



Appeal Decision

Inquiry held on 16-18 April 2013

Site visits made on 18 April 2013

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 23 October 2013

Appeal Ref: APP/G0908/A/12/2189934

Land at Potato Pot, Branthwaite, Cumbria

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Airvolution Energy Limited against the decision of Allerdale Borough Council.
 - The application Ref. 2/2012/0594 is dated 24 July 2012.
 - The development proposed is the erection of three wind turbines with a maximum blade tip height of up to 100 metres together with a substation and control building, upgraded access track, connecting internal tracks, associated hardstandings and infrastructure.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of three wind turbines with a maximum blade tip height of up to 100 metres together with a substation and control building, upgraded access track, connecting internal tracks, associated hardstandings and infrastructure on land at Potato Pot, Branthwaite, Cumbria in accordance with the terms of the application Ref. 2/2012/0594, dated 24 July 2012, subject to conditions in the attached schedule.

Procedural matter

2. At the Inquiry an application for a partial award of costs was made by Airvolution Energy Limited against Allerdale Borough Council. This application is the subject of a separate decision.

Reasons

3. The main issues are; first, the effect of the proposed three wind turbines, and their cumulative effect with other similar developments, on the character and appreciation of the landscape; second, the effect of the proposed turbines on the visual amenities of residents of the area; third, whether the proposed development would cause any other harm; and fourth, whether material considerations outweigh any harm caused and any conflict with the Development Plan.

The first issue – the landscape character of the area

4. The appeal site is within undulating countryside about 2 kms to the south-east of the A595 trunk road and about 4.2 kms from Workington and the west coast of Cumbria. The middle of the three wind turbines, which would be in line, equidistant, and on a north-west/south-east axis, would be in an area of scrubby vegetation and the outer turbines would be at the edges of fields used for grazing. The land is classified as Grade 4 agricultural land though it was the subject of open

cast coal mining between the mid 1980s and the early 1990s. Following the completion of these mining operations the land was restored to rough pasture.

5. The site is within a type 5a Ridge and Valley classification in the Cumbria Landscape Character Assessment. The key characteristics of this landscape classification are the ridges and valleys that rise gently towards the limestone fringes of the Lakeland Fells, designated as the Lake District National Park, the hedge bound pasture fields that are interspersed by areas of woodland, and the scattered farms and linear villages. The Cumbria Wind Energy Supplementary Planning Document (CWESPD), a document jointly prepared by Cumbria County Council and the six Borough and District Councils in the County, identifies this landscape sub-type as having a medium sensitivity to wind farm developments.

6. To the north of the appeal site is a country road that leads eastwards from a roundabout junction on the A595. From this road another country road, to the east of the site, leads roughly south-eastwards and a similar road from a junction with this road leads to the hamlet of Gilgarran, which lies about 1.2 kms to the south-west of the site. Between the three country roads and up to about one kilometre to the west of the site the land is undeveloped. The undeveloped nature of this land and its openness is valued by local residents and contributes to its character. The three wind turbines would alter this openness and would have a significant effect on the character of the land.

7. The area within about one kilometre of the appeal site would be dominated by the three wind turbines. The turbines would become the key characteristics of this area which would be subject to a very high degree of change and which would become a wind farm sub-type. Furthermore, a wind farm landscape would extend out from the wind farm sub-type area and this landscape area, between about one and two kilometres from the appeal site, would be subject to a high degree of change. The boundaries of areas that would be subject to very high and high degrees of change depend largely on topography but within these areas there would be a substantial adverse effect on landscape character.

8. In 'Assessing the Cumulative Impact of Onshore Wind Energy Developments', by Scottish Natural Heritage, it is recommended that an assessment of cumulative effect should include undetermined windfarm applications. This approach is also advocated in 'Planning practice guidance for renewable and low carbon energy', which was published by the Department for Communities and Local Government after the close of the Inquiry.

9. To the north-west of the appeal site is Lillyhall Industrial Estate which is alongside the A595. A landfill site to the east of the industrial estate is the location of a proposed development of four wind turbines of similar size to those proposed at Potato Pot. A planning application for this development has been submitted to Cumbria County Council but has yet to be determined. There is a dispute as to whether the County Council should be the determining authority but the Borough Council's stance on the application, as expressed in an Officer's report, is that it should be refused. This factor notwithstanding, the Council has sought to rely on the cumulative effect of the Potato Pot and Lillyhall schemes even though the latter scheme may not reach fruition for one of many reasons.

10. The immediate surroundings of the Lillyhall scheme are dominated by the industrial estate. This estate is at the edge of the area which would be subject to a very high degree of change as a result of the Potato Pot scheme and which would become a wind farm sub-type area. The Lillyhall scheme would be within this area

which would be subject to a greater degree of change if both schemes were to be built. There would be some cumulative effect but, given the proximity of the extensive industrial estate to the Lillyhall scheme, it is unlikely that there would be any significant adverse cumulative effect to landscape character.

11. Beyond the A595 about 3.5 kms to the north of the appeal site are the 18 wind turbines, maximum blade tip height of 81 metres, of Winscales 1 and 2 and Winscales Moor. About 4 kms to the south-west are the 5 turbines at Fairfield Farm and about 6 kms to the west, on the coast, are 6 turbines at Lowca. The three Winscales wind farms are close enough together to constitute one wind farm of 18 turbines and this development is within the same type 5a Ridge and Valley area as Potato Pot. Nevertheless, the A595 is a significant defining feature of the landscape of this area and, in terms of landscape character, there would be no cumulative effect with the Winscales development if the appeal development was to be carried out. Fairfield Farm is within type 9a Open Moorlands and Lowca is within type 5d Urban Fringe to the north of Whitehaven. They are, furthermore, sufficiently distant from Potato Pot for there not to be any potential cumulative effect with the appeal development on landscape character.

12. There are operational and consented single wind turbines in the vicinity of Potato Pot at Moor House Farm (47.5 metres to blade tip) and at Branthwaite Outgang Farm and Lucy Close Farm (both about 25 metres to blade tip). Moor House Farm is separated from Potato Pot by the A595 and, for the reasons mentioned above, this turbine and the appeal turbines would not result in any cumulative effect on landscape character. The other two turbines are too small to have any cumulative effect, with the Potato Pot turbines, on landscape character. No other operational and consented wind turbine schemes within the wider area would, with Potato Pot, result in cumulative harm to landscape character.

13. The Council did not allege, in their putative reasons for refusal of the appeal application, that the Potato Pot wind turbines would, in themselves, cause harm to landscape character. Their concern was with the cumulative harm to landscape character that might be caused. The conclusions reached in this decision are the opposite. The proposed three wind turbines at Potato Pot would have, for a limited area, a substantial adverse effect on landscape character but would not, taken together with other operational, approved and proposed schemes in the area, result in any significant cumulative harmful effect on landscape character.

14. The landscape between the three country roads is, as previously stated, appreciated by local residents for its openness. But there is no public access through this landscape so it is only valued by residents and visitors to the area for short periods as they travel along roads and footpaths in the vicinity of the site and use open access land to the south. There is no doubt that, for some, however, the three wind turbines would be visually intrusive and would dominate their surroundings. They would be visible in views westwards from a section of the public footpath that crosses fields between the village of Branthwaite and a group of dwellings close to the country road to the east of the appeal site.

15. From this footpath the backdrop is of the many wind turbines at Winscales and elsewhere along the coast. The proposed development would introduce wind turbines in the foreground of this view but they would be no higher than closer National Grid powerlines that are in place alongside the country road and they would only be in view, for walkers on the footpath, for about ten minutes. The three wind turbines would be visible in views north from open access land at High Park about 2 kms to the south. But from here it is the views to the east of the

Lakeland Fells and the views to the west of the Cumbrian coast that grab the attention. From the footpath and from the open access land the three wind turbines at Potato Pot would not be visually intrusive to any significant degree and would not adversely affect appreciation of the landscape.

16. The perception for residents of the area is that wind farm developments are creeping inland across the countryside towards the high fells of the Lake District. It was also suggested, at the Inquiry, that the A595 should be regarded to be the boundary for wind farm developments. The Fairfield Farm wind farm development to the south-west of Potato Pot is inland of the A595 but this is not a reason to discount the road as a boundary for wind farm developments. The A595 should not be considered to be a boundary because any development, in the absence of any policy or guidance on this matter, should be considered on its individual merits. The three wind turbines at Potato Pot would be visually intrusive in only a relatively small area and would not undermine an overall appreciation of the undulating countryside between the coast and the high fells of the Lake District.

17. The proposed three wind turbines at Potato Pot would not undermine an appreciation of the wider landscape between the developed coastal corridor and the high fells of the Lake District but would have a significant adverse effect on the landscape character of the area in the vicinity of the appeal site and would be visually intrusive in the same area. The proposal thus conflicts with saved policy E37 of the Cumbria and Lake District Joint Structure Plan (SP) and saved policies EN19 and EN25 of the Allerdale Local Plan (LP).

The second issue - the visual amenities of residents of the area

18. There is a cluster of dwellings to the east of the appeal site on the east side of the country road. These include Quietways, Brookfield, Bannock Row Farm and Lostrigg Cottage and the dwellings are between 700 and 750 metres from the location of the nearest proposed turbine. The dwellings are set down from the road and only the tops of the masts and the blades of the turbines would be visible behind the powerlines that run alongside the road. Furthermore, between the dwellings and the road is an area of mature trees and it is likely, even during winter months, that the turbines would not be visible from the dwellings or from their garden areas. They would not be visible during summer months and even if they are visible during the winter through the trees their impact on visual amenity at the dwellings would only be moderately significant.

19. Jackie Hill is a bungalow about 1.2 kms to the south-east of the nearest proposed turbine. The view from this property is directly aligned with the axis of the turbines and they are too far distant to have any significant effect on the visual amenities of the residents of Jackie Hill. Swincroft is a dwelling at the edge of the village of Gilgarran to the south-west of the appeal site. The front elevation of the dwelling faces directly towards the proposed turbines which would all be visible from habitable room windows and from the front garden area. The main garden area is on the opposite side of the house and it is unlikely, given its orientation, that the front garden is used as an outdoor amenity area. Furthermore, the dwelling is about 1.2 kms from the proposed turbines and their impact on visual amenity at Swincroft would only be moderately significant.

20. Colinside and Colingate are two dwellings situated alongside the road to the south of the appeal site. The dwellings are about 720 metres from the location of the nearest proposed turbine. There would be very oblique views from habitable room windows in the front elevation of Colingate but there would be no views of the

turbines from the rear elevation of the dwelling or from its main garden area. Colinside is an upside down house with a living room and kitchen at first floor level. There would be views of the turbines from small windows in these rooms but these are at low level and views would therefore be restricted. There would be direct views of the three turbines from a large ground floor window but this is to a bedroom and is not regarded to be significant.

21. Residents of the two dwellings share a forecourt parking area from which there would be unrestricted views of the proposed three turbines. The turbines would be visually intrusive and would be dominant features in views north from the parking area. But residents of the two dwellings would be in the parking area for only brief periods and both dwellings have private rear garden areas from where there would be no views of the turbines. The proposed turbines would not be overbearing at the two properties and their impact on visual amenity at Colinside and Colingate would be less than significant.

22. Wythemoor House and Wythemoor Sough are two dwellings on opposite sides of the road to the north of the appeal site. Wythemoor House is about 820 metres from the location of the nearest wind turbine and has windows in its south-west gable elevation and windows in its principal south-east front elevation. There would be oblique views of the three turbines from these windows. The dwelling is positioned to take advantage of the south-east views, from its principal windows, towards the Lakeland fells and the turbines would not intrude into or dominate these views. Furthermore, the dwelling is a significant distance from the proposed turbines which would not be overbearing at the property. The proposed turbines would have a less than significant impact on visual amenity at Wythemoor House.

23. The greatest concern for the visual amenities of residents of the area is for the residents of Wythemoor Sough. This dwelling is about 770 metres from the location of the nearest turbine. The dwelling has a rear elevation facing almost directly towards the appeal site within which there are windows to a kitchen and a living room at ground floor level and to two bedrooms at first floor level, and also to a utility room, toilet and bathroom. At the rear of the dwelling is a sitting out area that overlooks a garden. From the sitting out area and the garden there are views across open ground towards the appeal site.

24. The proposed turbines would dominate the view across the open ground from the windows in the dwelling and from the sitting out and garden areas. At the property, however, the eye is drawn to the expansive view east to the Lakeland fells and the turbines would not significantly intrude into this view. The middle turbine would be about 985 metres away and the furthest about 1200 metres away. The turbines, furthermore, would be in only about 14 degrees of the wide view out from the property. They would be dominant features at the property but, taking these factors into account, they would not be overbearing. The proposed turbines would have a significant adverse effect on visual amenity at Wythemoor Sough but they would not result in the dwelling being an unattractive or unpleasant place to live.

25. Visual amenity at other remote residential properties in the area has been considered but in no case, taking into account separation distance, topography and screening, would the proposed turbines be dominant, overbearing or visually intrusive. The nearest villages or hamlets to the appeal site are Gilgarran to the south-west, Branthwaite to the north-east, and Winscales to the north-west. At no dwellings in any of these settlements or in others further away, for the same reasons, would the three proposed turbines be dominant or visually intrusive. The three turbines might also be glimpsed in some views together with other wind

turbines in the area but there is no evidence to indicate that there would be any cumulative harm caused to visual amenity at any residential property.

26. The proposed three wind turbines would have a less than significant adverse effect on visual amenity at a few dwellings in the area and would have a significant adverse effect on visual amenity at Wythemoor Sough. Wythemoor Sough would, however, not be an unattractive or unpleasant place to live.

The third issue – other harm

27. The appeal site is within an over-wintering area, rather than a breeding area, for hen harriers. Adequate surveys were carried out during winter months to establish the presence of these birds in the area but there were no sightings during the survey. Evidence indicates that hen harriers are under little threat from wind turbines in over-wintering areas though they would be if the turbines were in a breeding area. The death of a hen harrier on collision with a wind turbine at a site in Scotland, as referred to at the Inquiry, was within such a breeding area. Natural England and the RSPB were consulted at application stage and neither body has submitted any adverse comments on ecology or ornithology. The presence of hen harriers, and red kites, in the vicinity of the appeal site is not a reason to withhold planning permission for the proposed turbines.

28. There is no substantive evidence to indicate that the proposed wind turbines would have any adverse effect on the ecology or ornithology of the area, or on any heritage asset and its setting. Neither is there any substantive evidence to suggest that the turbines would be a threat to safety. The Ministry of Defence has not commented on the appeal proposals and National Air Traffic Services have withdrawn their original objection subject to the imposition of two conditions. The proposed development would be located well outside the Lake District National Park and would have no effect on the character of the landscape of this designated area. The three turbines would be visible from high ground in the National Park but they would be about 7 kms from the nearest high vantage point in the park, they would be seen against a backdrop of the many wind turbines along the coast, and they would have no effect on an appreciation of the views out of the National Park.

29. Concerns have been expressed by residents of the area regarding the adverse effects of noise and shadow flicker. There is no substantive evidence to indicate that these effects, resulting from operation of the proposed wind turbines, would adversely affect the living conditions of residents of the area. In any event, conditions have been suggested by the Council that would require the developer, if harmful noise or shadow flicker should occur, to put in place measures to alleviate the harm. Allowing the proposed wind turbine would not set a precedent for other turbines in the area. This proposed development, like any others in the future, must be determined on its individual merits.

30. None of these matters, or any others mentioned in opposition to the proposed wind turbines, either individually or collectively, suggests that any other harm would be caused if the appeal is allowed and planning permission is granted.

The fourth issue – material considerations

31. The landscape within which the proposed wind turbines would be sited was formed by the most recent ice age and has been altered by man for farming and other purposes. These farming and other activities, such as an increasing reliance on motorised transport in the last hundred years, have contributed to changes in

the global climate that are having a detrimental effect on, amongst other things, the landscape. The landscape of West Cumbria is not immune from the effects of climate change. Flooding is a serious issue and will have affected West Cumbria, and the lives of those who live within the area, as it has to devastating effect elsewhere in the country. This one effect of climate change causes erosion of the landscape and alters how the landscape can be farmed and used. It also causes severe hardship for those who suffer the direct consequences of climate change; flooding of their homes and businesses.

32. A suggested condition would require the decommissioning and removal of the wind turbines within twenty-five years after they are brought into operation. Twenty-five years is a tiny fraction of the history of the landscape of West Cumbria and if the landscape is not to suffer serious erosion in the long-term future then consideration must be given to accepting short-term harm to the character of the landscape and to visual amenity. Moving towards a low carbon future is at the heart of Government policy that seeks to meet the challenge of climate change, as set out in the National Planning Policy Framework (NPPF). In paragraph 93 it is stated that 'Planning plays a key role in helping shape places to secure radical reductions in greenhouse gas emissions, minimising vulnerability and providing resilience to the impacts of climate change, and supporting the delivery of renewable and low carbon energy and associated infrastructure'.

33. Saved SP policy R44 states that proposals for renewable energy, in areas outside the Lake District National Park and Areas of Outstanding Natural Beauty, will be favourably considered if there is no significant adverse effect on, amongst other things, landscape character and local amenity. The policy also states that in considering applications for planning permission the environmental, economic and energy benefits of renewable energy proposals should be given significant weight. This consideration indicates that there is a balance to be struck between harm and benefit but in terms of emphasis the SP is out of step with the NPPF, the publication of which postdates the adoption of the SP.

34. In paragraph 14 of the NPPF it is stated that there is "...a presumption in favour of sustainable development..." and that for decision making this means, where policies in the development plan are out of date, granting planning permission unless "...any adverse impacts of doing so would significantly and demonstrably outweigh the benefits...". Paragraph 7 of the NPPF states that there are three dimensions to sustainable development: economic, social and environmental. The last of these requires development, if it is to be regarded to be sustainable, to contribute to protecting and enhancing our natural environment and to assist in mitigating climate change by moving to a low carbon economy.

35. After the close of the Inquiry the Institute of Acoustics Good Practice Guide on the use of ETSU-R-97, 'The assessment and rating of noise from Windfarms', was published. Also after the close of the Inquiry Mr Pickles, Secretary of State for Communities and Local Government, and Mr Davey, Secretary of State for Energy and Climate Change, both made Ministerial Statements on the subject of onshore wind energy developments. The main parties have been consulted on the Good Practice Guide and on the Ministerial Statements. Nothing in their responses to these consultations affects the primacy of the Development Plan in the decision making process or the NPPF presumption in favour of sustainable development.

36. All other matters raised before and at the Inquiry, by main and other parties, have been considered but do not, either individually or collectively, materially affect the outcome of the appeal.

Conditions

37. The Council has suggested twenty-six conditions and a comprehensive noise condition. They were generally agreed at the Inquiry though both main parties have suggested amendments to some of the conditions. These amendments are minor and, in the main, not contentious, and have been adopted.

38. The only slightly contentious issue is with condition 7 where the Council has suggested that the start of construction work on any weekday should be 0730 hours and not 0700 hours. The concern is for construction traffic passing residential properties early in the morning but relates to only two dwellings and these are not close to the highway. The condition as imposed, therefore, restricts the start of construction work on a weekday to no earlier than 0700 hours.

39. Grid references of dwellings in the tables referred to in condition 27 have been deleted as there is no doubt where the dwellings are located, and it is unnecessary to include the incorporation and address of NATS Limited in condition 19. Also deleted from some of the suggested conditions is the possibility of the Local Planning Authority unilaterally agreeing amendments to previously agreed schemes. The suggested conditions have otherwise been imposed though they have been amended, where necessary, in the interests of clarity and precision. The reasons for the conditions are set out in the schedule attached to this decision.

Conclusion

40. The proposed wind turbine development would have a significant adverse effect on the character of the landscape and on the visual amenities of some local residents; though in no case would a home become an unattractive or unpleasant place to live. The proposal conflicts with saved LP policies EN19 and EN25 and with saved SP policy E37. The proposed wind turbines would produce 6MW of electricity, would contribute to meeting renewable energy targets, would contribute to protecting and enhancing our natural environment, and would assist in mitigating climate change by moving to a low carbon economy. The proposed three wind turbines would have an adverse effect on visual amenity at a few dwellings in the area, to varying degrees, and would thus, with regard to paragraph 7 of the NPPF, have an adverse social effect. However, on balance, the proposed development is a sustainable form of development.

41. There is a presumption in favour of sustainable development and the harm to landscape character and to visual amenity, and the conflict with the Development Plan, does not significantly and demonstrably outweigh the long-term environmental benefits of the renewable energy scheme. Planning permission has thus been granted, subject to conditions, for the proposed erection of three wind turbines and associated works on land at Potato Pot, Branthwaite, Cumbria.

John Braithwaite

Inspector

SCHEDULE OF CONDITIONS FOR PLANNING PERMISSION 2/2012/0594

1. The development hereby permitted shall be commenced before the expiration of three years from the date of this permission. Written confirmation of the commencement of development shall be submitted to the Local Planning Authority no later than 14 days after the event.
2. The development hereby permitted shall be removed in accordance with condition 3 below after a period of 25 years from the date when electricity is first exported from any of the wind turbines to the electricity grid ("First Export Date"). Written notification of the First Export Date shall be submitted to the Local Planning Authority no later than 14 days after the event.
3. No later than 9 months before the end of this permission, a decommissioning and site restoration scheme shall be submitted for the written approval of the Local Planning Authority. The scheme shall make provision for the removal of the wind turbines and associated above ground works approved under this permission and for the removal of each turbine's foundation to a depth of at least 1 metre below ground level. The scheme shall also include the management and timing of any works and a traffic management plan to address likely traffic impact issues during the decommissioning period, location of material laydown areas, an environmental management plan to include details of measures to be taken during the decommissioning period to protect wildlife and habitats, and details of site restoration measures. The scheme, as approved, shall be implemented within 18 months of the expiry of this permission.
4. If any wind turbine hereby permitted ceases to export electricity to the grid for a continuous period of 9 months a scheme shall be submitted to the Local Planning Authority for its written approval within 3 months of the end of that 9 month period for the repair or removal of that turbine. The scheme shall include either a programme of remedial works where repairs to the relevant turbine are required, or a programme for removal of the relevant turbine and associated above ground works approved under this permission and the removal of the turbine foundation to a depth of at least 1 metre below ground level and for site restoration measures following the removal of the relevant turbine. The scheme shall be implemented in accordance with the approved details and timetable.
5. No development shall commence until a Construction Traffic Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Construction Traffic Management Plan shall include proposals for the routing of construction traffic, scheduling and timing of movements, the management of junctions to and crossings of the public highway and other public rights of way, details of escorts for abnormal loads, temporary warning signs, temporary removal and replacement of highway infrastructure/street furniture, reinstatement of any signs, verges or other items displaced by construction traffic, and banksman/escort details. The Construction Traffic Management Plan including any agreed improvements or works to accommodate construction traffic where required along the route, shall be carried out as approved.
6. No development shall commence until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The Construction Method Statement shall be followed throughout the construction and post-construction restoration period. The Construction Method Statement shall include:

1. Details of the temporary site compound including temporary structures/buildings, fencing, parking and storage provision to be used in connection with the construction of the development;
2. Details of the proposed storage of materials and disposal of surplus materials;
3. Dust management;
4. Pollution control, protection of the water environment, bunding of fuel storage areas, surface water drainage, sewage disposal and discharge of foul drainage;
5. Temporary site illumination during the construction period including proposed lighting levels together with the specification of any lighting;
6. Details of the phasing of construction works;
7. Details of surface treatments and the construction of all hard surfaces and tracks;
8. Details of emergency procedures and pollution response plans;
9. Siting and details of wheel washing facilities;
10. Cleaning of site entrances, site tracks and the adjacent public highway and the sheeting of all HGVs taking spoil or construction materials to/from the site to prevent spillage or deposit of any materials on the highway;
11. A site environmental management plan to include details of measures to be taken during the construction period to protect wildlife and habitats;
12. Areas on site designated for the storage, loading, off-loading, parking and manoeuvring of heavy duty plant, equipment and vehicles;
13. Details and a timetable for post construction restoration/reinstatement of the temporary working areas and the construction compound; and
14. Working practices for protecting nearby residential dwellings, including measures to control noise and vibration arising from on-site activities shall be adopted as set out in British Standard 5228 Part 1: 2009.

7. Construction work shall only take place between the hours of 0700 and 1900 hours Monday to Friday inclusive and 0800 and 1300 hours on Saturdays with no such work on a Sunday or Public Holiday. Emergency works including wind turbine erection works delayed due to the weather may be carried out at any time provided that the operator retrospectively notifies the Local Planning Authority in writing of the emergency and works undertaken within 24 hours.

8. The blades of all wind turbines shall rotate in the same direction. The overall height of the wind turbines shall not exceed 100m to the tip of the blades when the turbine is in the vertical position as measured from natural ground level immediately adjacent to the wind turbine base.

9. Prior to the erection of any wind turbine, details of the colour and finish of the towers, nacelles and blades and any external transformer units shall be submitted to and approved in writing by the Local Planning Authority. No name, sign, or logo shall be displayed on any external surfaces of the wind turbines or any external transformer units other than those required to meet statutory health and safety requirements. The approved colour and finish of the wind turbines and any external

transformer units shall not be changed without the prior written approval of the Local Planning Authority. The development shall be carried out in accordance with the approved details.

10. Prior to commencement of the construction of the turbine control and electricity substation building details of the design and the external appearance, dimensions and materials for the building and any associated compound or parking area, access roads and associated fencing and details of surface and foul water drainage from the substation building shall be submitted to and approved in writing by the Local Planning Authority. The construction of the building and any associated compound or parking area shall be carried out in accordance with the approved details.

11. All electrical cabling between the individual wind turbines and between the wind turbines and the on site electricity substation shall be installed underground.

12. There shall be no permanent illumination on the site other than lighting on the turbines as provided for in condition 18, lighting required during the construction period (as approved through the Construction Method Statement referred to in condition 6), lighting required during planned or unplanned maintenance or emergency lighting and a movement sensor-operated external door light for the electricity substation building door to allow safe access.

13. No development shall commence until an Ecology Habitat Enhancement Scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include the provision of woodland planting utilising species of local provenance, with the proposed plant area totalling approximately 4.3ha, and a programme for implementation of the scheme. The scheme shall be implemented as approved.

14. No development shall commence until a specification for checking surveys for nests of breeding birds on the site, to be carried out by a suitably qualified independent ecologist, has been submitted to and approved in writing by the Local Planning Authority. The specification shall include survey methodology and a timetable for the surveys and submission of a report detailing the results of the surveys. The report shall also identify any mitigation measures required as a result of the surveys for any construction works or clearance of vegetation between 1 March and 31 August. The specification and mitigation measures shall be implemented as approved.

15. Prior to the construction of the final wind turbine a written scheme shall be submitted to and approved in writing by the Local Planning Authority setting out a protocol for the assessment of shadow flicker in the event of any complaint to the Local Planning Authority from the owner or occupier of a dwelling (defined for the purposes of this condition as a building within Use Class C3 or C4 of the Use Classes Order) which lawfully exists or had planning permission at the date of this permission. The scheme shall include remedial measures to alleviate any shadow flicker attributable to the development. Operation of the wind turbines shall take place in accordance with the approved scheme.

16. Prior to the First Export Date a scheme providing for a baseline survey and the investigation and alleviation of any electro-magnetic interference to terrestrial television caused by the operation of the wind turbines shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall provide for the investigation by a qualified independent television engineer of any complaint of

interference with television reception at a lawfully occupied dwelling (defined for the purposes of this condition as a building within Use Class C3 and C4 of the Use Classes Order) which lawfully exists or had planning permission at the date of this permission, where such complaint is notified to the developer by the Local Planning Authority within 12 months of the First Export Date. Where impairment is determined by the qualified television engineer to be attributable to the development, mitigation works shall be carried out in accordance with the scheme which has been approved in writing by the Local Planning Authority.

17. Prior to the erection of the first wind turbine, written confirmation shall be provided to the Local Planning Authority of the proposed date of commencement and completion of the development, and the height above ground level and the position in latitude and longitude of each wind turbine.

18. Prior to the erection of the first wind turbine, a scheme for the installation of Ministry of Defence accredited infra-red lighting on the wind turbines shall be submitted to and approved in writing by the Local Planning Authority. The wind turbines shall be erected with this lighting installed and the lighting shall remain operational throughout the duration of this permission.

19. No wind turbine shall be erected until a Primary Radar Mitigation Scheme to mitigate the impact of the development upon the operation of the Primary Radar Installation at Lowther Hill and the air traffic management operations of NATS Limited (or such other organisation licensed from time to time under sections 5 and 6 of the Transport Act 2000 to provide air traffic services to the relevant managed area (within the meaning of section 40 of that Act)) has been submitted to and approved in writing by the Local Planning Authority.

20. No wind turbine shall be erected until the Primary Radar Mitigation Scheme approved by the Local Planning Authority pursuant to condition 19 has been implemented and the development shall thereafter be operated in accordance with the approved scheme.

21. The wind turbines hereby permitted shall be erected at grid co-ordinates 303817 524165 (T1), 304013 524026 (T2) and 304209 523887 (T3) unless the turbines and associated crane pads are micro-sited within 50m of the above-mentioned grid co-ordinates. The consequential realignment of the access tracks between and to the wind turbines shall be permitted within the red line boundary shown on drawing no. AVE_E081_008 Rev R4c. A plan showing the position of the wind turbines and access tracks established on the site shall be submitted to the Local Planning Authority prior to the First Export Date.

22. No development shall commence until details of the site access from the public highway has been submitted to and approved in writing by the Local Planning Authority. No other part of the development shall commence until the access has been constructed in accordance with the approved details.

23. No development shall commence until a scheme of investigation and assessment to identify the extent and nature of subsoil geology and the extent and nature of any existing mine workings has been undertaken and submitted in writing to the Local Planning Authority, and the findings shall be used to justify the foundation design for the turbine bases, access tracks and any other buildings, plant or machinery forming part of the development. The scheme shall comprise of the following:

- Phase 1 Report (Desk Study) including a historical survey and conceptual model of the site;
- Phase 2 Report (Exploratory Investigation) documenting the ground conditions of the site, incorporating trial puts, chemical gas and water analysis identified as being appropriate by the Phase 1 Report;
- Phase 3 Report (Engineering Recommendations) detailing the range of foundation options and instability correction options available, concluding with a justification of the preferred solution and of any other works necessary to protect the land from any risk of subsidence following completion of the development; and
- Phase 4 Report (Validation) demonstrating the proof and success of the solutions and remedial works implemented if required by the Phase 3 Report.

24. No development shall commence until the Phase 3 Report (Engineering Recommendations) referred to in condition 23, as agreed in writing with the Local Planning Authority, has been implemented.

25. No development shall commence until a scheme for monitoring the Engineering Recommendations contained in the Phase 3 Report (referred to in conditions 23 and 24) has been submitted to and agreed in writing by the Local Planning Authority. The agreed monitoring scheme shall be implemented throughout the duration of the construction phase and remedial works phase of the development.

26. No development shall commence until a scheme of investigation and assessment to identify the extent and nature of existing and potential contamination on and from the site has been submitted to and agreed in writing by the Local Planning Authority. The scheme shall comprise the following and shall be implemented as approved:

- Phase 1 Report (Desk Study) including a historical survey and conceptual model of the site;
- Phase 2 Report (Exploratory Investigation) documenting the ground conditions of the site, incorporating chemical, gas and water analysis as identified as being appropriate by the Phase 1 Report;
- Phase 3 Report (Remediation Plan) detailing the remediation works to prevent any land from the site being designated as contaminated land following development; and
- Phase 4 Report (Validation) demonstrating the proof and success of the remediation works implemented if required by the Phase 3 Report.

27. The rating level of noise immissions from the combined effects of the wind turbines (including the application of any tonal penalty), when determined in accordance with the attached Guidance Notes, shall not exceed the values for the relevant integer wind speed set out in or derived from Tables 1 and 2 attached to these conditions and:

- a) Prior to the First Export Date, the operator of the wind development shall submit to the Local Planning Authority for written approval a list of proposed independent consultants who may undertake compliance measurements in accordance with this condition. Amendments to the list of

approved consultants shall be made only with the prior written approval of the Local Planning Authority.

b) Within 21 days from receipt of a written request of the Local Planning Authority, following a reasonable complaint to it alleging noise disturbance at a dwelling within 3km of the site, the operator of the wind development shall, at its expense, employ an independent consultant approved by the Local Planning Authority to assess the level of noise immissions from the wind development at the complainant's property in accordance with the procedures described in the attached Guidance Notes. The written request from the Local Planning Authority shall set out the date, time and location that the complaint relates to. Within 14 days of receipt of the written request of the Local Planning Authority made under this paragraph (b), the operator of the wind developer shall provide the information relevant to the complaint logged in accordance with paragraph (h) to the Local Planning Authority in the format set out in Guidance Note 1(e).

c) Where there is more than one property at a location specified in Tables 1 and 2 attached to this condition, the noise limits set for that location shall apply to all dwellings at that location. Where a dwelling to which a complaint is related is not identified by name or location in the Tables attached to these conditions, the operator of the wind development shall submit to the Local Planning Authority for written approval proposed noise limits selected from those listed in the Tables to be adopted at the complainant's dwelling for compliance checking purposes. The proposed noise limits are to be those limits selected from the Tables specified for a listed location which the independent consultant considers as being likely to experience the most similar background noise environment to that experienced at the complainant's dwelling. The submission of the proposed noise limits to the Local Planning Authority shall include a written justification of the choice of the representative background noise environment provided by the independent consultant. The rating level of noise immissions resulting from the combined effects of the wind turbines when determined in accordance with the attached Guidance Notes shall not exceed the noise limits approved in writing by the Local Planning Authority for the complainant's dwelling.

d) Prior to the commencement of any measurements by the independent consultant to be undertaken in accordance with this condition, the operator of the wind development shall submit to the local planning authority for written approval the proposed measurement location identified in accordance with the Guidance Notes where measurements for compliance checking purposes shall be undertaken. Measurements to assess compliance with the noise limits set out in the Tables attached to these conditions or approved by the local planning authority pursuant to paragraph (c) of this condition shall be undertaken at the measurement location approved in writing by the Local Planning Authority.

e) Prior to the submission of the independent consultant's assessment of the rating level of noise immissions pursuant to paragraph (f) of this condition, the operator of the wind development shall submit to the Local Planning Authority for written approval a proposed assessment protocol setting out the following:

(i) the range of meteorological and operational conditions (the range of wind speeds, wind directions, power generation and times of day) to determine the assessment of rating level of noise immissions;

(ii) a reasoned assessment as to whether the noise giving rise to the complaint contains or is likely to contain a tonal element.

The proposed range of conditions shall be those which prevailed during times when the complainant alleges there was disturbance due to noise, having regard to the information provided in the written request of the local planning authority under paragraph (b), and such others as the independent consultant considers necessary to fully assess the noise at the complainant's property. The assessment of the rating level of noise immissions shall be undertaken in accordance with the assessment protocol approved in writing by the Local Planning Authority.

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

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

h) The operator of the wind development shall continuously log nacelle wind speed, nacelle orientation, and power generation for each turbine in accordance with this consent, all in accordance with Guidance Note 1(d) of the attached Guidance Notes. The data from each wind turbine shall be retained for a period of not less than 24 months. The wind farm operator shall provide this information in the format set out in Guidance Note 1(e) of the attached Guidance Notes to the Local Planning Authority on its request within 14 days of receipt in writing of such a request.

Note: For the purposes of this condition, a "dwelling" is a building within Use Class C3 or C4 of the Use Classes Order which lawfully exists or had planning permission at the date of this consent.

Table 1 - Between 07:00 and 23:00 - Noise level dB L_{A90}, 10-minute

Location	Standardised wind speed at 10 metres height (m/s) within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
	Noise Level L _{A90} dB											
Wythemoor Head Farm	37	37	38	39	41	44	45	45	45	45	45	45
Wythemoor Sough / Wythemoor House	36	36	36	38	40	42	45	45	45	45	45	45
Quietways, Brookfield, Lostrigg Cottage, Branthwaite Row Farm	36	37	39	40	42	44	45	45	45	45	45	45
Colingate and Colinside	36	36	36	38	40	42	45	45	45	45	45	45
At all other properties existing at the date of the consent or with planning permission	36	36	36	38	40	42	45	45	45	45	45	45

Table 2 - Between 23:00 and 07:00 - Noise level dB L_{A90}, 10-minute

Location	Standardised wind speed at 10 metres height (m/s) within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
	Noise Level L _{A90} dB											
Wythemoor Head Farm	43	43	43	43	43	43	45	45	45	45	45	45
Wythemoor Sough and Wythemoor House	43	43	43	43	43	43	44	45	45	45	45	45
Quietways, Brookfield, Lostrigg Cottage, Branthwaite Row Farm	43	43	43	43	43	43	45	45	45	45	45	45
Colingate, Colinside	43	43	43	43	43	43	44	45	45	45	45	45
At all other properties existing at the date of the consent or with planning permission	43	43	43	43	43	43	44	45	45	45	45	45

Note to Tables 1 & 2: The standardised wind speed at 10 metres height within the site refers to wind speed at 10 metres height derived from those measured at hub height, calculated in accordance with the method given in the Guidance Notes.

Guidance Notes for Noise Condition

These notes are to be read with and form part of the noise condition. They further explain the condition and specify the methods to be employed in the assessment of complaints about noise immissions from the wind farm. The rating level at each integer wind speed is the arithmetic sum of the wind farm noise level as determined from the best-fit curve described in Note 2 of these Guidance Notes and any tonal penalty applied in accordance with Note 3 with any necessary correction for residual background noise levels in accordance with Note 4. Reference to ETSU-R-97 refers to the publication entitled "The Assessment and Rating of Noise from Wind Farms" (1997) published by the Energy Technology Support unit (ETSU) for the Department of Trade and Industry (DTI).

Note 1

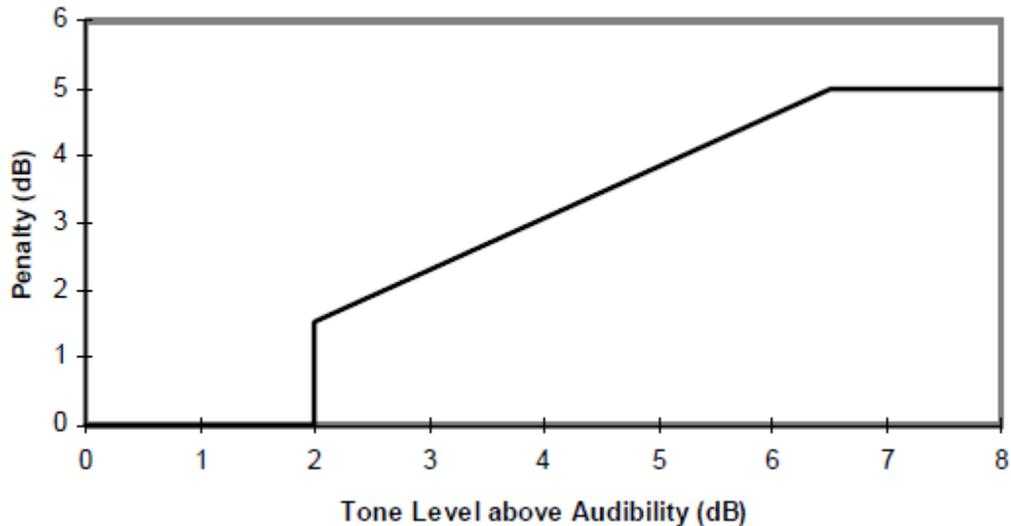
- (a) Values of the $L_{A90,10\text{-minute}}$ noise statistic should be measured at the complainant's property (or an approved alternative representative location as detailed in Note 1(b)), using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This should be calibrated before and after each set of measurements, using a calibrator meeting IEC 60945:2003 "Electroacoustics – sound calibrators" Class 1 with PTB Type Approval (or the equivalent UK adopted standard in force at the time of the measurements) and the results shall be recorded. Measurements shall be undertaken in such a manner to enable a tonal penalty to be applied in accordance with Guidance Note 3.
- (b) The microphone shall be mounted at 1.2 - 1.5 metres above ground level, fitted with a two-layer windshield or suitable equivalent approved in writing by the Local Planning Authority, and placed outside the complainant's dwelling and be not more than 35 metres from it. Measurements should be made in "free field" conditions. To achieve this, the microphone shall be placed at least 3.5 metres away from the building facade or any reflecting surface except the ground at the approved measurement location. In the event that the consent of the complainant for access to his or her property to undertake compliance measurements is withheld, the wind farm operator shall submit for the written approval of the Local Planning Authority details of the proposed alternative representative measurement location prior to the commencement of measurements and the measurements shall be undertaken at the approved alternative representative measurement location.
- (c) The $L_{A90,10\text{-minute}}$ measurements should be synchronised with measurements of the 10-minute arithmetic mean wind speed and wind direction data and with operational data logged in accordance with Guidance Note 1(d) and rain data logged in accordance with Note 1(f).
- (d) To enable compliance with the conditions to be evaluated, the wind farm operator shall continuously log arithmetic mean nacelle wind speed (duly corrected for the presence of the rotating blades) arithmetic mean nacelle orientation and arithmetic mean power generated during each successive 10-minute periods for each wind turbine on the site. The hub height wind speeds recorded from the nacelle anemometers or as calculated from the power output of each turbine shall be supplemented by standardised ten metre height wind speed data calculated for each 10-minute period from those measured at hub height assuming a reference roughness length of 0.05 metres and using the equation given on page 120 of ETSU-R-97. All 10-minute periods shall commence on the hour and in 10-minute increments thereafter synchronised with Greenwich Mean Time and adjusted to British Summer Time where necessary. Standardised 10 metre height wind speed data shall be correlated with the noise measurements determined as valid in accordance with Note 2(b), such correlation to be undertaken in the manner described in Note 2(c).
- (e) Data provided to the Local Planning Authority in accordance with paragraphs (e), (f), (g) and (h) of the noise condition shall be provided in comma separated values in electronic format.
- (f) A data logging rain gauge shall be installed within 3m of any sound level meter installed in the course of the independent consultant undertaking an assessment of the level of noise immissions. The gauge shall record over successive 10-minute periods synchronised with the periods of data recorded in accordance with Note 1(d).

Note 2

- (a) The noise measurements should be made so as to provide not less than 20 valid data points as defined in Note 2 paragraph (b).
- (b) Valid data points are those measured during the conditions set out in the assessment protocol approved by the Local Planning Authority under paragraph (e) of the noise condition but excluding any periods of rainfall measured in accordance with Note 1(f).
- (c) Values of the $L_{A90,10\text{-minute}}$ noise measurements and corresponding values of the 10-minute standardised ten metre height wind speed for those data points considered valid in accordance with Note 2(b) shall be plotted on an XY chart with noise level on the Y-axis and wind speed on the X-axis. A least squares, "best fit" curve of an order deemed appropriate by the independent consultant (but which may not be higher than a fourth order) shall be fitted to the data points to define the wind farm noise level at each integer speed. If anything other than a 3rd order polynomial is used, a full explanation must be provided as to why the polynomial order has been used.

Note 3

- (a) Where, in accordance with the approved assessment protocol under paragraph (e) of the noise condition, noise immissions at the location or locations where compliance measurements are being undertaken contain or are likely to contain a tonal component, a tonal penalty shall be calculated and applied using the following rating procedure.
- (b) For each 10-minute interval for which $L_{A90,10\text{-minute}}$ data have been determined as valid in accordance with Note 2, a tonal assessment shall be performed on noise immissions during 2-minutes of each 10-minute period. The 2-minute periods should be spaced at 10-minute intervals provided that uninterrupted uncorrupted data are available ("the standard procedure"). Where uncorrupted data are not available, the first available uninterrupted clean 2-minute period out of the affected overall 10-minute period shall be selected. Any such deviations from the standard procedure shall be reported.
- (c) For each of the 2-minute samples the tone level above audibility shall be calculated by comparison with the audibility criterion given in Section 2.1 on pages 104 -109 of ETSU-R-97.
- (d) The tone level above audibility shall be plotted against wind speed for each of the 2-minute samples. Samples for which the tones were below the audibility criterion or no tone was identified, a value of zero audibility shall be substituted.
- (e) A least squares "best fit" linear regression shall then be performed to establish the average tone level above audibility for each integer wind speed derived from the value of the "best fit" line fitted to values. If there is no apparent trend with wind speed then a simple arithmetic mean shall be used. This process shall be repeated for each integer wind speed for which there is an assessment of overall levels in Note 2.
- (f) The tonal penalty is derived from the margin above audibility of the tone according to the figure below derived from the average tone level above audibility for each integer wind speed.



Note 4

- (a) If a tonal penalty is to be applied in accordance with Note 3 the rating level of the turbine noise at each wind speed is the arithmetic sum of the measured noise level as determined from the best fit curve described in Note 2 and the penalty for tonal noise as derived in accordance with Note 3 at each integer wind speed within the range set out in the approved assessment protocol under paragraph (e) of the noise condition.
- (b) If no tonal penalty is to be applied then the rating level of the turbine noise at each wind speed is equal to the measured noise level as determined from the best fit curve described in Note 2.
- (c) If the rating level at any integer wind speed lies at or below the values set out in the Tables attached to the conditions or at or below the noise limits approved by the Local Planning Authority for a complainant's dwelling in accordance with paragraph (c) of the noise condition then no further action is necessary. In the event that the rating level is above the limit(s) set out in the Tables attached to the noise conditions or the noise limits for a complainant's

dwelling approved in accordance with paragraph (c) of the noise condition, the independent consultant shall undertake a further assessment of the rating level to correct for background noise so that the rating level relates to wind turbine noise immission only.

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

- i. Repeating the steps in Note 2, with the wind farm switched off, and determining the background noise (L_3) at each integer wind speed within the range set out in the approved noise assessment protocol under paragraph (e) of this condition.
- ii. The wind farm noise (L_1) at this speed shall then be calculated as follows where L_2 is the measured level with turbines running but without the addition of any tonal penalty:

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

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

REASONS FOR CONDITIONS

1. To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
2. In recognition of the expected lifespan of the wind farm and in the interests of safety and amenity once the plant is redundant.
3. To ensure the development is decommissioned and the site restored at the expiry of this permission.
4. To ensure appropriate provision is made for turbine or turbines requiring repair or for turbine or turbines which require decommissioning.
5. In the interests of highway safety.
6. To ensure a satisfactory level of environmental protection and to minimise disturbance to local residents during the construction process.
7. In the interests of amenity to restrict noise impact and the protection of the local environment.
8. In the interests of the character and appearance of the area.
9. In the interests of the character and appearance of the area.
10. In the interests of the character and appearance of the area.
11. In the interests of the character and appearance of the area.
12. In the interests of residential amenity and the character of the area.
13. To compensate for the small loss of habitat which will result from the development.
14. In the interests of nature conservation.
15. In the interests of amenity for nearby residents.
16. In the interests of amenity for nearby residents.
17. In the interests of aviation safety.
18. In the interests of aviation safety.
19. In the interests of aviation safety.
20. In the interests of aviation safety.
21. To enable necessary minor adjustments to the position of the turbines and access tracks to allow for site-specific conditions.
22. To secure an adequate and safe access to the development.
23. To minimise the risk of ground instability arising from the development.
24. To minimise the risk of ground instability arising from the development.
25. To minimise the risk of ground instability arising from the development.
26. To minimise the risk of ground contamination arising from the development.
27. In the interests of amenity for nearby residents.