southward along the upper part of the valley alongside the A520. This forms part of the setting in which the heritage asset is appreciated. [49, 50, 73]
99. Whilst it is claimed that the turbine would not be so harmful as to adversely affect the special historical or architectural interest of the area, or its significance, the Conservation Area as a whole tends towards a timeless quality with a number of surviving mills, some converted to residential use. [49]

100. It is said that the turbine would represent a new industrial structure, harnessing a natural form of energy, which would reflect the legacy of the surviving water mills. However, the introduction of a skyline feature, and the blade movement of the proposed turbine, would form an anomalous and eye-catching element at odds with the characteristic pattern of development deep within the valley. On this basis, the prominence of the proposed turbine and the movement and distraction of its blades, even on a localised basis, would have a serious adverse effect on the setting of the designated area. [50]
101. Although the National Planning Policy Framework acknowledges that the significance of an asset can be harmed as a result of development in its setting, the degree of harm would be 'less than substantial'.

*Hayes House and former stables (Grade II Listed Buildings)*

102. Hayes House is an early to mid 19<sup>th</sup> century country residence, with former stables, set in generally enclosed grounds. Its orientation and aspect relate to topography and views; and landform and mature trees provide a substantial backdrop to the house and its garden with the appeal site beyond. There would be no direct visual association between the turbine and the house; and any glimpsed views from the garden of blade tips would have a limited impact on the outlook from the curtilage of the heritage assets. It follows that the impact of the proposed development on the significance of the designated assets would be 'less than substantial'. [13, 51, 52, 53]

*Interim conclusion*

103. The National Planning Policy Framework indicates that when considering the harm to an heritage asset, great weight should be given to the asset's conservation. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires, in considering whether to grant planning permission for development which affects a listed building or its setting, special regard shall be had to the desirability of preserving the building or its setting. Overall, moderate weight is to be carried into the planning balance to reflect the identified harm to the above heritage assets. [17]

**Living conditions**

104. The nearest dwellings to the east and south are located some 800 metres from the proposed site and views of the turbine would generally be oblique. In these circumstances the proposal would not have a significantly harmful effect on the living conditions of these residents. [10]
105. More direct views would be available from the elevated residential properties to the west in Oultoncross. Although the proposed turbine would be seen to have a striking skyline presence, it would be sufficiently distant so as not to have a marked effect on the outlook from these homes. [10, 33]
106. The Shadow Flicker Report identifies one property which would be susceptible to shadow flicker effects for up to 16.3 hours between October and February on a 'worst case' assessment. In reality the potential impacts would be substantially less than predicted and could be offset either by a condition requiring the submission, agreement and implementation of a protocol to mitigate effects or, alternatively, the use of marginally shorter blades to reduce the extent of the theoretical shadow flicker zone and thereby fall short of the relevant property. [41, 42, 69, 70]

107. The appellant has indicated that the latter would be acceptable, having particular regard to the need to reduce the overall height of the turbine to minimize potential impacts on bats as discussed in paragraph 115 below. [42]
108. There is no indication from the submitted material, in light of the guidance in ETSU-R-97, that noise would be an issue; and adequate safeguards could be secured by condition. [44, 76]
109. Overall, the absence of harm to living conditions is neutral in the overall planning balance.

#### **Trees and hedgerows**

110. The construction of the proposed temporary access track would entail the removal of approximately 10 metres of hedgerow on the southern side of the existing gateway on to Hayes Bank. This would have a very limited effect which could be remedied by requiring replacement planting following the delivery of the turbine components. The widening of a further gateway between fields, and being less visible from the road, would have minimal effect and could be mitigated in the same way. [45, 71]
111. As to tree loss, the locality is the subject of an extensive Tree Preservation Order. The proposal would include the felling of two Alders (identified as T5 and T6 in the appellant's Arboricultural Survey). The former is a remnant tree which has been severely damaged and the latter, with a severed crown, has no particular amenity value and beneficial replacement planting could be secured by condition. [14, 45]
112. In terms of the other tree or hedge works proposed, there would be no material harm to established landscape features. Working in accordance with an agreed construction management scheme would ensure protection to root zones and safeguard nesting birds. [45, 46]
113. On this basis, the effect of the access road on trees and hedges would also be neutral.

#### **Ecology**

114. The appellant's Ecological Appraisal expresses the view that, with the application of a 50 metres buffer from bat habitat features, impacts on bat populations at the local level are considered unlikely. However, the veracity of the appraisal is questioned and reference is made to greater stand-off distances for hedgerows containing mature trees. [59(e)]
115. Overall, the relevant evidence in support of the appeal is generally proportionate, and, even with less than desirable proximity to a mature tree, the resulting risks of bat mortality would appear to be low. In any event, as indicated by the appellant, the maximum blade height and tip length could be reduced to ensure compliance with the bat stand-off distance. Again, this is neutral in the overall balance. [59(e)]

#### **Other matters**

116. A number of representations question the efficiency of turbines, the need for further on-shore wind development, capacity and the reliance on the NOABL database for wind speeds at the site. However, the Government's

commitment to renewable energy generation is set out in the National Planning Policy Framework. [23(a), 81, 83]

117. It is further suggested that the candidate turbine is available either as a 500kW (as proposed) or 900kW machine; with the former artificially restricted in order to take advantage of better financial incentives. The potential return for the operator is not a material consideration, and the proposal is to be determined on an overall balance related to the level of harm and the scale of the public benefit in securing renewable energy. However, it is acknowledged that the choice of machine might be of special relevance where there is a particularly fine planning judgement to be made. [83]
118. Reference is made to the effects of wind turbines on human health, including sleep disturbance and mental well-being. However, wind turbines are a mature technology and operate across the country and, sometimes, in similar proximity to residential properties. In the absence of anything more than generalised concerns, there is nothing of sufficient substance to merit material weight against the proposal. [81]
119. Concerns about ice throw appear unfounded in that the proposed turbine would be some distance from public routes. The potential for impurities to leach into watercourses arising from the construction of the access track could be minimised through an approved method statement. The impact of aviation lighting on a dark night sky would be minimal; and potential effects on television reception could be monitored and remedied through an agreed protocol. There is nothing to support the views that the proposal would have an adverse effect on tourism and the local economy; and there is no policy basis to require a minimum separation distance from residential properties. Speculation about the shadowing of neighbouring farmland has not been substantiated. [43, 59(a)(b)(c), 81, 83]
120. Construction traffic using country roads is likely to be of limited duration and not of disproportionate impact in light of the traffic generation associated with the construction of a single turbine; and on-going maintenance traffic is unlikely to be anything more than minimal. In terms of alleged driver distraction, wind turbines have, over a significant period of years, achieved familiarity close to significantly busier roads without any apparent adverse effects. [54, 55, 56, 75, 80]
121. In the representations, it was claimed that the proposal would, if allowed, be contrary to the Human Rights Act, in relation to protection and enjoyment of property. I do not consider this argument to be well-founded as the proposed development would not cause unacceptable harm to the living conditions of any dwelling. Thus, the degree of interference that would be caused would be insufficient to give rise to a violation of rights under Article 1 of the First Protocol. [81 (f)]
122. None of the above tells against the proposal.

#### **The benefits**

123. It is said that the proposed turbine would generate energy from a renewable source amounting to approximately 1.1 million kWh per year which would be the equivalent of providing electricity to 265 homes. Moreover, it would contribute to national renewable energy targets and address climate change by

offsetting some 475 tonnes of carbon dioxide per year. Although the above figures are a product of estimated output, which is questioned by others, the National Planning Policy Framework confirms that even small-scale projects provide a valuable contribution to cutting greenhouse emissions. This merits significant weight in favour of the proposal. [36, 79, 85]

124. Further, in support, it is claimed that the project would represent appropriate farm diversification leading to a reduction in farming costs for the landowner. As such it would be 'fundamental to the future of the farm' by providing a regular income stream for a family farm in its sixth generation; to preserve the land and its buildings; and to continue to farm in an environmentally sensitive manner. [37, 38]
125. However, none of these aspirations are quantified in a meaningful manner; there is no evidence relating to the viability of the holding, the importance or otherwise of the funds likely to be generated by the appeal proposal, or their application. No weight attaches. [37, 38]

#### Conditions

126. The conditions sought by the Council, in the event of the appeal being allowed, are set out in Annex A to this report and form the basis for my consideration as set out below. I have reviewed, supplemented and reworded these, as necessary, for clarity and precision. These are set out in Annex B; and the revised condition numbers forming part of this schedule are set out as **['Condition X']**.
127. Condition 1 specifies the standard time period within which the development is to be commenced **[Condition 1]**. Whilst it is important to identify the approved drawing(s), in condition 2, for the avoidance of doubt and in the interests of proper planning, it is not necessary to include all of the documents forming part of the original application, particularly as some of those were supplemented by later information **[Condition 2]**.
128. Condition 3 relates to aviation safety but the wording of the conditions sought by the Ministry of Defence, in correspondence associated with the appeal, are generally to be preferred with the addition of a requirement to ensure that the aviation lighting is provided and retained for the duration of the development. **[Conditions 8 and 9]**. [86]
129. Condition 4 requiring details of any future monitoring/anemometry mast has no apparent justification in that any such structure would require a separate application for planning permission.
130. The removal of the turbine, when it ceases to generate electricity, condition 5, is necessary in the interests of visual amenity **[Condition 3]**. The requirement, in condition 6, for a baseline television and radio reception study, and any resultant mitigation, would be a necessary precaution as, despite a potentially low risk, there could be no certainty of effects until the turbine has been erected and become operational **[Condition 7]**. [43]
131. The condition to limit noise, condition 7, restricting noise emissions to no more than 5dB(A) above background levels runs counter to the Planning Officer's assessment in the Committee Report and acknowledgement that the simplified ETSU-R-97 condition would be appropriate **[Condition 14]**. Current practice is not to assign a condition to deal with excess or other amplitude modulation. [44, 62, 81, 83]

132. Condition 8 appropriately requires agreement on the colour finish of the turbine and the surfacing of the permanent access track; and it is necessary to add a condition to limit the height of the turbine so as to rule out potential shadow flicker effects and to minimise impacts on bats **[Conditions 5 and 6]**. *[59(e)]*
133. Conditions 9, 10 and 11 are also necessary to protect badgers, birds and trees **[Conditions 10, 11 and 12]**. The removal of the temporary access track, condition 12; and the provision and reinstatement of temporary highway works, condition 13, are also appropriate **[Conditions 4 and 13]**. *[75]*
134. The comments of the parties on the redrafted and additional conditions have not been sought.

#### **The planning balance**

135. The proposed wind turbine would be inappropriate development in the Green Belt, which is by definition harmful, and further harm would arise as a result of loss of openness. Substantial weight is to be given to the harm to the Green Belt. The harm to the Green Belt would be compounded by the impact of the proposal on the appearance of the countryside and its effect on designated heritage assets. These also coincide with some of the matters raised by the local community. The failure to address these runs counter to the transitional arrangements set out in the Written Ministerial Statement to which significant weight also attaches. *[5, 6, 60, 77, 78, 79, 80, 81, 83, 84]*
136. There would be no material adverse impacts on living conditions; trees and hedgerows; ecology; or on any other matters raised. Whilst the appellant cites these as benefits, such matters are neutral in the overall planning balance. *[22]*
137. However, the generation of renewable energy would be a benefit which attracts significant weight. On the other hand, the asserted benefits of farm diversification lack transparent justification. Overall, the benefits arising from the proposal would fall well short of clearly outweighing the harm to the Green Belt, the landscape and heritage assets. Accordingly, the very special circumstances necessary to justify the development do not exist. *[18, 19, 20, 21, 22, 23, 63]*
138. In reaching this conclusion I have noted the references to other appeal decisions where Inspectors have found the benefits of renewable energy to outweigh the harm to the Green Belt. In the first, weight was given to the economic issues of a rural business and, in the second, the weight given to the renewable energy benefits related to a wind farm comprising 5 turbines. It is clear that those cases turned on their site specific and development specific considerations, as does this proposal, and that no meaningful direct comparison can be drawn. *[40]*
139. Accordingly, the proposal would conflict with Policies N3, N8 and N9 of The Plan for Stafford Borough in landscape and heritage terms and it would be at odds with Spatial Principle 1, in relation to the environmental role of sustainable development. *[15, 16, 17]*
140. Whilst Spatial Principle 6 has been drawn to attention, with particular reference to promoting a sustainable rural economy, the benefits of farm diversification have not been made out in a compelling manner. Overall, the proposal would be in conflict with the development plan taken as a whole and also with the National Planning Policy Framework when read in the same way. *[16]*

### **Recommendation**

141. I recommend that the appeal be dismissed.

142. However, in the event that the Secretary of State disagrees and allows the appeal, I recommend that the conditions at Annex B be applied.

*David MH Rose*

Inspector

## **Annex A: List of conditions supplied by the local planning authority**

1. The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which this permission is granted.
2. The development shall be implemented in full accordance with the plans and documents forming part of the original planning application unless otherwise required by conditions attached to this permission.
3. The turbine shall be fitted with a 25 candelas omni-directional red light or infrared aviation lighting with an optimised flash pattern of 60 flashes per minute of 200ms to 500ms duration at the highest practicable point.
4. Should a wind monitoring/anemometry mast be erected the Local Planning Authority shall be notified in writing by the applicant/developer of the date of its installation prior to its erection and the monitoring mast shall be in place for a maximum period of 24 months.
5. The turbine and its associated infrastructure shall be removed from the site, and the land restored in accordance with details to be agreed in writing with the Local Planning Authority, within 6 months of the date of it ceasing to be used for the generation of electricity. The site operator/owner shall give 28 days prior notice in writing to the Local Planning Authority of the commencement of decommissioning works.
6. No development shall begin until a baseline domestic television and radio reception study in the area has been undertaken by a qualified television and domestic radio engineer and submitted to the Local Planning Authority. A mitigation scheme setting out details of works necessary to mitigate any adverse effects to domestic television and radio signals in the area caused by the development shall also be submitted to and approved in writing by the Local Planning Authority before development begins. The mitigation scheme shall include provision for investigating and dealing with any claim by any person for domestic loss or interference at their household within 24 months of the final commissioning of the turbine, and any mitigation works must be carried out in accordance with the approved mitigation scheme.
7. The level of noise emissions generated by the wind turbine shall be no more than 5dB(A) above the background noise level at the nearest noise sensitive property.
8. Development shall not commence until details of the colour finish of the column, hub and rotors of the turbine, and the means of surfacing the permanent access track, have been submitted to, and approved in writing by, the Local Planning Authority. The development shall be carried out in accordance with the approved details and shall thereafter be satisfactorily retained at all times.
9. Development shall not commence until a survey has been undertaken to determine levels of badger activity on, and within 50 metres of, the site of the proposed works. The survey shall identify the degree to which the proposed development is likely to impact upon badgers and shall set out appropriate mitigation measures. Those measures, and the measures set

out in ecological report number 13-HMP-044 prepared by avian ecology, shall be completed prior to the development being first brought into use unless otherwise agreed in writing by the Local Planning Authority.

10. No works shall be undertaken within the bird nesting season (March to August) unless the applicants have first submitted a method statement, designed to demonstrate how disturbance to nesting birds will be avoided, and this has been approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved details.
11. Development shall not commence until an Arboricultural Method Statement (AMS) has been submitted to, and approved in writing by, the Local Planning Authority. This shall include details of the impact of the development upon the Root Protection Area (RPA) of any retained trees, hedgerows or shrubs and shall detail how these are to be adequately protected during the construction works. The AMS shall also make provision for the use of no-dig construction/surfacing solutions within the RPA's of retained trees where appropriate.
12. Within twelve months of the completion of the development the temporary access track shall be removed and landscaped, and the access point to that track closed off, in accordance with details which shall first have been agreed in writing with the Local Planning Authority. Where the agreed works involve the planting of new trees, hedges or shrubs, and where these become seriously damaged or die within five years of being planted, they shall be replaced within the next available planting season with specimens of the same species and size unless otherwise agreed in writing by the Local Planning Authority.
13. Development shall not commence until details of:-
  - a) all proposed off-site highway works,
  - b) the proposed measures for re-instating the temporary vehicular access, and
  - c) the proposed timing of all abnormal load visits to the site during construction, have been submitted to, and approved in writing by, the Local Planning Authority. Unless otherwise agreed in writing by the Local Planning Authority, the approved highway works shall be implemented in full before the approved development is first brought into use, the re-instatement measures shall be carried out in accordance with the timescale specified in condition 12 above, and visits by abnormal loads to the site shall be limited solely to between the agreed times.

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## **Annex B: Schedule of conditions recommended by the Inspector in the event of the Secretary of State deciding to allow the appeal**

### **Schedule of Planning Conditions (1 – 14)**

#### **Implementation**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

#### **Approved plans**

- 2) The development hereby permitted shall be carried out in accordance with the approved plan Drawing No. M5289-01: Date 8.10.13 unless otherwise required by conditions attached to this permission.

#### **Site restoration**

- 3) The turbine and its associated infrastructure shall be removed from the site, and the land restored in accordance with details to be agreed in writing with the Local Planning Authority, within 6 months of the date of it ceasing to be used for the generation of electricity. The site operator/owner shall give 28 days prior notice in writing to the Local Planning Authority of the commencement of decommissioning works.
- 4) Within a period of 12 months following the commissioning of the turbine, the temporary access track shall be removed and landscaped, and the access point to that track closed, in accordance with details which have previously been submitted to and approved in writing with the Local Planning Authority. Where the agreed works involve the planting of new trees, hedges or shrubs, and where these become seriously damaged or die within five years of being planted, they shall be replaced within the next available planting season with specimens of the same species and size unless otherwise agreed in writing by the Local Planning Authority.

#### **Height and appearance of turbine**

- 5) The overall height of the wind turbine shall not exceed 74 metres to the tip of the blades when the blade is in the vertical position, as measured from existing ground level immediately adjacent to the wind turbine base.
- 6) Development shall not commence until details of the colour finish of the column, hub and rotors of the turbine, and the means of surfacing the permanent access track, have been submitted to, and approved in writing by, the Local Planning Authority. The development shall be carried out in accordance with the approved details and shall thereafter be retained as such.

#### **Television reception**

- 7) No development shall begin until a baseline domestic television and radio reception study in the area has been undertaken by a qualified television and domestic radio engineer and submitted to the Local Planning Authority. A mitigation scheme setting out details of works necessary to mitigate any adverse effects to domestic television and radio signals in the area caused by the development shall also be submitted to and approved in writing by the Local Planning Authority before development begins. The mitigation scheme shall include provision for investigating and dealing with any claim by any person for domestic loss or interference at their household within 24 months of the final commissioning of the turbine, and any mitigation works shall be carried out in accordance with the approved mitigation scheme.

### **Aviation lighting and notification**

- 8) The turbine shall, at the time of erection, be fitted with visible 25 candela omni-directional red lighting at the highest practicable point which shall thereafter remain operational for the duration of the development.
- 9) Not later than 14 days before the commencement of development, written notification shall be given to the local planning authority, for the purposes of informing the Ministry of Defence, of the intended commencement date and the duration of the works; the maximum height of construction equipment; and confirmation of the latitude and longitude of the turbine position.

### **Ecology and trees**

- 10) Development shall not commence until a survey has been undertaken to determine levels of badger activity on, and within 50 metres of, the site of the proposed works. The survey shall identify the degree to which the proposed development is likely to impact on badgers and shall set out appropriate mitigation measures. Those measures, and the measures set out in ecological report number 13-HMP-044 prepared by Avian Ecology, shall be completed in accordance with a timetable previously submitted to and approved in writing by the Local Planning Authority.
- 11) No works shall be undertaken within the bird nesting season (1 March to 31 August) unless a method statement, designed to demonstrate how disturbance to nesting birds would be avoided, has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved details.
- 12) Development shall not commence until an Arboricultural Method Statement (AMS) has been submitted to, and approved in writing by, the Local Planning Authority. This shall include details of the impact of the development on the Root Protection Area (RPA) of any retained trees, hedgerows or shrubs and shall detail how these are to be adequately protected during construction works. The AMS shall also make provision for the use of no-dig construction/surfacing solutions within the RPA's of retained trees where appropriate.

### **Highway works**

- 13) Development shall not commence until details of:
  - a) all proposed off-site highway works;
  - b) the proposed measures for re-instating the temporary vehicular access; and
  - c) the proposed timing of all abnormal load visits to the site during constructionhave been submitted to, and approved in writing by, the Local Planning Authority. Unless otherwise agreed in writing by the Local Planning Authority, the approved highway works shall be implemented in full before the approved development is commenced; the re-instatement measures shall be carried out in accordance with the timescale specified in condition 4 above; and visits by abnormal loads to the site shall be limited to the agreed times.

**Noise**

- 14) The level of noise emissions shall not exceed an  $L_{A90,10\text{-minute}}$  of 35dB(A), up to wind speeds of 10m/s and measured at 10 metres height, at any existing residential property.

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## **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 for permission 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**

With the permission of the High Court 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. 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 for leave under this section must be made within six weeks from the date of the decision.

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### **SECTION 3: AWARDS OF COSTS**

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### **SECTION 4: 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 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.