



Department for  
Communities and  
Local Government

Mr Richard Fearnall  
Fine Energy Ltd  
212 Zellig Building  
The Custard Factory  
Birmingham  
B9 4AU

Our Ref: APP/G0908/A/14/2220065

5 July 2016

Dear Mr Fearnall

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY FINE ENERGY LTD  
AT GRANGE GRASSINGS, GILCRUX, WIGTON, CUMBRIA, CA7 2DU  
APPLICATION REFERENCE 2/2013/0797**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Richard Clegg BA(Hons) DMS MRTPI, who made a site visit on 4 March 2015 into your appeal against the decision of Allerdale Borough Council ('the Council') to refuse planning permission for a 500 kw wind turbine and associated works at Grange Grassings, Gilcrux, Wigton, Cumbria CA7 2DU in accordance with application reference 2/2013/0797.
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 which raise important or novel issues of development control and/or legal difficulties. The Inspector incorrectly notes the date when the appeal was recovered as being 30 September 2013 in IR1.

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

3. The Inspector recommended that the appeal be allowed and planning permission granted subject to conditions. For the reasons given below, the Secretary of State disagrees with the Inspector's conclusions and recommendation. Therefore, the Secretary of State 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.

## **Policy and Statutory Considerations**

4. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan consists of The Allerdale Local Plan (Part 1) 'Strategic and Development Management Policies' which was adopted in July 2014 after the refusal of planning permission. The Secretary of State considers that the development plan policies of most relevance to this appeal are those identified by the Inspector at IR11.
5. Other material considerations which the Secretary of State has taken into account include: the National Planning Policy Framework, March 2012 ('the Framework'); the National Planning Practice Guidance ('the guidance') and the Written Ministerial Statement ('WMS') of 18 June 2015 which concerns wind farms. This is the planning policy and guidance referred to by the Inspector in IR13. Like the Inspector (IR12), he has also taken account of the Cumbria Wind Energy Supplementary Planning Document.
6. An environmental statement ('ES') accompanied the planning application. The adequacy of the information contained in the ES was not disputed by the Council other than in respect of cumulative noise. A supplementary noise report addressed that concern. The Inspector was therefore satisfied that the requirements of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 have been met (IR5). The Secretary of State has taken the ES and the supplementary noise report into account when considering this proposal.

## **Main Issues**

7. The Secretary of State considers that the main issues in this case are those identified by the Inspector at IR21.

### **Character and Appearance**

8. The Secretary of State has noted the Inspector's considerations at IR22, and agrees that the turbine would cause limited harm to the landscape.
9. The Secretary of State has carefully considered the Inspector's assessment of cumulative impact at IR23-30. However, he does not agree with his conclusion that there is no adverse cumulative impact. He notes (IR24) that the additional turbine would extend the group at Tallentire when viewed from the A596 corridor. As such, while he does not find that the cumulative impact is substantial, he concludes that there is a minor adverse impact, which would conflict with Policy S32 (b).
10. The Secretary of State agrees with the Inspector that the turbine would not appear overbearing or oppressive to Tallentire Farm located 600m away and, given the greater distance of separation to other dwellings in the surrounding area, there would not be an adverse effect on the visual amenity of occupiers (IR28).

11. The Secretary of State agrees with the Inspector that as the proposal would not be entirely compatible with the character of the surrounding area and would impinge to a degree on visual amenity, there would be an element of conflict with local Policy S32(b) (IR30).

#### Other Considerations

12. In common with the Inspector (IR31), the Secretary of State attaches significant weight to the benefits of the proposal. The Secretary of State notes that the turbine would provide electricity to the local network from a renewable source. He also notes that it would provide an income to Grange Grassings Farm and that this diversification would assist in maintaining the viability of the farm. The Secretary of State agrees with the Inspector that these benefits are consistent with the provisions of the NPPF to support a transition to a low carbon future and to promote the development of agriculture, and that this carries significant weight.
13. The Secretary of State notes the Inspector's comments in IR32 where he states that following the receipt of additional information, the Council is not pursuing an objection in respect of noise. The Secretary of State shares the Inspector's view that there is no substantive evidence to indicate that noise would harm the living conditions of local residents.

#### Written Ministerial Statement

14. The Secretary of State also takes account of, and gives substantial weight to, the WMS of 18 June 2015. As the appeal proposal predates the WMS and the development plan does not identify suitable sites, the transitional provision within the WMS is applicable. This states that *'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'*.
15. The Secretary of State notes that affected local communities have raised concerns in relation to character and appearance and several other matters.
16. It is the Secretary of State's view that the siting of the proposed turbine will result in harm to the landscape and give rise to cumulative impacts when viewed with existing wind turbines in the vicinity. While he finds that these impacts are limited, he concludes that they are such that the planning impacts identified by affected local communities have not been addressed in the circumstances of this case. Accordingly, he considers that the transitional provision within the WMS has not been satisfied, and he gives substantial weight to this conflict.

#### **Conclusions**

17. The Secretary of State has given very careful consideration to the Inspector's concluding remarks at IR 34-36.

18. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. For the reasons set out in this letter, the Secretary of State concludes that while the appeal proposal would not conflict with policies S19, S32(e) or S33, it would conflict with policy S32(b), and he finds greater conflict than the Inspector, given his conclusions on cumulative impact. The Secretary of State concludes that this conflict, and the conflict with the WMS, would be at odds with the environmental dimension to sustainable development. As the achievement of sustainable development is central to the Local Plan and the Framework, the proposed wind turbine would not accord with the development plan when read as a whole.
19. The Secretary of State has also considered whether there are any material considerations justifying determining the case other than in accordance with the development plan.
20. The Secretary of State accepts that the turbine would make a contribution to the attainment of national and local renewable energy policy objectives and targets. He also notes that the scheme would allow Grange Grassings Farm to diversify which would assist in securing its viability in the future, and he gives significant weight to this.
21. However, the Secretary of State has taken account of paragraph 5-007 of the PPG which states that *'the need for renewable or low carbon energy does not automatically override environmental protections'*. He has therefore weighed the harm arising from cumulative impact and harm to landscape character and appearance against the proposal, affording them moderate weight. He has also weighed this conflict with the provisions of the WMS, to which he affords substantial weight.
22. Overall, the Secretary of State concludes that the balance is against granting planning permission for the wind turbine. He considers that the harm is not outweighed by the benefits of the proposal and the material considerations in this case do not justify determining the appeal other than in accordance with the development plan.
23. Given this, the Secretary of State does not agree with the Inspector's overall recommendation that the appeal should be allowed.

### **Formal Decision**

24. For the reasons given above, the Secretary of State does not allow your appeal and refuses planning permission for a 500 kw wind turbine and associated works at Grange Grassings, Gilcrux, Wigton, Cumbria CA7 2DU in accordance with application reference 2/2013/0797 dated 23 October 2013.

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

25. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within six weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

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

Yours sincerely

*Phil Barber*

Authorised by the Secretary of State to sign in that behalf

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

**by Richard Clegg BA(Hons) DMS MRTPI**

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

**Date: 23 November 2015**

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**TOWN AND COUNTRY PLANNING ACT 1990**

**ALLERDALE BOROUGH COUNCIL**

**APPEAL BY**

**FINE ENERGY LTD**

Site visit made on 4 March 2015

Grange Grassings, Gilcrux, Wigton, CA7 2DU

File Ref: APP/G0908/A/14/2220065

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**File Ref: APP/G0908/A/14/2220065**

**Grange Grassings, Gilcrux, Wigton, CA7 2DU**

- 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 Fine Energy Ltd against the decision of Allerdale Borough Council.
- The application Ref 2/2013/0797, dated 23 October 2013, was refused by notice dated 19 March 2014.
- The development proposed is the erection of a 500kW wind turbine with up to a 77m blade tip height and associated ancillary development.

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

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**Procedural Matters**

1. The appeal was recovered for a decision by the Secretary of State for Communities and Local Government by a direction dated 30 September 2013, as it relates to proposals which raise important or novel issues of development control and/ or legal difficulties.
2. Planning permission was refused for the following reasons:
  1. *Insufficient detail has been provided with regard to a cumulative noise assessment on the potential impact of the proposed turbine with the existing Tallentire Hill windfarm and any harm (to) the amenity of properties in the locality of the site contrary to saved Policy EN6 of the Allerdale Local Plan, paragraphs 7, 14, 17 and 109 of the National Planning Policy Framework March 2012, Planning Practice Guidance for Renewable and Low Carbon Energy July 2013, and (the) Ministerial Statement dated 6 June 2013, and Policy S32 of the draft Allerdale Local Plan (Part 1).*
  2. *The Local Planning Authority considers the proposed turbine by virtue of its contrasting site, size and contour level in combination with the existing Tallentire windfarm would result in adverse combined cumulative impacts on the landscape when viewed from the north and west including the A596 (as typified but not exclusively restricted to the application viewpoint 5) and also adverse cumulative sequential landscape impacts along the transport corridors of the A595 and the A66 (as typified but not exclusively restricted to the application's viewpoints 4 & 6). The proposal is therefore contrary to saved Policies EN19 and EN25 of the Allerdale Local Plan, paragraphs 7, 14, 17, 96, 97 and 109 of the National Planning Policy Framework March 2012, Planning Practice Guidance for Renewable and Low Carbon Energy July 2013, and (the) Ministerial Statement dated 6 June 2013, and Policy S32 of the draft Allerdale Local Plan (Part 1).*
3. The Council's reasons for refusal refer to policies in the Allerdale Local Plan, which was adopted in 1999. Since the refusal of planning permission, the Council has adopted the Allerdale Local Plan (Part 1) – Strategic and Development Management Policies (the 2014 Local Plan), policies of which are now included in the Development Plan<sup>1</sup>. All of the policies from the 1999 Local Plan referred to in the reasons for refusal have been replaced by policies in the 2014 Local Plan. In

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<sup>1</sup> The Council's supplementary statement (Document 11) refers to the adoption of the Local Plan (2014) and gives the text of certain policies.

considering this appeal, I have had regard to current policies of the Development Plan. The Planning Practice Guidance for Renewable and Low Carbon Energy of July 2013 was cancelled when the Planning Practice Guidance Suite was issued in 2014.

4. The first reason for refusal referred to a lack of sufficient detail in respect of a cumulative noise assessment of the proposal and Tallentire windfarm. Subsequently, the Appellant has submitted a *Supplement to the Noise Report* (Document 10), and the Council has advised that it is satisfied with the findings, and that the amenity of nearby residents would remain at an acceptable level. I have no reason to take a different view.
5. An environmental statement accompanied the planning application (Documents 7-9). Volume 2 of the Environmental Statement includes a Noise Study and Cumulative Noise Study (Document 9, Appendix 7). The adequacy of the information contained in the environmental statement was not disputed by the Council other than in respect of cumulative noise, and a supplementary noise report has addressed that concern (above, para 4). I am satisfied that the requirements of The Town and Country Planning (Environmental Impact Assessment) Regulations 2011 have been met. I have taken the environmental statement and the supplementary noise report into account in considering this proposal.
6. On 18 June 2015, the Secretary of State issued a Written Statement entitled *Local planning* concerning the considerations to be applied to wind energy development proposals, and certain consequential changes were made to the national Planning Practice Guidance (PPG). Where, as in this case, a valid application had already been submitted and the Development Plan does not identify suitable sites for wind energy development, the Written Ministerial Statement (2015 WMS) sets out a transitional provision whereby a proposal may be found acceptable, if, following consultation, it has addressed the planning impacts identified by affected local communities and therefore has their backing. The main parties have been given the opportunity to comment on the implications of the 2015 WMS for their respective cases. Both the Council and the Appellant have submitted representations which I have taken into account in considering this appeal (Documents 15 & 16).
7. This report contains a description of the site and its surroundings, an explanation of the proposal, details of relevant planning policies, the gist of the submissions made in writing, followed by my appraisal and recommendation. A list of documents is appended.

### **The Site and Surroundings**

8. The appeal site is in the countryside and the main part of the site is about 1.8km to the south-east of the small settlement of Gilcrux, and about 1.5km to the south of the road between Gilcrux and Arkleby. Grange Grassings farmstead is reached by a track from this road, and the turbine would be erected about 0.4km to the south-west of the farmstead within a field and between two blocks of woodland.
9. This is an elevated position above lower-lying land extending to the coast to the north-west, and the land continues to rise beyond the site to the south and south-west. To the north-west is the Solway Coast Area of Outstanding Natural



Beauty (AONB) and the Lake District National Park extends up to the A595 to the south of the appeal site. There are several turbine developments in this part of Cumbria, notably the Tallentire windfarm, comprising two clusters of three turbines each, which is situated a short distance to the west of the appeal site.

## **The Proposal**

10. The proposal is for the erection of a single wind turbine, with a hub height of about 50m and a maximum blade tip height of 77m (Plan C). An area of hardstanding and a sub-station would also be constructed at the appeal site. Access to the site would be along the existing track to Grange Grassings, which would be extended from the farmstead to the appeal site. It is proposed to widen the junction of the access track with the Gilcrux - Arkleby road to enable abnormal load vehicles to reach the site<sup>2</sup>. The turbine would have a rated capacity of 500Kw: it would provide electricity to the local network and an income to Grange Grassings Farm.

## **Planning Policy and Guidance**

11. Policy S19 of the 2014 Local Plan encourages the development of renewable energy and low carbon technologies. A positive view of proposals should be taken where, amongst other matters, there would not be a significant adverse impact on the location, in relation to visual impact and impact on the character and sensitivity of the surrounding landscape, and potential benefits to the local economy and community, including agriculture, are considered. Policy S32 supports proposals which would make a positive contribution to the area by maintaining or improving the quality of the environment and amenity. The considerations which indicate that proposals should not be supported include where they would have a detrimental effect on the local area in terms of visual amenity, distinctive character or environmental quality, or cause a significant adverse environmental impact in relation to landscape or pollution to the water environment. The landscape character and local distinctiveness of the Plan Area should be protected, conserved, and wherever possible enhanced under Policy S33.
12. The Cumbria Wind Energy Supplementary Planning Document (SPD – Document 4) includes a landscape capacity assessment. The appeal site lies within the higher limestone landscape type, which is assessed as having an overall low/moderate capacity to accommodate turbine development. Up to a small group of 3-5 turbines, and exceptionally a large group of 6-9 turbines in blander parts of the landscape type, are referred to as an appropriate scale of development.
13. I have had regard to national planning policy and guidance, in particular that contained in the National Planning Policy Framework (NPPF), the PPG, and the 2015 WMS. Matters addressed in the 2013 WMS, which was referred to in the reasons for refusal, are covered in the PPG.

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<sup>2</sup> Plans showing the junction widening and associated visibility splay are in Appendix D to the Abnormal Load Route Access Report (Document 9, Appendix 8)

## **The Case for the Appellant** (Documents 5, 12 and 16)

*The material points are:*

14. In those instances where there is evidence of visual impact, existing turbines can already be seen from the roads in question. From viewpoint 5 near the A596 the perceived height of the turbine would be similar to that of those at Tallentire, and its position would reflect the separation distances of the two outer turbines. The proposed turbine would be seen as an extension to the existing group. From further away there would be limited visual impact, as vegetation and scattered built form restrict open views. From viewpoints 4, 6, 12 and 15 on the A595, the proposed turbine would also be seen in conjunction with the Tallentire wind farm. There would be a short stretch of road from where the upper part of the turbine would be visible alone, but given the close spacing to the Tallentire wind farm, the cumulative sequential effect would be barely noticeable. If there are any views from the A66, the development would be visible with the Tallentire turbines and it would add marginally to the cumulative effect. Having regard to Policies S19 and S32 of the 2014 Local Plan, there would not be a significant adverse effect on the landscape. Aviation lights are already a feature of the night sky in the area.
15. It is considered that insufficient attention has been paid to the positive impact of the proposal. The additional income would benefit the farm, and the electricity would be used by local businesses and residents, reducing demand on the national network. The relevant planning impacts highlighted by the local communities have been considered as part of the assessment of the application: affected local communities should, therefore, be deemed to back the proposal.

## **The Case for the Council** (Documents 3, 11 and 15)

*The material points are:*

16. The benefits of renewable energy development are not disputed, but Ministerial guidance has highlighted that these do not automatically override environmental concern. By virtue of the cumulative effect with Tallentire windfarm, the turbine would be visible from a considerable distance, especially from the north and west and including from the A596. There would also be significant adverse sequential impacts along the A595 and the A66. The degree of visual harm to the landscape would be significant, and this would not be outweighed by the benefits of the scheme. Policies S19, S32 and S33 of the 2014 Local Plan are relevant and reinforce the second reason for refusal. Tallentire Hill Farm is the dwelling where visual amenity is most likely to be affected, but given the presence of tree cover, it is not considered that the turbine would result in an unduly overbearing and oppressive outlook. Appeals concerning turbines have been dismissed at Broughton Lodge and Great Orton.
17. The transitional provision of the WMS explains that local planning authorities can find a wind energy proposal acceptable if it has addressed the planning impacts identified by local communities and therefore has their backing. Objections have been submitted on a range of grounds by parish councils and individuals, and the planning impacts highlighted have been considered as part of the assessment of the proposal. In particular the cumulative landscape impacts raised by the community are significant and cannot be overcome: therefore the development would not have the community's backing.

## Written Representations

*The material points are:*

18. In response to the appeal notification, the Ministry of Defence confirmed that it had no objection to the proposal, but requested that the turbine be fitted with aviation lighting, and that it be notified of the date of construction and the height and position of the turbine (Document 2).
19. At application stage<sup>3</sup> objections were made by Gilcrux, Bridekirk and Blindrake Parish Councils (PCs) on the ground of cumulative impact. Gilcrux PC also referred to flood risk and shadow flicker, and Bridekirk PC raised concerns about television reception, flood risk, the water environment, and the living conditions of local residents. Twenty seven letters of objection from local residents referred to similar matters and also expressed concern about the effect on birds. The Friends of the Lake District objected on the grounds of the effect on landscape character, the effect on the setting of the National Park and the AONB, and cumulative landscape and visual impact. Friends of Rural Cumbria's Environment objected due to the effect on the character of the landscape, cumulative impact, the effect on residential amenity, policy conflict, and concerns about the information provided including that on hydrology. The Lake District National Park Authority had no objection to the proposal, but the Solway Rural Initiative objected because of the effect on views into and out of the AONB and the cumulative effect of the proposal.

## Conditions

20. The Council submitted a list of suggested conditions to which the Appellant had no objections (Documents 13 & 14). The suggested conditions cover the following matters: the plans for determination, duration of planning permission and site restoration, temporary working areas, the colour and finish of the turbine, notification of construction, the laying of cabling, highway works, noise limits, electro-magnetic interference, and debris on the highway. The Appellant's planning statement (Document 6) suggests conditions concerning the detailed siting of the turbine and associated development and approval of details of the sub-station. In addition, the ecological appraisal advises that there should be no clearance of vegetation during the bird breeding season.

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<sup>3</sup> The representations at application stage are summarised in Document 3.

## **Appraisal**

*References are made, where appropriate, to sources of material in earlier parts of the report by indicating the relevant paragraph number thus [8].*

### **Main considerations**

21. I have identified the following main considerations in this case:

- (i) The effect of the proposed development on the character and appearance of the area.
- (ii) Whether any harm arising from the proposal would be outweighed by other considerations.

### **Character and appearance**

22. Given the proximity of the Tallentire windfarm [9], the proposal would not introduce a new and distinct feature into the landscape: indeed, due to this close relationship, the turbine at Grange Grassings would in effect form part of an existing group. Although the proposed turbine would be sited at a higher level, at 50m to the hub and 77m to the blade tip, it would not be as tall as the 100m structures in the nearby windfarm, and neither its overall altitude nor its different tip height, hub height or rotor diameter would distinguish it as a discordant feature from those structures. The SPD explains that some blander fringes of the higher limestone landscape type would not be intimidated by a small or possibly large group of turbines, especially if visually linked to large scale field patterns or forestry blocks [12]. In this case the turbine would be erected between two blocks of woodland on the side of a low ridge [8], and its presence close to the existing windfarm would cause only limited harm to this part of the landscape.
23. Most of the viewpoints in the Appellant's landscape and visual impact assessment (LVIA) were agreed between the main parties. The Council has expressed specific concern about the effect of the development in the landscape when seen from the A596, the A595, and the A66 [16], and I had the opportunity to assess the views towards the site from these roads. Concerns about the effect of the development on the character and appearance of the area have also been put forward by Gilcrux Parish Council, the groups Friends of Rural Cumbria's Environment and Friends of the Lake District and several residents of this part of Allerdale [19]. Blindcrake and Bridekirk Parish Councils object on the basis of a cumulative impact. The Appellant's LVIA has excluded turbines of less than 50m from its cumulative assessment, but I have not followed this approach in considering the representations on this appeal and the observations during my programme of site visits.
24. From the A596 corridor, about 4km to the north and north-west of the appeal site, the proposed turbine would appear as part of the group at Tallentire. The presence of the additional turbine would consolidate the group, and its greatest impact from this direction would be at viewpoint 5 on the southern edge of Prospect. Seen from this position, the additional turbine to the east of the windfarm would extend the group more appreciably than from other vantage points. Nevertheless it would not unduly increase the prominence of the group, and the extended line of seven turbines would not seriously damage visual amenity across this area of countryside, which though pleasant lacks any

particularly distinctive features. Other turbines can be seen when travelling along the stretch of the A596 between Prospect and Crosby. They are, however, clearly separated in the landscape from the appeal site and Tallentire, and I do not consider that the proposal would give rise to an adverse cumulative effect.

25. A closer and clear view of the existing turbines is obtained from the minor road which runs westwards from Gilcrux. The proposed turbine would also be readily apparent, but from this direction it would appear more closely integrated with the windfarm, and the impact on the surrounding area would be limited.
26. The site at Grange Grassings is about 2.5km from viewpoint 4 on the A595 and about 4.5km from viewpoint 6. From these directions, to the south and north-east, the higher land above the appeal site would mask the lower part of the proposed turbine. At certain points along the road, such as viewpoint 4, the blades of the proposed turbine may be more prominent than those of the turbines at Tallentire, but, at about 2.5km distant, the partial view of the turbine would not be intrusive in the landscape. Further to the north-east, by viewpoint 6, Wharrels Hill windfarm is close to the A595. Other turbines referred to by the Council on this route between Workington and Carlisle are further from the appeal site. Given the distance of the appeal site from most other developments along the A595, and the ridgeline which would mask the lower part of the structure, I do not consider that the turbine would have a significant impact in sequential views of wind energy development from this road, nor have an adverse cumulative effect.
27. The LVIA does not include any viewpoints on the A66, and no specific locations have been identified by the Council. The road is over 6km from the appeal site and given the intervening hilly landform, I do not consider that the turbine would be a noticeable feature when travelling eastwards towards Cockermouth. In views from the AONB (viewpoints 8 & 10) and the National Park (viewpoints 11 and 14), the turbine would be relatively distant and I do not consider that it would adversely affect the appreciation of these important landscapes. Notwithstanding the concern expressed by the Friends of the Lake District, I note that the National Park Authority considers that the development would not be a serious detractor in any key views and that it would not adversely affect the character of the National Park landscape [19]. The Ministry of Defence has requested that the turbine be fitted with aviation lighting [18]: I do not consider that additional lighting arising from the erection of this structure would have a material effect on the night-time environment in the surrounding area.
28. I agree with the Council that, taking account of intervening tree cover, the turbine would not appear overbearing or oppressive from Tallentire Hill Farm [16] which is about 600m away<sup>4</sup>. Given the greater separation distances to other non-associated dwellings in the surrounding area, there would not be an adverse effect on the visual amenity of their occupiers.
29. I note that appeals in respect of turbine proposals at Broughton Lodge and Great Orton have been dismissed [16]. Whilst Broughton Lodge is a nearby site, this was a scheme for three turbines, and Great Orton is some distance to the north-east, close to Carlisle. Moreover the full details of these cases are not before me, and each proposal must be judged on its own merits.

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<sup>4</sup> The Council's report on the application gives a distance of 650m.

30. The siting of the turbine in a position where it would appear as an extension of the existing group of turbines at Tallentire would avoid any serious landscape or visual harm, and addresses the concerns expressed in this regard by the local community. I conclude that the proposed development would only have a limited adverse effect on the character and appearance of the area. Policy S19 of the Allerdale Local Plan (2014) supports renewable energy proposals, which, amongst other considerations, would not have a significant adverse impact on the location, in relation to visual impact and the impact on the character and sensitivity of the landscape. As the proposal would not cause significant harm, there would be no conflict with this part of the policy. Similarly the development would not be contrary to part (e) of Policy S32, which explains that proposals should not be supported where they would cause significant adverse environmental impact in relation to landscape. Nor would the limited adverse effects represent a material conflict with the objective of Policy S33 and of paragraphs 97 and 109 of the NPPF to safeguard landscapes, or the core planning principle in paragraph 17 of the NPPF to recognise the intrinsic character and beauty of the countryside. However, as the proposal would not be entirely compatible with the character of the surrounding area, and would impinge to a degree on visual amenity there would be an element of conflict with Policy S32(b), which requires that proposals should not have a detrimental effect on the local area in terms of visual amenity, distinctive character or environmental quality.

### ***Other considerations***

31. The turbine would provide electricity to the local network from a renewable source. It would also provide an income to Grange Grassings Farm [10], and this diversification would assist in maintaining the viability of the farm. These benefits are consistent with provisions of the NPPF to support the transition to a low carbon future and to promote the development of agriculture. They carry significant weight in support of the proposal.
32. Parish councils have objected on the grounds of shadow flicker, flood risk, and interference with television reception and ground water: individual objections also refer to these matters and to noise and a potential risk to birds [19]<sup>5</sup>. Following the receipt of additional information, the Council is not pursuing an objection in respect of noise [4], and there is no substantive evidence before me to indicate that noise would harm the living conditions of local residents. Arqiva, which is responsible for providing the BBC's and ITV's transmission networks, has no objection to the proposal. A hydrology and geology report, submitted as an appendix to the environmental statement, considers that there would be only minor and negligible effects on the water environment, including abstraction for the fish farm at Gilcrux, and that it is unlikely that there would be a significant cumulative impact when the Tallentire windfarm is also taken into account<sup>6</sup>. The Council has pointed out that the extent of new impermeable surfaces associated with the development would be very small and that any impact on surface water run-off rates would be negligible. On the information before me, I have no reason to take a different view on these matters. Insofar as shadow flicker is concerned, the Council refers to a zone of influence of 540m, whereas the

<sup>5</sup> These matters are addressed in the Council's report on the application, Document 3.

<sup>6</sup> Document 9, Appendix 6.

distance to the nearest non-associated dwelling is about 600m. Given the separation distances between the site of the turbine and dwellings in the locality, I do not consider that shadow flicker would cause harm to living conditions, and I note that no objection has been raised by the Council on this matter. Subject to a restriction on vegetation clearance during the bird breeding season, the Appellant's ecological appraisal<sup>7</sup> finds no significant adverse impact on breeding birds, and there is no substantive evidence before me to indicate that the proposal would cause material harm to bird life.

### **Conditions**

33. To safeguard the character and appearance of the area, conditions would be required concerning decommissioning of the installation at the end of its operational life and subsequent site restoration, the removal of the turbine if it does not produce electricity for a period of six months, the colour and finish of the turbine and mast, details of the sub-station the removal of temporary working areas, and the laying of cabling underground. The turbine is likely to have a useful life of 20-25 years: a condition specifying the duration of planning permission for 25 years would, therefore, be appropriate, and if the turbine were to be decommissioned earlier the condition requiring removal after six months inactivity would take effect. Alterations to the junction of the access road with the road between Arkleby and Gilcrux, and arrangements for cleaning the highway are necessary in the interest of highway safety, and, to safeguard the living conditions of local residents, arrangements should be made to address possible electro-magnetic interference, and noise levels should be controlled. Although the appeal proposal is for a single turbine, it would effectively increase the size of the group at Tallentire, and in this situation there is a role for a condition which would prescribe noise limits at nearby dwellings, and another providing for assessments in response to complaints over a wider area. The installation of aviation lighting, and the notification of construction and details of the height and position of the turbine are necessary to ensure air safety. A condition to prevent site clearance during the bird breeding season would be necessary in the interests of nature conservation. It is important that a detailed site plan is submitted for approval and that the development is carried out in accordance with the specified plans for the avoidance of doubt and in the interests of proper planning.

### **Conclusions**

34. The turbine would have only a limited adverse effect on the character and appearance of the area, but in consequence there would be some conflict with Policy S32 of the Local Plan (2014), and paragraph 5-007 of the PPG points out that the need for renewable or low carbon energy does not automatically override environmental protections. However the proposal would bring an economic benefit to Grange Grassings Farm, in addition to contributing to wider policy objectives to reduce reliance on non-renewable sources of energy. Moreover Policy S19 of the Local Plan supports the development of renewable energy resources where, amongst other considerations, there would not be a significant adverse impact on the location in relation to visual impact and the character and sensitivity of the surrounding landscape, and that is the situation in this case.

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<sup>7</sup> Document 9, Appendix 5.

35. I have attached significant weight to the WMS, which is an up-to-date expression of Government policy. The local community has raised concerns about the impact of the proposal on the character and appearance of the area and in respect of several other matters, which I have considered above (paras 21-28, 30). However the siting of the turbine would avoid any serious landscape or visual harm, and no material harm would be associated with the other matters raised. Having regard to the transitional provision, I consider that the proposal addresses the planning impacts identified by the local community. Nonetheless, there would be some harm to the character and appearance of the area, and it is open to the Secretary of State to reach a different view on the application of the transitional provision.
36. I conclude that the limited harm from the proposal to the character and appearance of the area would be outweighed by the economic benefit to Grange Grassings Farm, and the contribution of the proposal to wider policy objectives to reduce reliance on non-renewable sources of energy.

### **Recommendation**

37. I recommend that the appeal be allowed and that planning permission be granted subject to the conditions in the Annex to this report.

*Richard Clegg*

INSPECTOR



## **SCHEDULE OF SUGGESTED CONDITIONS**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: location plan ref 102 dated 07/11/2013, site plan ref dated 21/10/2013, and the turbine elevations and base details on the drawing dated 22/10/2013.
- 3) No development shall take place until a detailed site plan has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved plan.
- 4) The permission hereby granted shall endure for a period of 25 years from the date when electricity is first supplied from the wind turbine (the First Export Date). Written confirmation of the First Export Date shall be provided to the local planning authority no later than one calendar month after that event.
- 5) Not later than twelve months before the end of this permission, a decommissioning and site restoration scheme shall be submitted for the approval in writing of the local planning authority. The scheme shall provide for the removal of the relevant turbine and associated above ground works approved under this permission and the turbine foundation to a depth of at least one metre below ground. The approved scheme shall be fully implemented within six months of the expiry of this permission.
- 6) If the turbine hereby permitted ceases to produce electricity for a continuous period of six months, it shall be dismantled and removed from the site in accordance with a scheme which shall be submitted to and approved in writing by the local planning authority within three months of the end of that six months period. The scheme shall provide for the removal of the relevant turbine and associated above ground works approved under this permission and the turbine foundation to a depth of at least one metre below ground. The approved scheme shall be fully implemented within six months of the date of its approval by the local planning authority.
- 7) No development shall take place until details of the colour and finish of the wind turbine have been submitted to and approved in writing by the local planning authority. No part of the structure shall carry any logo or lettering. The development shall be carried out in accordance with the approved details.
- 8) No development shall take place until details of the sub-station, including the colour and finish, have been submitted to and approved in writing by the local planning authority. No part of the structure shall carry any logo or lettering. The development shall be carried out in accordance with the approved details.
- 9) Within six months of the completion of the construction works, any temporary working areas around the turbine shall be removed.
- 10) All cabling between the turbine and the substation shall be laid underground.

- 11) No other works shall commence until the junction of the access lane and the road between Arkleby and Gilcrux has been altered in accordance with a scheme which has been submitted to and approved in writing by the local planning authority. The scheme shall be prepared in accordance with the drawings in Appendix D of the Abnormal Load Route Access Report by JMP dated 1 July 2013.
- 12) No development shall take place until arrangements for cleaning the highway have been put in place in accordance with a scheme which has been submitted to and approved in writing by the local planning authority.
- 13) The following noise limits shall not be exceeded when the wind turbine is in operation:
  - a) Night time limits (2300-0700) - The LA90 (10 minutes) specific noise level shall not exceed 45dB(A) when assessed and measured 3.5m from the façade of the nearest financially involved noise sensitive use, namely Grange Grassings, Arkleby, Wigton, Cumbria, CA7 2DU.
  - b) Day time limits (0700-2300) - The LA90 (10 minutes) specific noise level shall not exceed 45dB(A) when assessed and measured 3.5m from the façade of the nearest financially involved noise sensitive use, namely Grange Grassings, Arkleby, Wigton, Cumbria, CA7 2DU.
  - c) Night time noise limits (2300-0700) - The LA90 (10 minutes) specific noise level shall not exceed 40dB(A) when assessed and measured 3.5m from the façade of the nearest non financially involved noise sensitive uses namely Swallow Barn, Tallentire, Cockermouth, CA13 OPY and Hill Farm, Tallentire, Cockermouth, CA13 OPY.
  - d) Day time noise limits (0700-2300) - The LA90 (10 minutes) specific noise level shall not exceed 37.5dB(A) when assessed and measured 3.5m from the façade of the nearest non financially involved noise sensitive uses, namely Swallow Barn, Tallentire, Cockermouth, CA13 OPY and Hill Farm, Tallentire, Cockermouth, CA13 OPY.
- 14) In the event of a complaint being received in writing by the local planning authority alleging noise nuisance at a residential property due to the wind turbine, the wind turbine operator shall, at its expense, employ an independent consultant approved by the local planning authority to measure and assess the level of noise emissions from the wind turbine at the location of the complainant's property. The results of the independent consultant's assessment shall be provided in writing to the local planning authority within three months of the date of notification of the complaint. If a breach of condition No 11 (parts c or d) is confirmed in the assessment, the operation of the turbine will cease until the local planning authority is satisfied the turbine can operate within the noise limits specified in condition 11 (parts c or d). The operator of the development shall be under no obligation to follow the procedure set out in this condition where the complaint relates to a residential property more than 3km from the wind turbine.
- 15) In the event that a written complaint is received relating to electro-magnetic interference, a scheme shall be submitted for the approval of the local planning authority setting out a protocol for the assessment of

- electro-magnetic interference, including remedial measures. Operation of the turbines shall take place in accordance with the approved scheme.
- 16) Prior to the erection of the wind turbine, the developer shall provide written confirmation to the Local Planning Authority, NATS en-route plc, the Civil Aviation Authority and the Ministry of Defence of the proposed date for commencement, the anticipated date of completion of construction, the height above ground level of the highest structure and the position of the turbine in latitude and longitude.
  - 17) No development shall take place until a scheme for the installation of aviation lighting has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details, and the aviation lighting shall be retained thereafter.
  - 18) No site clearance works shall take place during the bird breeding season (1 March – 31 August inclusive).

## **ATTENDANCE AT SITE VISIT<sup>8</sup>**

FOR THE LOCAL PLANNING AUTHORITY:

Mr S Long

Planning Officer, Allerdale BC.

FOR THE APPELLANT:

Mr R Moss

Edwin Thompson LLP.

## **DOCUMENTS**

- 1 Notification of appeal.
- 2 Correspondence received in response to Document 1.
- 3 Report on the planning application to the Council's Development Panel.
- 4 Cumbria Wind Energy SPD.
- 5 Appellant's statement.
- 6 Planning statement accompanying the planning application.
- 7 Environmental statement – non-technical summary.
- 8 Environmental statement – Volume 1 – Written text.
- 9 Environmental statement – Volume 2 – Appendices.
- 10 Supplement to noise report on the appeal proposal (Document 9, Appendix 7).
- 11 The Council's supplementary statement.
- 12 The Appellant's comments on Document 11 and representations from other parties.
- 13 Schedule of conditions suggested by the Council.
- 14 Email from the Appellant in response to Document 13.
- 15 Comments from the Council relating to the WMS.
- 16 Comments from the Appellant relating to the WMS.

## **PLANS**

- A Location plan ref 102 dated 07/11/2013.
- B Site plan ref 01 dated 21/10/2013.
- C Turbine elevations and details dated 22/10/2013.

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<sup>8</sup> The main parties were only represented at the appeal site. I visited several other locations in the surrounding area on an unaccompanied basis.



## **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 day after 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 day after 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.