

Miss Anna Cartledge  
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(re Staffurth's Bridge Farm)

Our Ref: APP/D0515/A/10/2123739 and  
APP/D0515/A/10/2131194

Mr David Hardy  
Cobbetts  
Number 1 Whitehall Riverside  
Leeds  
LS1 4BN  
(re Burnthouse Farm)

6 July 2011

Dear Miss Cartledge and Mr Hardy,

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)  
APPEALS BY FIVESTONES LTD AND SCOTTISH POWER RENEWABLES (UK)  
LTD  
LAND NORTH OF BURNTHOUSE FARM, BURNTHOUSE SIDINGS, TURVES  
PE7 2HP AND STAFFURTH'S BRIDGE FARM, MARCH, CAMBRIDGESHIRE  
PE15 0YP  
APPLICATION REFS: F/YR09/0392/F AND F/YR09/0272/F**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Jill C Kingaby BSc(Econ) MSc MRTPI, who held a public local inquiry on 2-4, 8-11 and 16 February 2011, along with a site visit on 15 February, into your clients' appeals under Section 78 of the Town and Country Planning Act 1990 against the decisions of Fenland District Council to refuse planning permission for:

**Appeal A (Burnthouse Farm)**

The erection of 3 wind turbines (maximum height 100m to blade tip) together with ancillary structures and works including the erection of a control building, site access tracks and temporary compound (located on West Fen Drove) during construction, in accordance with planning application ref: F/YR09/0392/F, dated 22 May 2009; and

**Appeal B (Staffurth's Bridge Farm, hereafter referred to as Flood's Ferry Farm)**

The erection of 9 wind turbines with a maximum height of not more than 110.5metres from base to blade tip (when vertical), together with ancillary development, including control building housing switch gear, on-site

underground electrical cables, on-site access tracks and watercourse crossings, crane hardstanding areas, permanent meteorological mast, two temporary construction compounds and access from Quaker's Drove, in accordance with planning application ref. F/YR09/0272/F, dated 31 March 2009.

2. The appeals were recovered for the Secretary of State's determination on 19 August 2010, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because cumulatively the appeals involve proposals of major significance for the delivery of the Government's climate change programme and energy policies.

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

3. The Inspector, whose report is enclosed with this letter, recommended that the appeals be allowed and planning permission granted, subject to conditions. For the reasons given in this letter, the Secretary of State unless otherwise stated agrees with the Inspector's conclusions and with her recommendation on Burnthouse Farm (Appeal A). However, he disagrees with her recommendation on Flood's Ferry Farm (Appeal B). All paragraph references, unless otherwise stated, refer to the Inspector's report (IR).

### **Procedural matters**

4. In reaching this position the Secretary of State has taken into account the Environmental Statements and further environmental information submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, as set out at IR6-7. The Secretary of State is satisfied that the Environmental Statements and further information comply with the above regulations and that sufficient information has been provided for him to assess the environmental impacts of the appeals.

### **Policy Considerations**

5. 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. In this case, the development plan comprises the East of England Plan: the Revision to the Regional Spatial Strategy (May 2008) (RS), saved policies from the Cambridge and Peterborough Structure Plan (October 2003) and saved policies from the Fenland District Wide Local Plan (1993). The Secretary of State considers that the development plan policies most relevant to the appeal are those set out at IR15-16. The emerging Core Strategy is still at a relatively early stage of preparation (IR17), and the Secretary of State has given it limited weight.
6. The Secretary of State has made it clear, following the judgment of the Court on 10 November 2010 in *Cala Homes (South) Ltd v Secretary of State for Communities and Local Government and Winchester City Council* [2010] EWHC 2886 (Admin), that it is the Government's intention to revoke RSs, and the provisions of the Localism Bill which is now before Parliament reflect this intention. This gave rise to a subsequent decision of the Court on 7 February 2011 in *Cala Homes (South) Ltd v Secretary of State for Communities and Local*

*Government [2011] EWHC 97 (Admin)* which held that the Government's intention to legislate to revoke regional spatial strategies was capable of being a material consideration. However, while the Secretary of State has taken this matter into account in determining this case, he gives it limited weight at this stage of the parliamentary process.

7. Other material considerations which the Secretary of State has taken into account include PPS1: Delivering Sustainable Development, and its Supplement entitled Planning and Climate Change; PPS7: Sustainable Development in Rural Areas; PPS22: Renewable Energy and its Companion Guide; Circular 11/95: *Use of Conditions in Planning Permission*; Circular 05/2005: *Planning Obligations*; and the Community Infrastructure Levy (CIL) Regulations 2010; as well as the Wind Turbine Development Policy Guidance (WTG) adopted by the Council in June 2009 (IR18) and the climate change and renewable energy documents set out at IR286.
8. The Secretary of State has also taken account of the Written Ministerial Statement (WMS) of the Rt Hon Greg Clark MP, dated 23 March 2011, which emphasises that the Secretary of State will attach significant weight to the need to secure economic growth and employment.

## **Main Issues**

9. The Secretary of State agrees with the Inspector that the main issues are those set out in IR226.

### Living conditions of neighbouring occupiers

10. For the reasons given at IR229-232, the Secretary of State agrees with the Inspector that serious harm to living conditions which might lead to a recommendation for planning permission to be refused, in the public interest, is a more stringent requirement than the identification of a significant adverse impact. He further agrees that when assessing the effect on visual outlook, it is helpful to pose the question '*would the proposal affect the outlook of these residents to such an extent, i.e. be so unpleasant, overwhelming and oppressive that this would become an unattractive place to live?*' (IR232).
11. For the reasons given at IR233-258, the Secretary of State agrees with the Inspector that the Flood's Ferry Farm proposal (Appeal B) would not be harmful to the amenity of nearby residential properties (IR255). He further agrees that though there would be a significant impact on visual outlook for occupiers of a number of properties in the area, no properties would be rendered unpleasant places to live by the Burnthouse Farm proposal (Appeal A); and that it would not be seriously harmful to the living conditions of neighbouring occupiers with particular reference to visual outlook; nor would it conflict with Policy E8 of the Local Plan (IR256 and 258).

### Character and appearance – cumulative impact

12. The Secretary of State agrees with the Inspector at IR259-60 that it is necessary to consider the likely cumulative impacts if one or more of the Burnthouse Farm

and Boardinghouse proposals and Flood's Ferry Farm were permitted (IR259). He further agrees at IR261 that it is necessary to consider whether any cumulative visual and landscape impacts would be such that they would cause harm to the public interest; and that this is different from finding that, in EIA terms, the proposal would cause significant cumulative impact.

13. It was agreed that if either Flood's Ferry Farm alone or in combination with Boardinghouse Farm went ahead, there would be significant landscape impact at a local scale, and that there would also be a significant landscape impact resulting from implementation of Flood's Ferry Farm and Burnthouse Farm over a small area (IR266). However, the Secretary of State agrees with the Inspector in giving weight to the issues raised at IR264-265, particularly the fact that all three proposals would be acceptable at the overall strategic level in the terms set down by the WTG. He concludes that cumulative landscape impact does not constitute a reason for refusing either of the appeals.
14. He has gone on to consider cumulative visual impact. For the reasons given at IR268-285, the Secretary of State agrees with the Inspector's conclusions that the Burnthouse Farm proposal (Appeal A) would be the main cause of a detrimental cumulative effect on visual outlook in the locality of Blackhall Cottages, giving rise to conflict with the Local Plan; but that the area over which the visual outlook would be adversely affected would be very localised (IR294).
15. The Secretary of State further agrees with the Inspector that the Flood's Ferry Farm proposal (Appeal B) would give rise to adverse cumulative visual impact over a sizeable area (IR295), that it would be the principal cause of materially harmful cumulative effects in the surrounding rural area (IR282), and that the proposal would conflict with the development plan (IR295). He has given this harm significant weight.

#### The wider economic and environmental benefits

16. For the reasons given in IR286-293, the Secretary of State agrees with the Inspector's conclusions that the harms arising from the cluster of three turbines at Burnthouse Farm (Appeal A) would be substantially outweighed by the ensuing economic and environmental benefits from the increased capacity for renewable energy generation (IR294).
17. However, he concludes that the harms arising from the Flood's Ferry Farm proposal (Appeal B) are not outweighed by the contribution which it would make to meeting national and regional targets for renewable energy installation and for helping to combat the threat of climate change.

#### Planning obligations

18. The Secretary of State has had regard to the s.106 unilateral undertaking from Fivestone Ltd in respect of the Burnthouse Farm proposal (Appeal A). He has considered it in the light of Circular 05/2005, the Community Infrastructure Levy (CIL) Regulations 2010, and the Inspector's assessment as set out at IR240 and 316. For the reasons set out at IR240, the Secretary of State agrees with the Inspector in giving little weight to the proposed landscaping scheme for Willow

Farm. He considers that in terms of the CIL Regulations the proposed decommissioning bond is not necessary, given that decommissioning is covered by a condition. He therefore gives it no weight. However, he considers that this type of bond can be in general form a useful part of a decommissioning and site restoration scheme required by a planning condition.

### Conditions

19. The Secretary of State has considered the proposed conditions set out in Annexes 1 and 2 to the IR, the Inspector's comments at IR298-315, and the policy tests set out in Circular 11/95. He considers that the conditions are reasonable and necessary and comply with the provisions of Circular 11/95. However, in the case of Flood's Ferry Farm (Appeal B), he does not consider that the conditions overcome his reasons for refusing planning permission.

### **Overall conclusion**

20. Both appeals give rise to some conflict with the development plan. The Secretary of State considers that in the case of Burnthouse Farm (Appeal A) this is substantially outweighed by the ensuing economic and environmental benefits arising from the increased capacity for renewable energy generation. However, in the particular circumstances of Flood's Ferry Farm (Appeal B), he concludes that the benefits of the scheme do not outweigh the harms arising, and that material considerations do not outweigh the development plan conflict.

### **Formal Decision**

21. Accordingly, for the reasons given above:

#### **Appeal A (Burnthouse Farm)**

The Secretary of State hereby allows your client's appeal and grants planning permission for the erection of 3 wind turbines (maximum height 100m to blade tip) together with ancillary structures and works including the erection of a control building, site access tracks and temporary compound (located on West Fen Drove) during construction, in accordance with planning application ref: F/YR09/0392/F, dated 22 May 2009, subject to the conditions at Annex 1 of this letter.

#### **Appeal B (Flood's Ferry Farm)**

The Secretary of State hereby dismisses your client's appeal and refuses planning permission for the erection of 9 wind turbines with a maximum height of not more than 110.5metres from base to blade tip (when vertical), together with ancillary development, including control building housing switch gear, on-site underground electrical cables, on-site access tracks and watercourse crossings, crane hardstanding areas, permanent meteorological mast, two temporary construction compounds and access from Quaker's Drove, in accordance with planning application ref. F/YR09/0272/F, dated 31 March 2009.

22. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted

conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

23. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.
24. This letter serves as the Secretary of State's statement under regulation 21(2) of the Town and Country (Environmental Impact Assessment) (England and Wales) Regulations 1999.

**Right to challenge the decision**

25. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.
26. A copy of this letter has been sent to Fenland District Council and those who appeared at the Inquiry. A notification letter has been sent to other parties who asked to be informed of the decision.

Yours sincerely

**Maria Stasiak**

Authorised by the Secretary of State  
to sign in that behalf

## **Annex 1**

### **Schedule of Conditions – Burnthouse Farm (Appeal A) Time Limits and Site Restoration**

- 1) The development hereby permitted shall be commenced within 5 years of the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the plans, Nos. EN12855/DR1.1, EN12855/DR2.1, EN12855/DR1.2 (July 2009), AK0001(rev June 2009), 949908/04, 949908/05A, 05B & 05C (revised Aug 2009).
- 3) The permission hereby granted shall expire not later than 25 years from the date when electricity is first exported from any of the wind turbines to the electricity distribution grid ("First Export Date"). Written notification of the First Export Date shall be given to the Local Planning Authority no later than 14 days after the event.
- 4) Not later than 12 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 ancillary equipment to a depth of at least 0.2 metres below ground. The scheme shall include the management and timing of any works, a traffic management plan to address likely traffic issues during the decommissioning period, an environmental management plan to include details of measures to be taken during the decommissioning period to protect wildlife and habitats and a programme of implementation. The approved scheme shall be fully implemented within 12 months of the expiry of this permission.
- 5) If any wind turbine hereby permitted fails to produce electricity for supply to the grid for a continuous period of 12 months then, unless otherwise agreed in writing by the Local Planning Authority, the wind turbine and its associated ancillary equipment shall be removed from the site within a period of 3 months from the end of the 12 month period. The land shall be reinstated in accordance with a scheme (including management and timing of the works and a traffic management plan) submitted to and approved in writing by the local planning authority.

### **Ecology**

- 6) No development shall take place until a specification for a breeding bird survey on the development site has been submitted to and approved in writing by the Local Planning Authority. The specification, prepared by a suitably qualified independent ecologist, shall include the methodology for the survey, a timetable for checking of the survey and submission of a report detailing the survey results. The report shall also identify any mitigation measures required as a result of the survey for any construction works or clearance of vegetation between 1 March and 31 August. The specification and mitigation measures shall be implemented as approved.
- 7) No development shall take place until a specification for protected species surveys to be carried out has been submitted to and approved in writing by the Local Planning Authority. The surveys shall be undertaken by a suitably qualified ecologist in the last suitable season prior to site preparation and construction work commencing. The survey results and a programme of any mitigation works required shall be submitted to and approved in writing by the Local Planning Authority. The approved programme of mitigation works shall be implemented in full.

- 8) No development shall take place until an Ecological Management Scheme has been submitted for the approval of the Local Planning Authority. The scheme shall include details of land management measures on the site to deter avian species from foraging in the vicinity of the turbines and built structures; enhancement and maintenance of field margins and dyke verges; and measures to minimise foraging habitat on the site including the maintenance of margins around the access tracks and built structures which comprise the development and the management of surplus crops on the site. The scheme shall be implemented as approved in writing by the Local Planning Authority.

### **Surface and Foul Water Drainage**

- 9) No development shall take place until a surface and foul water drainage scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with a programme of implementation setting out approved details.
- 10) All electrical equipment (critical infrastructure) should be raised to a level of at least 1.5 metres AOD to provide sufficient freeboard above the predicted flood water level.

### **Construction Traffic Management Plan and Highways**

- 11) No development shall take place 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 approved Construction Traffic Management Plan including any agreed improvements or works to accommodate construction traffic where required along the route, shall be carried out as agreed in writing by the Local Planning Authority.
- 12) No development shall take place until a scheme to secure any repairs to the length of the road shown on the attached plan titled "Road Survey Plan" required as a consequence of the development have been submitted to and improved in writing by the Local Planning Authority. The scheme shall include proposals for a condition survey of the length of road shown on the Road Survey Plan and a programme and methodology for any necessary repairs following the completion of construction. The scheme shall be implemented as approved.
- 13) Access roads should be set no lower than 300 mm above the average surrounding ground level.

### **Construction Method Statement**

- 14) No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the construction of the development shall only be carried out in accordance with the approved Statement, subject to any variations agreed in writing by the Local Planning Authority. The Construction Method Statement shall address the following matters:
  - a) Details of the phasing of all construction works
  - b) Details of routing of the access tracks
  - c) Details of the construction and surface treatment of all hard surfaces and tracks



- d) Details of the proposed storage of materials and disposal of surplus materials
- e) Dust management
- f) Siting and details of wheel washing facilities
- g) Details of the proposed temporary site compound for storage of materials and machinery (including areas designated for car parking)
- h) Areas on site designated for the storage, loading, off-loading, parking and manoeuvring of heavy duty plant, equipment and vehicles
- i) The construction of the site access and the creation and maintenance of associated visibility splays
- j) 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
- k) Pollution control: protection of water courses, bunding of fuel storage areas, surface water drainage, sewage disposal and discharge of foul drainage
- l) Proposals for post construction restoration/reinstatement of the temporary working areas
- m) Details of emergency procedures and pollution response plans
- n) Details of the routing of underground cabling
- o) Working practices for protecting the nearby residential dwellings, including measures to control noise and vibration arising from on-site activities, such as piling, shall be adopted as set out in British Standard 5228 Part 1: 2009

## **Construction Hours**

- 15) Construction work shall only take place between the hours of 07:00 – 19:00 on Monday to Friday inclusive, 08:00 – 13:00 hours on Saturdays with no such construction work on a Sunday or Public Holiday. Outside these hours, works at the site shall be limited to emergency works and dust suppression, unless otherwise approved in writing by the Local Planning Authority. The Local Planning Authority shall be informed in writing of emergency works within three working days of occurrence.
- 16) The delivery of any construction materials or equipment for the construction of the development, other than turbine blades, nacelles and towers, shall be restricted to the hours of 07:00 – 19:00 on Monday to Friday inclusive, 08:00 – 13:00 hours on Saturdays with no such deliveries on a Sunday or Public Holiday unless otherwise approved in writing by the Local Planning Authority having been given a minimum of two working days notice of the proposed delivery.

## **Appearance**

- 17) Prior to the erection of any turbine, details of the finish and colour of the wind turbines and any external transformer units shall be submitted to and approved in writing by the Local Planning Authority. No name, sign, symbol or logo shall be displayed on any external surfaces of the turbines or any external transformer units other than those required to meet statutory health and safety requirements. The agreed colour finishes of the wind turbines shall not be changed without the prior consent in writing of the Local Planning Authority.
- 18) The temporary construction compound shall be removed from the site within 3 months of the commissioning of the final turbine.
- 19) The blades of all of the wind turbine generators shall rotate in the same direction.
- 20) Construction of a sub-station building shall not commence until details of the external appearance, dimensions, layout and materials of that building and any associated compound or parking area, and details of surface foul water drainage

from the sub-station building and any associated compound or parking area have been submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved details.

- 21) All cabling between the turbines and sub-station shall be laid underground.
- 22) The overall height of the wind turbines shall not exceed 100 metres to the tip of the blades when the turbine is in a vertical position as measured from natural ground conditions immediately adjacent to the turbine base.

### **Television Interference**

- 23) Prior to the First Export Date a scheme providing for the investigation and alleviation of any electro-magnetic interference to TV caused by the operation of the turbines shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall provide for the investigation by a qualified 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 wind farm, mitigation works shall be carried out in accordance with the scheme which has been approved in writing by the Local Planning Authority.

### **Shadow Flicker**

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

### **Aviation**

- 25) No development shall take place unless and until a Radar Mitigation Scheme has been submitted to and approved in writing by the Local Planning Authority. The Radar Mitigation Scheme shall address the impact of the proposed development upon air safety.

“Radar Mitigation Scheme” means a scheme proposed by the wind farm operator which is designed to mitigate the impact of the development upon the operation of the Primary Surveillance Radar at RAF Cottesmore (“the Radar”) and the air traffic control operations of the Ministry of Defence which are reliant upon the Radar. The Radar Mitigation Scheme shall set out the appropriate measures to be implemented to mitigate the impact of the development on the Radar and shall be in place for the period the Primary Surveillance Radar at RAF Cottesmore remains in operation.

- 26) No turbines shall become operational unless and until all measures required as part of the approved Radar Mitigation Scheme have been implemented in accordance with timescales within it and the Local Planning Authority has confirmed in writing that the Radar Mitigation Scheme has been implemented. The development shall thereafter be operated fully in accordance with the approved Radar Mitigation Scheme.

- 27) No development shall commence unless and until a scheme for lighting (“the Lighting Scheme”) has been submitted to and approved in writing by the local planning authority. The Lighting Scheme shall include MoD approved infrared aviation lighting to be fitted to the hub of turbines 1 and 3, as denoted on EN12855/DR8.33, and lighting required during the construction period of the development and any periods of planned maintenance. The Lighting Scheme shall thereafter be implemented as approved.

## Noise

- 28) The rating level of noise immissions from the combined effects of the wind turbines (including the application of any tonal penalty) hereby permitted when determined in accordance with the attached Guidance Notes, shall not exceed the values for the relevant integer wind speed set out in the tables attached to these conditions and:
- A. Prior to the First Export Date the wind farm operator 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 complaint to it alleging noise disturbance at a dwelling, the wind farm operator shall, at its expense, employ an independent consultant approved by the Council to assess the level of noise immissions from the wind farm at the complainant’s property in accordance with the procedures described in the attached Guidance Notes. The written request from the Local Planning Authority shall set out the conditions described in Guidance Note 2(b) and include a statement as to whether, in the opinion of the Local Planning Authority, the noise giving rise to the complaint contains or is likely to contain a tonal component. The wind farm operator shall provide the information relevant to the complaint logged in accordance with paragraph (G) to the Local Planning Authority in the format set out in Guidance Note 1(e).
  - C. Where a dwelling to which a complaint is related is not listed in the tables attached to these conditions, the wind farm operator shall submit to the Local Planning Authority for written approval proposed noise limits selected from those listed in the Tables to be adopted at the complainant’s dwelling for compliance checking purposes. The proposed noise limits are to be those limits selected from the Tables specified for a listed location which the independent consultant considers as being likely to experience the most similar background noise environment to that experienced at the complainant’s dwelling. The 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 representative background noise environment and proposed noise limits shall be submitted for approval in writing by the Local Planning Authority. 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 these conditions, the wind farm operator 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. The wind farm operator shall provide to the Local Planning Authority the independent consultant's assessment of the rating level of noise immissions undertaken in accordance with the Guidance Notes within 2 months of the date of the written request of the Local Planning Authority made under paragraph (B) unless the time limit is extended in writing by the Local Planning Authority. The assessment shall include all data collected for the purposes of undertaking the compliance measurements, such data to be provided in the format set out in Guidance Note 1(e) of the Guidance Notes. The instrumentation used to undertake the measurements shall be calibrated in accordance with Guidance Note 1(a) and certificates of calibration shall be submitted to the Local Planning Authority with the independent consultant's assessment of the rating level of noise immissions.
- F. Where a further assessment of the rating level of noise immissions from the wind farm is required pursuant to paragraph 4(c) of the attached Guidance Notes, the wind farm operator shall submit a copy of the further assessment within 21 days of submission of the independent consultant's assessment pursuant to paragraph (E) above unless the time limit has been extended in writing by the Local Planning Authority.
- G. The wind farm operator shall continuously log power production, nacelle wind speed, nacelle wind direction and nacelle orientation at each wind turbine all in accordance with Guidance Note 1(d). These data shall be retained for a period of not less than 12 months. The wind farm operator shall provide this information in the format set out in Guidance Note 1(e) to the Local Planning Authority on its request, within 14 days of receipt in writing of such a request.

**Note:** For the purposes of this condition, a "dwelling" is 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 consent.

## TABLES TO BE USED IF JUST BURNTHOUSE IS OPERATIONAL

### Windfarm Noise Limits (Burnthouse)

**Table 4 - Between 07:00 and 23:00 - Noise level dB L<sub>A90</sub>, 10-minute**

Location	Standardised wind speed measured at 10 metre height (m/s) within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
Burnt House Farm (financially interested)	45	45	45	45	45	45	45	47	51	53	53	53
Willow Farm	35	35	35	35	35	37	39	41	44	45	45	45
17 Burnthouse Sidings	35	35	35	35	35	37	40	43	47	49	49	49
Quaker's Drove Farm	35	35	35	36	38	40	43	47	51	53	53	53
Hakes Farm	35	35	35	35	37	40	42	46	50	52	52	52
Blackhall/Tokai	35	35	37	40	42	45	48	51	55	56	56	56
3 Burnthouse Sidings	35	35	39	39	41	42	45	47	51	53	53	53

**Table 5 – Between 23:00 and 07:00 – Noise level dB  $L_{A90, 10\text{-minute}}$** 

Location	Standardised wind speed at 10 metre height (m/s) within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
Burnt House Farm (financially interested)	45	45	45	45	45	45	45	45	45	45	45	45
Willow Farm	43	43	43	43	43	43	43	43	43	43	43	43
17 Burnthouse Sidings	43	43	43	43	43	43	43	43	43	43	43	43
Quaker's Drove Farm	43	43	43	43	43	43	43	43	45	45	45	45
Hakes Farm	43	43	43	43	43	43	43	43	47	47	47	47
Blackhall/Tokai	43	43	43	43	43	43	47	51	54	54	54	54
3 Burnthouse Sidings	43	43	43	43	43	43	43	43	43	43	43	43

**Table 6: Coordinate locations of the properties listed in Tables 4 and 5.**

Property	Easting	Northing
Burnt House Farm (financially interested)	533498	294294
Willow Farm	533496	295046
17 Burnthouse Sidings	534227	294226
Quaker's Drove Farm	534082	295930
Hakes Farm	534607	295881
Blackhall	534692	294861
3 Burnthouse Sidings	533555	294252

Note to Table 6: The geographical coordinates references are provided for the purpose of identifying the general location of dwellings to which a given set of noise limits applies.

### Guidance Notes for Noise Conditions

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

#### Note 1

- (a) Values of the  $L_{A90,10\text{-minute}}$  noise statistic should be measured at the complainant's property, using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This should be calibrated in accordance with

the procedure specified in BS 4142: 1997 (or the equivalent UK adopted standard in force at the time of the measurements). Measurements shall be undertaken in such a manner to enable a tonal penalty to be applied in accordance with Guidance Note 3.

- (b) The microphone should be mounted at 1.2 - 1.5 metres above ground level, fitted with a two-layer windshield or suitable equivalent approved in writing by the Local Planning Authority, and placed outside the complainant's dwelling. Measurements should be made in "free field" conditions. To achieve this, the microphone should be placed at least 3.5 metres away from the building facade or any reflecting surface except the ground at the approved measurement location. In the event that the consent of the complainant for access to his or her property to undertake compliance measurements is withheld, the wind farm operator shall submit for the written approval of the Local Planning Authority details of the proposed alternative representative measurement location prior to the commencement of measurements and the measurements shall be undertaken at the approved alternative representative measurement location.
- (c) The  $L_{A90,10\text{-minute}}$  measurements should be synchronised with measurements of the 10-minute arithmetic mean wind speed and with operational data logged in accordance with Guidance Note 1(d), including the power generation data from the turbine control systems of the wind farm.
- (d) To enable compliance with the conditions to be evaluated, the wind farm operator shall continuously log arithmetic mean wind speed in metres per second (m/s), arithmetic mean wind direction in degrees from north and nacelle orientation as logged by the turbine control system. The mean wind speed data as measured at hub height shall be 'standardised' to a reference height of 10 metres as described in ETSU-R-97 at page 120 using a reference roughness length of 0.05 metres. It is this standardised 10 metre height wind speed data which is correlated with the noise measurements determined as valid in accordance with Note 2(b), such correlation to be undertaken in the manner described in Note 2(c). 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.
- (e) Data provided to the Local Planning Authority in accordance with paragraphs (B), (E), (F), and (G) of the noise condition shall be provided in comma separated values in electronic format.
- (f) A data logging tipping bucket 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 in accordance with the protocol detailed in 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 specified by the Local Planning Authority in its written request under paragraph (B) of the noise condition but excluding any periods of rainfall measured in accordance with Note 1(f). These specified conditions shall include the range of wind

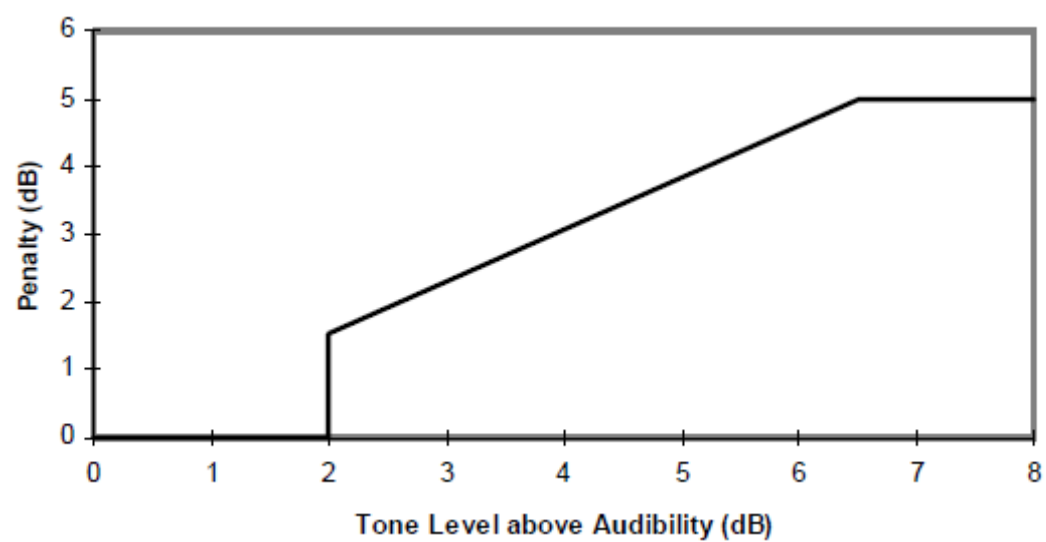
speeds, wind directions, times of day and meteorological conditions and power generation. In specifying such conditions the local planning authority shall have regard to those conditions which prevailed during times when the complainant alleges there was disturbance due to noise or which are considered likely to result in a breach of the limits.

- (c) Values of the  $L_{A90,10\text{-minute}}$  noise measurements and corresponding values of the 10-minute wind speed for those data points considered valid in accordance with Note 2 paragraph (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) should be fitted to the data points and define the wind farm noise level at each integer speed.

### **Note 3**

- (a) Where, in the opinion of the Local Planning Authority as advised to the wind farm operator in its written request under paragraph (B) of the noise conditions, 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 within  $\pm 0.5\text{m/s}$  of each integer wind speed. If there is no apparent trend with wind speed then a simple arithmetic mean shall be used. This process shall be repeated for each integer wind speed for which there is an assessment of overall levels in Note 2.
- (f) The tonal penalty is derived from the margin above audibility of the tone according to the figure below.





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

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

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

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

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

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

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

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

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

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

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



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

by Jill C Kingaby BSc(Econ) MSc MRTPI

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

Date: 26 April 2011

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THE TOWN AND COUNTRY PLANNING ACT 1990

REPORT ON RECOVERED APPEALS

BY

FIVESTONE LIMITED

AND

SCOTTISH POWER RENEWABLES (UK) LIMITED

AGAINST THE DECISIONS OF

FENLAND DISTRICT COUNCIL

Inquiry held on 2-4, 8-11, & 16 February 2011  
Site visit made 15 February 2011

File Ref(s): APP /D0515/A/10/2123739 and APP /D0515/A/10/2131194

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## **ABBREVIATIONS USED IN THIS REPORT**

<b>BDH</b>	<b>Boardinghouse Farm</b>
<b>BHF</b>	<b>Burnthouse Farm</b>
<b>[CD]</b>	<b>Core Document</b>
<b>EHO</b>	<b>Environmental Health Officer</b>
<b>EIA</b>	<b>Environmental Impact Assessment</b>
<b>ES</b>	<b>Environmental Statement</b>
<b>FDC</b>	<b>Fenland District Council</b>
<b>FF</b>	<b>Flood's Ferry Farm</b>
<b>ha(s)</b>	<b>hectare(s)</b>
<b>km(s)</b>	<b>Kilometre(s)</b>
<b>LDF</b>	<b>Local Development Framework</b>
<b>L&amp;V</b>	<b>landscape and visual</b>
<b>LVIA</b>	<b>landscape and visual impact assessment</b>
<b>MoD/MOD</b>	<b>Ministry of Defence</b>
<b>MW</b>	<b>megawatts</b>
<b>PPS</b>	<b>Planning Policy Statement</b>
<b>RSS</b>	<b>Regional Spatial Strategy</b>
<b>SF</b>	<b>solar farm</b>
<b>SOCG</b>	<b>Statement of Common Ground</b>
<b>SoS, SofS</b>	<b>Secretary of State</b>
<b>SoSCLG</b>	<b>Secretary of State for Communities and Local Government</b>
<b>SPR</b>	<b>Scottish Power Renewables (UK) Limited</b>
<b>UKRES</b>	<b>UK Renewable Energy Strategy</b>
<b>WTG</b>	<b>Wind Turbine Development Policy Guidance</b>

**File Ref: APP/D0515/A/10/2123739 (Appeal A)**

**Land north of Burnthouse Farm, Burnthouse Sidings, Turves PE7 2HP**

- 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 Fivestone Limited against the decision of Fenland District Council.
- The application Ref F/YR09/0392/F, dated 22 5 09, was refused by notice dated 4 1 10.
- The development proposed is the erection of 3 wind turbines (maximum height 100m to blade tip) together with ancillary structures and works including the erection of a control building, site access tracks and temporary compound (located on West Fen Drove) during construction.

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

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**File Ref: APP/D0515/A/10/2131194 (Appeal B)**

**Staffurth's Bridge Farm, March, Cambridgeshire PE15 0YP**

- 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 Scottish Power Renewables (UK) Limited against the decision of Fenland District Council.
- The application Ref F/YR09/0272/F, dated 31 3 09, was refused by notice dated 4 1 10.
- The development proposed is the erection of 9 wind turbines with a maximum height of not more than 110.5metres from base to blade tip (when vertical), together with ancillary development including control building housing switch gear, on-site underground electrical cables, on-site access tracks and watercourse crossings, crane hardstanding areas, permanent meteorological mast, two temporary construction compounds and access from Quaker's Drove.

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

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**Procedural Matters**

1. The site and proposal in Appeal A are described as 'Burnthouse Farm' or 'Burnthouse', and the site and proposal in Appeal B as 'Flood's Ferry Farm' or 'Flood's Ferry' in this report.
2. An application for planning permission for 5 wind turbines with blade tip height up to 125m at Burnthouse Farm was made in May 2009. Following further consideration by the Appellant, the application was revised in August 2009, before the Council had determined it, with the removal of two turbines and re-siting of one further south. The revised application sought permission for turbines with a blade tip height up to 100m (hub height approximately 60m). The amended application was supported by revisions to the Environmental Statement (ES), design and access statement and plans. The Council determined the application for 3 wind turbines; my report is based on the revised scheme.
3. Appeal A was refused by the Council for the single reason:  
*"The proposal is contrary to policies E1 and E8 of the Fenland District wide Local Plan and Planning Policy Statement 22 – Renewable Energy in that a number of individual residential dwellings would be adversely affected with regard to visual outlook due to the close proximity of the windfarm."*
4. Appeal B was also refused for a single reason:

*"The proposal is contrary to policies E1 and E8 of the Fenland District wide local Plan and Planning Policy Statement 22 – Renewable Energy in that the cumulative impact arising from the development in visual terms would result in a harmful material change."*

5. Following a Pre-Inquiry Meeting for the Fivestone appeal in July 2010, the Inspectorate decided that both appeals should be the subject of a conjoined Inquiry. The decision was taken because of the proximity of the sites and the potential for cumulative impacts to be significant in terms of both landscape/visual impact and residential amenity.
6. The Planning Inspectorate wrote to Fivestone Limited on 3 August 2010 in connection with the submitted Environmental Statement (ES) and updated ES. Pursuant to Regulation 19(1) of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, further information was sought from the Appellant:  
  
*"An assessment of the cumulative effects of the proposed development which shall not be limited to consideration of only existing and consented schemes, but shall include proposals for which design information is in the public domain."*
7. Further Environmental Information comprising an assessment of potential cumulative significant effects and updated noise assessment, to include a cumulative noise assessment, was produced by Fivestone in October 2010 [CD9.8, 9.9]. Scottish Power Renewables also produced a Supplementary Environmental Information report September 2010, EIA Additional Landscape and Visual Information – Review of Cumulative Situation August 2010, and Updated Cumulative Noise Assessment report, July 2010 [CD10.2]. The Planning Inspectorate considered all the submitted information and concluded that it was adequate in both cases and Schedule 4 of the EIA Regulations was met.
8. These appeals were recovered by the Secretary of State for his determination in August 2010 in exercise of his powers under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990. The reason for the direction was that: *"cumulatively the appeals involve proposals of major significance for the delivery of the Government's climate change programme and energy policies"*.

### **The Sites and Surroundings**

9. Both sites lie some 12-13 miles east of Peterborough and in a rural area. The surrounding landscape is typically flat, low-lying agricultural fenland.
10. Located south of Turves, the Burnthouse Farm site occupies approximately 220 hectares (ha) of farmland. Other settlements within 5 kilometres (kms) are Benwick to the south, and Eastrea and Coates to the north. The site consists of arable land with field tracks and drainage ditches and in places native hedges mark field boundaries. Large agricultural buildings are present in the vicinity of the site associated with adjacent farmsteads. A minor public no-through road, West Fen Drove, provides access across the site.

11. The Flood's Ferry Farm site is some 5kms south-west of the settlement of March and about 2kms from Turves. Other nearby centres of population are Doddington and Benwick at about 5kms and Whittlesey, some 9kms to the west. Occupying about 377 ha, this site too is characterised by agricultural fields divided by managed ditches, and built development includes farm buildings. A number of individual residential properties lie close to the site boundary.
12. The Flood's Ferry Farm site is accessed from Quaker's Drove to the west which connects to Burnthouse Road. The Hereward's Way long distance footpath (FP28) bisects the site along Hake's Drove. South-east of the site, runs the navigable River Nene with a holiday park at Staffurth's Bridge. National Cycle Route 63 and the railway line extend to the north in a west-east direction.

## Planning Policy

13. The development plan for the area currently consists of the East of England Plan: the Revision to the Regional Spatial Strategy (May 2008) (RSS), saved policies from the Cambridgeshire and Peterborough Structure Plan (October 2003) and saved policies from the Fenland District Wide Local Plan (1993).
14. The Coalition Government declared its intention to abolish RSS shortly after last year's General Election. Following a successful legal challenge by Cala Homes (South) Ltd, in November 2010 the Secretary of State's revocation decision of July 2010 was quashed and it was confirmed that the RSS continued to form part of the development plan. A second challenge was made by Cala Homes to the Secretary of State's statement and letter to Chief Planning Officers of 10 November 2010, which indicated that the proposed revocation of RSS was material to the determination of planning applications and appeals. This challenge failed (February 2011) so that the proposed abolition of the East of England Plan is a material consideration in this appeal. The weight to be given to it is a matter for the decision-maker [S8].
15. Policy ENG1 of the RSS states that, to meet regional and national targets for reducing climate change emissions, new development should be located and designed to optimise its carbon performance. Local authorities should encourage the supply of energy from decentralised, renewable and low carbon energy sources and through Development Plan Documents set ambitious but viable proportions of the energy supply of new development to be secured from such sources. Policy ENG2 of the RSS sets targets for renewable energy capacity. By 2010, 10% of the Region's energy and by 2020, 17% should have come from renewable sources, excluding energy from off-shore wind. Policy ENV2 calls on planning authorities to protect and enhance the diversity and local distinctiveness of the countryside character by developing area-wide strategies and landscape character assessments [CD1.1].
16. Neither the Structure Plan [CD1.3] nor the Local Plan [CD1.2] contain policies which specifically address renewable energy or wind farm development. Saved Policies E1 and E8 of the Local Plan were cited in the reasons for refusal. E1 states that development likely to detract from the

unique, open character of the Fenland landscape will not normally be permitted. New development for which a rural location is essential should be i) sited close to existing buildings or on a site which minimises its visual impact, ii) of a scale and design and use materials that can be assimilated into the rural landscape, and iii) adequately screened and landscaped. Saved Policy E8 requires new development to be of a design compatible with their surroundings and have regard for the amenities of adjoining properties and the locality in general. Policy E7 relates to archaeological sites, and E20 resists any development which would give rise to unacceptable levels of noise, nuisance or other environmental pollution.

17. The emerging Core Strategy within the Local Development Framework (LDF) is still at a relatively early stage of preparation [CD2.2]. Emerging Policy N5 of Preferred Options 2 supports renewable energy development in principle, providing that specific criteria are met. Emerging Policy N6 permits proposals for wind turbines with ancillary buildings and infrastructure except where defined adverse effects would occur.
18. The Council commissioned the Landscape Partnership to undertake a wind turbine study in November 2007, to provide support for emerging policy in the LDF and to enable Planning Officers to make informed judgments in respect of the suitability of wind farm proposals. Following public consultation, the Wind Turbine Development Policy Guidance (WTG) was adopted and published in June 2009 [CD2.1]. It is not part of the development plan but represents a material consideration in these appeals. Its section 6 identifies a series of landscape and environmental criteria for application in all future wind turbine proposals at Scoping Opinion stage, during Environmental Impact Assessment and for review as part of the decision-making process.
19. The WTG references the established national guidance on Landscape Character Assessment in the Countryside Agency and Scottish National Heritage document "Landscape Character Assessment: Guidance for England and Scotland, 2002" [CD6.3]. The Topic Papers supporting this guidance draw attention to the importance of the value of the landscape when defining capacity to accommodate wind turbines [CDs 6.5 & 6.6]. There are no national, regional or local landscape designations within Fenland District.
20. The WTG considered the likely impact of turbine developments of varying sizes, categorising a group of 2-5 turbines with a typical height of 100-125m as a small scale group and 6-11 turbines as small to medium scale. Five Landscape Character Types within the District are identified in the WTG report, and the appeal sites would occupy the "drained fenland" type. The sensitivity of landscape character types, having regard to scale and sense of enclosure, impact of landform, landcover and landcover change, settlement pattern and density, skyline, landmarks and built development, visibility from outside and connection with adjacent landscapes, remoteness and tranquillity, was assessed. Small to medium scale development in the drained fenland generally scored "low" and occasionally "moderate" in terms of sensitivity (Appendix 6 of the WTG).
21. The WTG went on to evaluate the visual impact of turbine development at different distances. Within 400m, turbines over 100m in



height would have a “dominant” magnitude of impact – “Turbines form the principle [sic] element of the view and may overpower the viewer”. Between 400m and 2km, they would be “prominent” and “form a very large element of the view, commanding and controlling the view”. At 2-5km, turbines would be “conspicuous” and at 5-15km “apparent”. For turbines of 86-100m in height a “dominant” impact would occur within 350m, and “prominent” at 350m-1.7kms.

22. Since Fenland District already contains wind turbine developments which affect the character of its landscapes, an assessment was made of the proportion of character types which were covered (in 2009) by different zones of visual impact. Flood’s Ferry Farm and Burnthouse Farm are located within the Drained Fen character type. Table 9 of the WTG indicated that 16% of the drained fenland could be classified within the “prominent” zone and 57% in the “conspicuous” zone. Thresholds for capacity were then calculated which would allow for the sensitivity of different landscape character types but allow for suitable future turbine development. Thresholds for the Drained Fenland were given as 25% “prominent” and 75% “conspicuous”, rising to 100% “apparent”.
23. On cumulative visual impacts, the WTG, following the Scottish National Heritage document, identifies 3 types of effect: Combined/simultaneous impact (can see 2 or more developments from one viewpoint without moving head or over an arc of some 90 degrees); successive/repetitive impact (2 or more windfarms visible from one viewpoint but have to move head to do so over a 180-360 degree arc); and sequential impact (have to move to see other developments or the same development from a different view eg. travelling along a road). When turbines are within 4kms of each other ie. where the prominent zones of visibility overlap, there is likely to be a significant cumulative impact from a number of locations. If turbines are within 10kms of each other (where the conspicuous visibility zones overlap) there will be a noticeable cumulative visual impact. Settlements of 10 or more dwellings, it is suggested, should not have wind farms in more than 90 degrees of their field of view for a distance up to 5kms. Individual dwellings should not have wind turbines in more than 180 degrees for a distance of 10kms.
24. National planning policy relevant to the proposal is principally:
  - Planning Policy Statement 1: Delivering Sustainable Development, and its Supplement entitled Planning and Climate Change [CD3.1];
  - Planning Policy Statement 7: Sustainable Development in Rural Areas [CD3.3];
  - Planning Policy Statement 22: Renewable Energy and its Companion Guide [CD3.5].

## The Proposals

25. The Burnthouse Farm proposal would consist of three turbines each with a maximum electricity generation capacity of 2megawatts (MW), giving 6MW in total. In addition to the turbines, associated infrastructure would include a control building, new access tracks and the upgrading of existing tracks, crane hardstanding areas, a temporary construction compound on West Fen Drove, concrete turbine foundations and associated

underground power cabling. New site access points would be provided, from Burnthouse Sidings to serve Turbine 1 and from West Fen Drove to access Turbines 2 and 3. The overall construction period is expected to last about 20 weeks. After a life of some 25 years, the development would be de-commissioned [SOCG].

26. The 9 turbines at Flood's Ferry Farm generating up to 18MW of electricity would be supported by ancillary features comprising crane hardstandings, control building and compound housing switchgear, on-site access tracks, a permanent meteorological mast, on-site underground electrical cabling, provision to bury two existing powerlines that cross the site and a temporary construction compound. Two existing buildings and a derelict structure would be removed and replaced with the control building and compound. In order to protect the development against flood risk (1 in 100 years), infrastructure would be set at least 0.3m above the existing minimum ground level.
27. New access tracks and the upgrading of existing tracks would extend to about 3.5kms. New tracks would follow existing field boundaries wherever possible so that the land would remain useable for agricultural purposes. Selected access tracks would be retained throughout the operational life of the turbines to enable maintenance. An area of site accommodation and temporary works would be required during construction and de-commissioning, but would be removed and the area fully restored after the completion of construction. Planning permission for a meteorological mast of 70m height was granted in September 2007 on the site (Ref: F/YR07/0830/F) [SOCG].

### **Agreed and Other Facts**

28. A Statement of Common Ground (SOCG) for the Burnthouse Farm proposal (Appeal A), was signed by the Appellant's solicitors and Fenland District Council in April 2010. A SOCG for the Flood's Ferry Farm proposal (Appeal B) was signed on behalf of Scottish Power Renewables and Fenland District Council in September 2010.

### *Baseline for Cumulative Landscape and Visual Impact Assessment*

29. The SOCG for Burnthouse Farm stated that relevant wind energy schemes for the assessment of potential cumulative effects were "Foundry Way at Longhill, Stag's Holt, Coldham, Glassmoor, the five turbines at Ranson Moor, McCains, Redtile, Ramsey, Deeping St Nicholas, Gedney March, Wryde Croft and Abbey." (paragraph 8.4). Although it was agreed that *"there are no other schemes which are required to be included within the ambit of the cumulative LVIA"*, this position was changed with the Regulation 19 request. It is clear that the above list would not include all potential wind energy schemes, notably those at Flood Ferry's Farm and Boardinghouse Farm.
30. Following the Regulation 19 request from the Planning Inspectorate, further information was provided by Scottish Power Renewables to extend the list of relevant wind energy schemes which it considered relevant to assess any cumulative impacts. The Review of Cumulative Assessment [CD10.2] explains that the Appellant reviewed wind farms within 60kms radius of Flood's Ferry and identified a study area of

15kms radius “being the maximum extremity at which significant cumulative effects could potentially occur”. It listed the following sites for consideration in the assessment of cumulative impact:

- Operational: Ramsey, Coldham 1, Glassmoor, Longhill Road, McCain’s Foods, Ransonmoor Farm, Red Tile Farm, Stag’s Holt, Abbey Group (Whittlesey).
- Consented: Coldham Extension II, Longhill Road 2, Anglian Water, March, Nuts Grove, Stag’s Holt extension, Wryde Croft
- In Planning: March Landfill
- Appeal: Burnthouse Farm, Boardinghouse Farm, French Farm.

31. A number of wind farms of 1MW capacity or more were identified as being at the scoping stage. Given their preliminary status and the high prospects of change, these were not included in the assessment. Proposals for Australia Farm, Greenvale, Yewtree Farm and White Fen Farm were mapped on Figure 3 of CD10.2 but not included in the assessment.

32. Fivestone also undertook additional work on cumulative effect [CD9.8] identifying 19 wind farms, single turbines or extensions to wind farms within 20kms of its site which were either in operation, under construction or in the planning system. These were listed in Table 1.5 and shown in Fig 1.1 of CD9.8 and they correlate closely with those considered by Scottish Power Renewables. Concerning the request for a scoping opinion at Australia Farm, this was sought in March 2009 for 4 turbines up to a maximum height of 120m to blade tip (described in places as 20m). They would be located some 1.8kms from Burnthouse Farm and much closer to the Flood’s Ferry Farm scheme. However, the Council reported no further communication or follow up action for this site.

#### *Proposed Wind Turbines at Boardinghouse Farm*

33. A planning application for 5 wind turbines with associated infrastructure on land south of Boardinghouse Farm, Knight’s End Road, March was made in August 2009 to Fenland District Council by Ecogen Limited (F/YR09/0562/F). It was refused because, it was alleged, it would have a detrimental impact on the existing landscape and be contrary to Policy E1 of the Local Plan. The site is at Ranson Moor immediately north of the existing Ransonmoor wind farm. Its position in relation to the proposals for Flood’s Ferry Farm and Burnthouse Farm is shown in the Appendix to Mr Billingsley’s Proof at JB04. The Boardinghouse Farm proposal is included in the planned schemes which form the baseline for cumulative assessment by both Scottish Power Renewables and Fivestone Limited for Appeals A and B [30, 32].

34. An appeal was lodged for the Boardinghouse Farm proposal in October 2010 (Ref: APP/D0515/A/10/2138585) and the case recovered by the Secretary of State in December because it involves proposals of major significance for the delivery of the Government’s climate change programme and energy policies.

#### *Proposed Solar Farm at Burnthouse Farm*

35. A planning application for a solar farm at Burnthouse Farm was submitted in December 2010 by Abbey Renewables Limited. The site of just under 17ha comprises agricultural land on the north side of Burnthouse

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- Sidings. The proposal is *“Construction of solar energy farm, to include the installation of solar panels to generate up to 5mw of electricity, with on site equipment rooms and plant, access tracks, security fencing and cameras, landscaping and other associated works”* [F5]. A screening request for Environmental Impact Assessment (EIA) was submitted in November 2010 with the acknowledgement that it *“would by virtue of its size be caught by Schedule 2 of the Regulations”* but based on experience elsewhere, the Applicant observed that EIA would be unlikely to be required [F5(2)].
36. Banks of solar panels or strings would be around 8m apart to avoid any overshadowing. The panels would be angled at about 25 degrees to horizontal, rising from 0.75m to 2.2m above ground at the lowest and highest points. At strategic points within the development, inverters and transformers would be housed in small buildings of about 3x5m designed to appear like traditional agricultural buildings. A dark coloured fence of about 2.4m height would provide site security and would be screened by hedgerows and planting on the eastern, western and southern sides of the development.
  37. Notwithstanding the Applicant’s opinion on the requirement for EIA, a Landscape and Visual Impact Assessment was undertaken which covered viewpoints and 17 residential properties within 1km of the proposed site [F5,(4)]. It concluded that 6 properties would experience moderate adverse effects in year 1: Forties Farm, Model Farm, 200 Cock Bank, 1 & 2 Blackhall Cottages and Willow Farm. By year 10 with mitigation in place, these would experience moderate/slight neutral impacts. Burnt House Farm, 5, 15 and 17 Burnthouse Sidings and Garton House, Jones Drove were judged as likely to experience moderate/slight adverse impacts in Year 1 reducing to slight neutral or moderate/slight neutral by year 10. For viewpoints along Hereward’s Way as it continues along Hake Drove, along the River Nene (Old course) and local minor roads, moderate/slight neutral effects in year 1 would become slight neutral by year 10.
  38. Evidence on behalf of Scottish Power Renewables indicated that EIA was not being sought for the solar farm application [S7(2.0)]. The proposed Flood’s Ferry windfarm would be about 1.35km from the solar farm site and at this distance SPR asserted *“I consider it inconceivable that the addition of Flood’s Ferry windfarm to a baseline that contained the solar farm, would give rise to any significant or visual impacts, including cumulative effects.”*
  39. A Cumulative Landscape and Visual Assessment of Burnt House Wind Farm in combination with the Turves Solar Farm was completed in February 2010 during the Inquiry [F6 RevA & RevC]. The assessment found that in combination the schemes would not give rise to more than a moderate cumulative effect at any of the residential properties along Cock Bank or Burnthouse Sidings. Willow Farm, assessed by the Solar Farm LVIA to have a moderate adverse effect, had been assessed as having a substantial effect from the proposed wind turbines. The cumulative visual effect was also assessed as substantial. Regarding users of public rights of way and local roads, the study found that substantial cumulative effects would arise along a short section of Hereward’s Way and on sections of Burnthouse Road and West Fen Drove. Where substantial cumulative effects were identified, these were largely attributable to the proposed wind

farm. The effects from the solar farm, it was concluded, would be limited in extent and nature and would diminish over time.

40. Response to the document from Scottish Power Renewables raised the following points:
  - lack of clarity as to whether the baseline includes the solar farm, to which Burnthouse wind farm would be added, or vice versa. The methodology for the solar farm assessment was not calibrated with that for the wind farm and did not follow good practice guidance [CD6.4, 6.8];
  - the assessment of the cumulative impact was not logical where it stated that a moderate effect from the solar farm plus a moderate effect from the wind farm gave an in-combination moderate effect. The impact on amenity might be much greater;
  - confusion as to the effect on Jones Drove;
  - misrepresentation of the line of Hereward's Way which does not run along West Fen Drove [S10].
41. Some of these points were addressed in the RevC version of the Burnthouse report which concluded that *"the solar farm will not give rise to significant cumulative effects in combination with the proposed Burnt House wind turbines other than at those locations within the immediate locality of the two sites for which a substantial visual effect has already been assessed in relation to the wind turbine scheme in its own right."*

#### Noise

42. **For Burnthouse Farm**, the SOCG records agreement that the methodology in ETSU-R-97: The Assessment and Rating of Noise from Wind Turbines is appropriate for the assessment and rating of operational noise from the proposed development [CD8.1]. Locations selected for background noise monitoring were agreed. The wind turbines could be constructed and operated so that noise levels remained within acceptable limits, and planning conditions could be applied to ensure compliance with ETSU-R-97 standards.
43. In May 2010, the noise assessment was updated in line with current and new good practice [CD8.2]. The assessment also included a cumulative noise assessment in response to the PINS Regulation 19 request [CD9.9]. This updated assessment led to the conclusion that the proposed wind farm, Flood's Ferry wind farm and Boardinghouse could all operate within the ETSU-R-97 limits concurrently at all noise sensitive receptors save one. This was Willow Farm where a minor exceedance would occur, though only at specific windspeeds during quiet daytime periods when wind would come from a specific direction.
44. The noise impact assessment contained in the **Flood's Ferry Farm ES** also compared the predicted noise from the candidate wind turbines with noise limits in ETSU-R-97. Noise predictions were revised in line with good practice published after the ES was submitted. Predictions of typical downwind turbine noise would meet the ETSU-R-97 nighttime limit and a limit midway between the upper and lower daytime limits. Noise levels were judged to be acceptable at all locations under all conditions and the Council made no objections on grounds of noise.

45. **Cumulative assessment** was carried out in July 2010 for Scottish Power Renewables to evaluate the effect of developing the Flood's Ferry site in conjunction with existing and proposed turbines at Ransonmoor, Burnthouse Farm and Boardinghouse. It established that significant cumulative effects would occur only at Tokai and Blackhall Cottages located between Burnthouse Farm and Flood's Ferry where acting together they would cause an increase of around 1.5dB [CD10.2] for worst case wind conditions. The complexity of assessing cumulative noise effects is discussed in this report (the relative contribution from different schemes to noise will vary with wind directions and speeds). If planning permission were granted for both Flood's Ferry and Burnthouse, it is argued that noise limits for this location as specified in planning conditions would need to be reduced to take account of the predicted cumulative impact.
46. Proposed noise limits to be applied through planning conditions in accordance with ETSU-R-97 for daytime and nighttime were submitted by both Appellants. However, different assumptions and inputs were used eg. Fivestone Limited set a daytime noise limit of 35dB(A) and Scottish Power Renewables used 37.5dB(A). Background noise level monitoring had been undertaken by both Appellants in accordance with ETSU guidance but for differing lengths of time and at different times of year. As a result, different noise limits were put forward [PC1, 2 & 3]. The case for applying the same set of conditions to control developments which are closely related, as in these appeals, was set out by the Inspector in the appeal at Nuts Grove Farm [CD4.30]. However, the content of noise conditions was not agreed by the two Appellants in the current cases.
47. The Council reviewed both parties' figures and reached the following conclusions [PC1]:
  - for consistency both sites should use a lower daytime limit of 37.5dB(A)
  - using the lower background noise levels monitored for each site would provide most protection to neighbouring properties
  - if both schemes were permitted, the most appropriate noise limits would be the total windfarm noise limits (cumulative) as submitted by Scottish Power Renewables with the lowest of the limits identified for Blackhall/Tokai.

#### *Other Factors*

48. The ESs for both schemes with updates and additions addressed a range of possible impacts. There was agreement that these impacts would not be so harmful as to give grounds for refusal and that adverse effects could be addressed by planning conditions.

### **The Case for Fenland District Council**

The main points were:

49. The determination of these appeals involves striking the appropriate balance between the protection of the local landscape and the amenity of the local people from the harmful effects of development, including its cumulative effects, and the need to tackle climate change through the development of renewable energy projects [C6]. The narrow focus of the issue in each appeal may be summarised:

- Burnthouse – Whether the adverse impacts on the residential amenity of individual residential dwellings tip the balance so as to justify refusal of the appeal.
  - Floods Ferry – Whether the adverse cumulative visual impacts of the proposal, set against the existing baseline, or a baseline including either one or both of the Burnthouse and Boardinghouse proposals, would tip the balance so as to justify refusal of the appeal.
50. The Council struck the correct balance when it refused each application. The cumulative assessments which have been carried out for the purposes of these appeals only serve to underline the Council's concerns and further justify refusal of each scheme. The Appellants' landscape and visual impact evidence has shifted towards the position taken by the Council.
51. Despite the degree of agreement on significant impacts between the experts, there remain the questions of judgment as to whether the impacts on residential amenity in the Burnthouse appeal amount to overbearing impacts, and whether the cumulative visual impacts in the Floods Ferry appeal give rise to harm. Whilst inspectors' decisions on appeal can provide some context as to how others in different circumstances have considered those issues, those decisions do not form any kind of binding precedent for these appeals.
52. The Appellants argued that even if the Council's case on landscape and visual impact is taken at its highest, the weight to be given to the need for renewable energy and the wider economic and environmental benefits would outweigh any landscape and visual impacts. If the Appellants' arguments on renewable energy were accepted, it might be thought that there would be no way in which to refuse a renewables scheme, as the imperative for renewable energy would always win out. That cannot be right. In particular, whilst Government energy policy statements are material considerations carrying weight, the way in which those statements are expressed in land use planning policy should be considered first. Whilst there might be a direction of travel in energy policy, the planning system must reflect a balance with other competing land use factors.

### ***Wind Turbine Development Policy Guidance 'WTG'***

53. Although the WTG is not a Supplementary Planning Document, it forms part of the evidence base for the LDF Development Plan Documents and is not described as a 'development control' document. The WTG is consistent with the advice contained in PPS22 to assess small scale developments using objective descriptive material and analysis wherever possible (para. 19), and to use a criteria based approach to assessing applications for renewable energy projects (para. 1(iii)).
54. The fact that the WTG identifies areas and circumstances where turbine development is unlikely to be acceptable (para. 0.1) is not inconsistent with PPS22. Key Principle (iii) of PPS22 provides that planning policies that place constraints on the development of all, or specific types of renewable energy technologies should not be included in local development documents without sufficient reasoned justification.

55. Overall, the WTG should carry considerable weight as a material consideration in these appeals. It derives from an independent assessment of the District and was subjected to a consultation process following which changes were made. Published in June 2009, it was up to date when the Council refused the applications in December of the same year. The Inspector dealing with a wind turbine appeal at Creek Road, March, gave the document 'some weight' in January 2009, prior to its adoption [CD 4.28].
56. The Council in determining these appeals took into account the Landscape Partnership's application of the WTG, and the detailed review of each appeal scheme. Agreeing with those views, it then undertook the planning balance.

***Burnthouse Appeal – the effect on the living conditions of local residents, with particular reference to outlook / visual amenity and noise / shadow flicker***

57. The Council's consultant on landscape and visual impact examined the effect of the development on individual residential properties within 1km of the turbines and concluded (JB, App. 2):
  - There would be significant adverse impacts in EIA terms on 17 of those properties
  - There would be major adverse impacts (as distinct from major / moderate impacts) on 8 of those 17 properties
  - 7 of the eight individual residential properties would be rendered unattractive places to live as a result of the overbearing impact of the turbines on residential amenity.
58. The fact that certain impacts on residential amenity are not found to be 'overbearing' does not mean that they should be ignored. A finding of 'significance' in EIA terms is not meaningless and should be carefully considered along with any other adverse impacts in the assessment. In particular, it should be noted that 4 of the 7 properties rendered unattractive places to live are within 550m of T1 or T2. The combination of the relative proximity of the turbines and the angle of view from living rooms and garden areas would result in them becoming unattractive places to live. (Mr Billingsley's proof at para. 4.33ff, the table at Appendix 2, comment on the Residential Impact Note produced by Burnthouse and the combined Table of Impacts also by Burnthouse).
59. The other 3 properties are relatively further away at 850-940m. However all have open south facing views with the turbines occupying a central part of the view from the house. They would control the outward aspect to the south from living rooms and gardens. Finally, significant adverse impacts on the settlement of Turves are also identified, including those on the March Road looking south with open aspects to the rear (JB, 4.98 - 4.99). These aggregated impacts should also be weighed in the balance.
60. The thoroughness and consistency of the Council's case contrasts with that put forward by Burnt House. At the ES stage, for example, the assessment was that only one property (Willow Farm) would experience a substantial adverse effect ([CD 9.2] at 8.7.3), but it was later conceded that the visual effects on dwellings had been underestimated and



6 properties would experience a significant adverse impact in EIA terms (BD, 6.28). The Appellant did not gain access to the individual properties or their gardens to carry out the assessment.

61. Whilst it is accepted that the ES is broadly compliant with the suggested methodology in the GLVIA [CD 6.4], it did not follow good practice in certain aspects. For example, the criteria defining sensitivity included residential dwellings in all 3 categories (high, moderate, and low) depending on proximity and screening ([CD 9.2], Table 8.10). The categories for magnitude of viewpoints took into account the duration of the deterioration of the view as a result of the development, meaning that the development (for a 25 year period) could only ever reach a moderate high adverse impact since it would not be permanent ([CD 9.2], Table 8.12). These and other points cast doubt over the accuracy of the findings of the ES.

*Approach to whether any of the impacts on residential amenity are overbearing*

62. It is accepted that the higher threshold relating to residential amenity in wind turbine decisions reflects the public interest in delivering projects which can deliver sources of renewable energy. Significant adverse impacts should still be carefully considered and can be added into the balance with any which are found to be overbearing. Further, a high degree of caution should be exercised before identifying a 'test' of whether an impact on residential amenity can be considered to be overbearing for a number of reasons.
63. Firstly, the concept is a relatively recent one, and was first referred to in the Enifer Downs decision in April 2009 [CD 4.3]. When properly analysed, the approach in the Inspectors' decisions is not to formulate a 'test' as such, but rather to find a way of articulating, on a case by case basis, the threshold which would need to be passed before an impact on residential amenity could be said to be harmful. The approach does not derive from statute, nor from planning policy, and has not been considered by the Courts. Whilst the decisions of other planning inspectors are capable of being material considerations, the weight to be attached to them is a matter for the decision maker. They are not binding and a mechanistic approach is inappropriate. Ultimately, each case must be decided on its own merits using professional judgment [CD 4.25].
64. Analysis of the decisions undertaken by the Council's witness provides a useful context as to the types of distances which have been found to involve overbearing impacts (JB, 4.8ff.). As a material consideration, the decision in the Nutsgrove Farm appeal carries more weight since it is a recent decision dealing with wind turbine development in the Fenland Area ([CD 4.30], para.s 39-52). The Inspector's finding that a property about 840m away from the development was on the margins of acceptability is consistent with previous decisions and provides a benchmark for the assessment here, where there are several properties at roughly that distance or closer to the proposed wind turbines.
65. The fact that Burnthouse are prepared to offer a Unilateral Undertaking of mitigation planting for one property, Willow Farm, should carry little weight in the assessment. Whilst the potential for effective new

screening can be a relevant factor, the planting is not put before this inquiry as a joint agreement.

66. The criticism of the Council's photomontages is both overstated and unwarranted. There is a range of photomontages for each property provided, and each is transparent insofar as it provides all of the specifications so that it can be considered against relevant guidance. All photomontages should be treated with caution, but these provide a helpful illustration of the views in the context of the relevant Guidance and proof.
67. Valency should not form part of the equation for assessing impacts. It is a consideration in the overall planning balance. It is also unhelpful to make the issue simply one of numbers. As a matter of principle, the impacts on one property if sufficiently serious could lead to harm and justify refusal.
68. The Burnthouse wind turbines are sited close to a number of residential properties. There are significant adverse impacts on a number of them. The fact that the proposal was amended to reduce the number of turbines and their heights has provided some mitigation, but does not go far enough in the light of the impacts identified. Overall, it is submitted that in concluding that not one property would experience an overbearing impact as a result of this development, the Appellant has substantially underestimated the impacts on residential amenity.

***The effect of the proposed developments on the character and appearance of the local landscape (including any cumulative effects).***

69. The assessment of the cumulative visual effects arising from the Burnthouse proposal followed the Regulation 19 request from PINS. The impacts can be summarised as follows:
  - Addition of Burnthouse proposal alone to existing and consented schemes - There would not be any significant cumulative visual impacts. (Table at JB, Appendix 4).
  - Addition of Burnthouse, Flood's Ferry, and Boardinghouse to existing and consented schemes - 12 viewpoints would experience significant cumulative visual impacts. (Table at JB, Appendix 4, 'TLP assessment' boxes with ticks. Viewpoints 1 and 14 are agreed by Appellant (ibid. under 'Pegasus Significance')).
  - Addition of Burnthouse and Flood's Ferry (without Boardinghouse) to the existing and consented schemes - 8 viewpoints would experience significant cumulative visual impacts. (Table at JB, Appendix 4. Also, 12 individual properties within 1km of the Burnthouse proposals would experience significant cumulative visual effects (major and moderate-major adverse impacts), as well as the village of Turves. (Table at JB, Appendix 2). A number of recreational routes, including Hereward Way, River Nene (Old Course), Whittlesey Dyke and National Cycle Route 63, would experience significant sequential visual impacts. (JB05 Drawing). There would be local landscape character impacts particularly in the area between the two sites extending up to 2km from the turbines. (JB04 Drawing).

70. Each of the viewpoints considered by Burnthouse is simply representative of the impacts of the scheme as a whole in the cumulative situation. The actual impacts would be wider than merely those identified for each location. The cumulative impacts should be weighed in the balance together with those on individual properties, when the cumulative case for granting more than one appeal scheme is considered. The cumulative visual impacts cannot be ignored and must be weighed in the balance.
71. Addition of Flood's Ferry to the existing and consented schemes would result in significant cumulative visual effects on 6 out of 7 locations identified by the Appellant and at a further 3 locations. There would be significant cumulative visual impacts on the Flood's Ferry Marina Park arising from a combination of simultaneous and successive views notwithstanding the line of trees / vegetation seen on site. Sequential views at this location would have to be considered as well. There would be significant cumulative visual impacts on various recreational routes, other footpaths and rights of way. The impacts would comprise a combination of simultaneous, successive, and sequential views. (JB05 Drawing).
72. Although there would not be a significant cumulative landscape character impact on the Drained Fen landscape character type overall, there would be significant landscape impacts at a local scale, especially in the area between Flood's Ferry and Ranson Moor. (JB04 Drawing where the 2km radii for Flood's Ferry and Ranson Moor overlap).
73. There would be significant cumulative visual impacts on a number of residential receptors with 15 experiencing major significant adverse impacts. (JB, Appendix 6, shading in yellow). The residential receptors cover a number of settlements (most notably Turves) and a number of properties to most aspects of the compass. Whilst the professional view of the Council's witness remains that certain of the cumulative visual impacts on individual properties would render them unattractive places to live (JB, Summary, 5.9), in light of the position agreed in the Statement of Common Ground (that the Council's case is limited to cumulative visual impacts), the Council does not rely on this evidence.
74. Addition of Flood's Ferry, Burnthouse, and Boardinghouse to the existing and consented schemes would lead to significant cumulative visual effects at Viewpoint 2 on Whittlesey Road, and Viewpoint 16 on the edge of Turves. The Council considers that Viewpoint 11 would be affected too (Table at JB, Appendix 5).
75. Addition of Flood's Ferry and Boardinghouse (without Burnthouse). There would be additional significant cumulative impacts from Viewpoints 4 and 8 and from the settlements to the east including March and Wimblington. There would also be a further significant reduction in the existing 'gap' that currently exists between Ranson Moor and the Flood's Ferry site.
76. Overall, the Council's case is that there are sufficient cumulative impacts with the addition of the Flood's Ferry scheme alone to cause harm. The addition of either or both of Burnthouse or Boardinghouse would only increase the harm. The decision-maker should have regard to all of the

viewpoints selected by the parties in its ultimate assessment of the cumulative impact of each scheme (JB06 Drawing).

77. There is a relatively narrow area of disagreement between the Council's and Flood's Ferry landscape professionals on the extent of various impacts, and the major issue between them is the exercise of professional judgment as to whether the cumulative visual impacts tip the balance such that there are harmful effects. It has never been the Council's case that the overall capacity for the Drained Fenland Landscape Character Type would be exceeded by the grant of either or both of the appeal schemes. Nor is it disputed that wind turbines are already a distinctive feature of the Fens as a landscape (WTG, Appendix 5, p.5) and that some degree of concentration of turbines is likely in the area as a whole. However, the Council contends that the wide range, number, and extent of cumulative impacts caused by the development would amount to harm in cumulative visual terms.
78. Visual clustering might be seen as a positive approach generally, but that cannot mean that clustering can continue without restriction in this area. The recent decision in Monkwith [CD 4.36] provides a useful illustrative example of where cumulative visual impacts, and particularly sequential impacts, can lead to refusal. The Inspector accepted that cumulative visual impacts can occur over comparatively extensive areas (para. 33). Although a cumulative landscape impact was identified in that case (para. 23), sequential cumulative impacts formed a main part of the decision to dismiss the appeal (para.s 33, 36). The Inspector there included that the proposal for 3 turbines would increase the numbers of turbines and windfarms in the area (there were 3 other wind farms) to an extent where the resultant harm would outweigh the presumption in favour of such schemes (para. 78). The conclusion that the repeated visual effects of the 4 windfarms would dominate and overpower the receptors' experience of the locality (para. 36) is consistent with the cumulative visual impacts which the Flood's Ferry scheme would bring.

***Whether any effects would be outweighed by wider economic and environmental benefits which the proposals would bring (with reference to PPS22)***

79. The starting point must be section 38(6) Planning and Compulsory Purchase Act 2004 which seeks to ensure that the development plan is given added weight in decision making. The importance of that section must not be overlooked in the analysis of the weight to be attached to development plan policy and in particular policies E1 and E8 in this case. The decision maker is required to apply properly adopted and saved development plan policy, and determine in accordance with those policies unless material considerations indicate otherwise.
80. The RSS continues to remain in force until it is abolished by the SoS. Following the decision in *Cala Homes (South) Limited v SoSCLG and Winchester CC*, 2011, EWHC 97 (Admin) the Government's stated intention to abolish the RSS and to promote legislation for that purpose is a material consideration. It is submitted that whilst the policies of the RSS remain applicable, they carry considerably less weight, and certainly less weight than extant local plan policy, as a result of the SoS's stated intention.

81. In the RSS, Policy ENG1 and ENG2 provide some support for the appeal proposals. Whilst the Core Strategy is not yet in force, Policies N5 and N6 provide a positive framework within which to consider renewable energy and wind turbine development. Yet the terms of those policies also reflect the issues in these appeals. Policy N5 supports renewable energy in principle, whilst requiring that it should minimise any adverse impacts on the environment and amenity through careful siting and design. Likewise, Policy N6 is permissive, save where the cumulative effect of the proposal would have an adverse impact on the visual quality of the open landscape.
82. The Council applied the relevant policies of the development plan, identifying conflicts with Local Plan Policies E1 and E8. Since E1 forms part of the general policy approach to controlling development in the countryside, where wind turbines are generally located, it is necessarily engaged and relevant. The policy provides a criteria based approach, and refers to minimising visual impact which reflects the wording of key principle (viii) in PPS22, paragraph 1. The mere fact that the policy is old, and pre-dates wind turbine development, is no answer to its application as a general policy which reflects the wording of extant national policy on renewables.
83. Policy E8 of the Local Plan similarly relates to new development and its impacts on the environment. New development is required to have regard for the amenities of adjoining properties and the locality in general. Insofar as the visual impacts in the Burnthouse scheme are found to affect adversely residential amenity, the proposal is in breach of that part of the policy. Insofar as the cumulative visual impacts of the Flood's Ferry proposal are significant and adverse, the proposal could be deemed not to have had regard for the locality. Conflict with these policies should be afforded full weight.

*Other material considerations*

84. Overall conflict with the Development Plan can be outweighed by other material considerations. The various national energy policy documents referred to by each Appellant are all capable of being material considerations, but when considering national energy and planning policies, it is national planning policy which should be the starting point and should carry considerable weight. It flows from that that the provisions of European Directives carry considerable weight insofar as they are relevant. Their relevance to the planning system will be manifested in national planning policy which refers to and supersedes them and should carry more weight. Where a governmental White Paper foreshadows the issue of national planning policy, the publication of the latter and its terms should carry more weight.
85. National planning policy on renewables is up to date and not materially affected by more recent statements of energy policy. The more recent national energy policy carries less weight because it is either in draft and therefore subject to change or has not yet been formulated into the planning context. This would bring with it the need to protect the environment, the matter which is at the heart of these appeals.
86. Both Appellants referred to the White Paper 'Meeting the Energy Challenge' (5/07) [CD5.1] and the 'clear steer to planning

professionals and local authority decision makers, that in considering applications they should look favourably on renewable energy developments' (AB, 4.7, PF, 2.8 – emphasis added). But that quotation is contained in a section which discusses the application of energy policy to the planning system and ultimately anticipates the publication of the PPS on Climate Change ([CD 5.1], p.157, 5.3.70). The Supplement on Planning and Climate Change includes express reference to the White Paper indicating that that document has been taken into account (para. 3, footnote 5). Also, the favourable consideration 'test' has been considerably watered down as applicants for renewable energy projects which will contribute to the delivery of Key Planning Objectives 'should expect expeditious and sympathetic handling' of their planning application (PPS1, Supplement, para. 40 [CD3.1]).

87. The wording which the Appellants seek appears in the new draft PPS Planning for a Low Carbon Future in a Changing Climate ([CD 5.7], at p.25, LCF14.2). However, the PPS is in draft and therefore subject to change, and the reference is not a stand-alone test being one of eight considerations to be taken into account when determining applications. The reference in the draft PPS therefore carries little weight when set against extant national policy.

### *Targets*

88. The Council accepts that there is a shortfall against the regional targets, that that is a material consideration to be weighed in the planning balance, and that as a material consideration it does carry weight. However, the weight to be attached to Flood's Ferry's analysis of the shortfall on UKRES targets should be limited. The current targets are set in PPS22 (10% of UK electricity from renewables by 2010 with an 'aspiration' to double that), and in EU Directive (2009/28/EC) where the UK target for share of energy from renewable sources in gross final consumption of energy by 2020 is 15%. The UKRES [CD 5.2] is part of Government energy policy which provides a 'lead scenario' that 'about' 30% or more of all electricity 'could' come from renewables. The draft PPS does not contain that new target so that the aspiration to achieve about 30% electricity from renewables by 2020 is far from being planning policy. It is the targets at RSS level that should be applied here.

### *The wider environmental and economic benefits and Committee reports*

89. On the significant weight which is to be applied to the wider environmental and economic benefits of all renewable energy proposals (PPS22, para. 1 Key Principles (iv)), although it is a key principle, it should be considered in context. It is not a stand-alone test. The principle is one of eight within PPS22, paragraph 1. Key Principle (i) provides that renewable energy developments should be capable of being accommodated in locations where environmental impacts can be addressed satisfactorily, envisaging that landscape and visual impacts might not be satisfactorily addressed in any given case. Similarly, Key Principle (viii) requires development proposals to demonstrate how environmental impacts have been minimised through careful consideration of location, scale, design, and other measures. With regard to small scale developments it is recognised in the guidance that landscape and visual effects will vary and that planning authorities

should take account of the cumulative impact of wind generation projects in particular areas (para.s 19 and 21).

90. The Methodology section in the WTG refers to the advice of PPS1 Climate Change, PPS 22 and the Key principles which are set out in full, the Companion Guide to PPS22, the East of England Plan policies, and the targets within it (para. 2.1 – 2.8). It had proper regard to the planning policy context.
91. This is not an authority which is new to wind farm developments or the arguments put in support of them. With the experience of handling and granting wind farms in the area and the attendant knowledge base at the Council, together with the assessment carried out by the Landscape Partnership, the Council was well placed to recommend refusal in each case on specific grounds.
92. There are different perceptions of wind farms both before and after they are built. However, valency should form no part of an ES assessment. The planning system exists in part to protect people from the unacceptable impacts of development. Because some people have a positive reaction to wind turbines, it should not be concluded that that makes unacceptable impacts acceptable. The Nuon (UK) Ltd v SoSCLG, Bedford BC (CO/4170/2010) consent order is not a High Court decision and does not have equivalent status. The fact that some people living close to the turbines are in support should be taken into account, just like the fact that there are objectors. However, the weight to be attached is very small; this is not a numbers game.
93. The permissions sought by the Appellants are not 'temporary' in any real sense of the word. 'Reversibility' is a euphemism. The wind turbines if either scheme is granted, will be in place for 25 years plus, due to decommissioning, a further 18 months in the case of Burnthouse, and a further 12 months in the case of Flood's Ferry. Further, it is highly likely that the argument for renewable energy will remain for some time to come. The temporary nature of the permissions sought must be taken into account, but should, it is submitted, carry little weight in the planning balance.
94. It is readily accepted by the Council that the concept of residential amenity covers noise, shadow flicker, dust, TV interference, as well as visual residential amenity (JB, 4.3). However, the broad nature of the concept does not preclude any one aspect of it, such as visual impacts, from affecting residential amenity on its own. The Council accepts any impact caused by shadow flicker can be adequately mitigated by condition, and each Appellant has provided a scheme based condition which satisfies the Council.
95. As for noise, it is accepted that noise impacts can be controlled by condition. The particular concern is with regard to the impact in the event that both Appeals were allowed and both Appellants have demonstrated that they can meet noise limits in accordance with ETSU-R-97. There is clearly a need for consistency between the conditions for an enforcing authority. The Council's preferred option is that both sites use the lower day-time limit of 37.5 dB(A), and that the lower of the two

background noise levels monitored for each site are used, as set out during the conditions session. It is submitted that such an approach is not unlawful. In any given case, the background noise level will have derived from ETSU compliant monitoring. The lower figure has been chosen to provide the greatest protection for residents.

96. If, however, only one set of figures should be used, the Council would prefer that Scottish Power's figures are used, since, apart from at wind speeds of 11 – 12m/sec (when the wind itself would be very high, and noisy), they are the lower figures.
97. Whilst the solar farm application has been submitted, the outcome cannot be second guessed. It is made by a separate company from Fivestone and is due for completion well before the SoS is likely to produce a decision for these appeals. The cumulative assessment made during this Inquiry is welcomed but the Council is unable to comment on it now.
98. In summary, the Council accepts that there is an urgent need for renewable energy, that the Regional Targets contained in the RSS have not been met, that the wider economic and environmental benefits of wind energy should carry significant weight, and that there are economic benefits brought forward by the schemes. However, national planning policy reflects the balance to be struck with environmental and social impacts with particular regard to landscape and visual effects. Statements of national energy policy are material, but when properly considered, do not substantially change the balance of planning policy. The visual impacts in each case are such that the environmental and social impacts have not been addressed satisfactorily and have not been minimised. Overall, it is submitted that the Appellants have attached undue weight to the arguments in favour of renewable energy.
99. It is difficult to make a value judgment as between harm caused by impact on residential amenity, and cumulative visual impacts. The Council refused each individual application and would not be drawn on which is the 'better' scheme.

### **The Case for Fivestone Limited (Appeal A)**

The main points were:

100. If the massive scaling up set out in the Renewable Energy Strategy, the Renewable Energy Action Plan and the Ministerial Statement of 18 October 2010 is to be achieved, an urgent response is required to hit the 2011-2012 interim target [F9]. The proposed development, whether taken on its own or in combination with the proposed 5MW solar farm on the same site would provide vital installed capacity in an excellent location.
101. In this case, the Council raises the single issue of the effects of the proposed development on the residential amenity of nearby dwellings. Indeed, the reason for refusal is even narrower than that, alleging unacceptable harm to visual outlook. During the course of the evidence, the Council's case has been refined yet further such that it now alleges that just seven properties would be unacceptably affected by Burnthouse Farm and



eight properties would be unacceptably affected by Burnthouse Farm in combination with Flood's Ferry. The Council is satisfied that the effects of noise and shadow flicker would not be unacceptable. Whilst it is accepted that there would be significant effects upon the visual component of residential amenity from a limited number of local properties, in no case would those effects be overbearing or overwhelming and when considered in the round, would not give reason for refusal of planning permission. Given the small scale nature of the development, spacing of the turbines, distances involved, orientation of properties and amenity space, any effects on outlook would not justify refusal of planning permission as a matter of public interest.

102. In all other respects, the proposed development has a clean bill of health. In the event that the decision maker concludes that planning permission can only be granted for either the Burnthouse development or the Flood's Ferry development, the planning balance weighs firmly in favour of the Burnthouse scheme. It would result in less harm to interests of acknowledged importance. Most importantly, in combination with other developments such as the solar farm and the Boardinghouse extension at Ransonmoor, a greater installed capacity than that provided by Flood's Ferry could be achieved but in a way which more satisfactorily preserves landscape character and which better preserves future options for spatial distribution of additional renewable energy schemes in the area. A disaggregated approach would provide more installed capacity but with "a lighter environmental touch". The degree of potential harm caused to landscape character and general visual amenity caused by the Flood's Ferry development is of a different degree of magnitude and significance to the alleged harm to outlook from residential amenity of individual dwellings caused by the Burnthouse development.

### ***Threshold of acceptable change***

103. It is not suggested that there is a presumption in favour of this scheme. Nor does the Appellant argue that once the requirement to minimise environmental, social and economic impacts pursuant to Key Principle 1(viii) in PPS 22 has been met, it is not necessary to go on and consider residual harm. It clearly is. But minimising effects within Key Principle 1(viii) does not mean to make minimal; taken literally, that would mean either to have no wind farm at all or to reduce to absurdity the scale of the already modest proposed development such as to a single turbine of very small dimensions.
104. The key point is that in order to meet vital policy objectives, the threshold of acceptable change, including change to outlook from some existing residential properties has to be set at the right level; at a level which allows us to 'get on with it'. Protection of residential amenity in the public interest means that unacceptable harm has to be avoided; not that no change or no harm has to be guaranteed. It is interesting to note how other decision makers and bodies have attempted to draw together all the various policy statements and articulate the correct test. Within a number of appeal decisions, made by both Inspectors and the Secretaries of State, there are various attempts to articulate the correct test but all are minor variations on the same one-way theme; the scales in the planning balance do not start on an even keel for this project.

105. In summary:
- If we are to adhere to Government policy and Key Principle 1(1) in PPS 22 then renewable energy developments are capable of being accommodated throughout England in locations where the technology is viable and environmental, economic and social impacts can be addressed satisfactorily.
  - The policy imperative can be translated to mean “as many schemes as possible and as fast as possible, providing that in each case the impacts of a given scheme have been satisfactorily addressed”.
  - The Council agreed that “satisfactorily addressed” can be interpreted to mean that planning permission should follow unless interests of acknowledged importance would be “seriously compromised”. The authors of the ARUP Study contended that planning permission should follow unless an “exceptional reason” can be shown [CD5.6]. This is an agreed articulation of a test which should be applied by the Inspector and Secretary of State in this case.
  - “Satisfactorily addressed” does not equate to finding the ideal or even the best solution. Serious harm is not the same thing as a “significant effect” for the purposes of the Environmental Impact Assessment Regulations 1999. It must indicate something more harmful and of greater overall gravity than that which otherwise would arise from any commercial wind energy development. Calibration of what does or does not equate to “seriously compromised” or an “exceptional reason” must take into account the massive shortfall against regional and national targets.
  - Pursuant to Paragraph 40 of the Supplement on Climate Change to PPS 1, the proposed development deserves “expeditious and sympathetic handling” in the planning system and in the language of Chapter 5 of the White Paper on Energy (May 2007) a “clear steer” has been given to decision makers, including the Inspector and Secretary of State himself to “look favourably” upon the grant of consent. The White Paper is expressly stated to be a material consideration in planning decision making and carries significant weight. The Council’s suggestion that Paragraph 40 somehow waters down Chapter 5 is misguided. Both policy “anchors” apply in this case and are to do with the substance of decision making and not procedure. The only way to give expression to the overwhelming policy drive is to set the threshold of acceptable change at a level which allows sufficient schemes to go through in sufficient places; the limbo bar has to be raised high enough to let sufficient numbers of wind farms to pass through but not so high that unacceptable schemes which cause unacceptable environmental harm qualify.

### ***Energy policy context***

106. Energy policy is clear and was set out comprehensively in Meeting the Energy Challenge: A White Paper on Energy in May 2007 . When this document is read in conjunction with :
- PPS 22 and its Technical Companion

- Supplement to PPS 1 on Climate Change
- Climate Change: The UK Programme
- EU Climate Change and Energy Package
- Planning for a Sustainable Future
- The Renewable Energy Strategy
- The Planning Act 2008
- The Energy Act 2008
- The Climate Change Act 2008
- UK Low Carbon Transition Plan
- Draft National Policy Statement on Energy Infrastructure (and response)
- Draft National Policy Statement on Renewable Energy (and response)
- The Renewable Energy Action Plan
- The Annual Energy Statement of July 2010
- Ministerial Statement of 18 October 2010

there is no reasonable room for dispute regarding (1) the seriousness of climate change and its potential effects (2) the seriousness of the need to cut carbon dioxide emissions or (3) the seriousness of Central Government's intention regarding deployment of renewable energy generation [CDs3.1, 3.5 & 5.1-5.29]. None of this is challenged by the Council.

107. Such trenchant policy cannot just be mentioned in passing or agreed quickly in cross-examination and then forgotten. Amidst consideration of the potential effects on visual amenity and residential outlook from local properties, sight cannot be lost of the underlying policy mission. Even if effects were considered to be harmful, which is not accepted, they do not need to be rendered harmless to be acceptable. They have to be "satisfactorily addressed".

### ***Planning policy framework***

108. For the purposes of section 38(6) of the Planning and Compulsory Purchase Act 2004, the adopted development plan currently comprises: The East of England Plan: The Revision to the Regional Spatial Strategy for the East of England (May 2008); Saved policies of the Cambridgeshire and Peterborough Structure Plan (2003); and Saved policies of the Fenland District Wide Local Plan (1993) [CDs1.1-1.3].
109. In relation to the East of England Plan, the RSS is up to date in relation to renewable energy generation and represents a recent expression of top tier development plan policy relevant to the proposed development. It provides a clear policy imperative for further provision of renewable energy (Policy ENG 2) in support of the sustainable development objectives of the Plan in Policy SS1.
110. In relation to Cambridgeshire and Peterborough Structure Plan, none of the saved policies are relevant to the proposed development.
111. In relation to the Fenland District Wide Local Plan, the only policies which are referred to by the Council are Policy E1 and Policy E8. Both policies are very stale indeed and were written long before the advent of renewable energy schemes such as the current one. The

Inspectors dealing with the applications at Foundry Way [CD4.8] and Creek Road [CD4.28] specifically commented on the agedness of the policies. In cases such as Earls Hall Farm [CD4.6] in which Inspectors have considered modern wind turbines against policies which were never designed to countenance them, it has not taken long for decision makers to decide that little policy harm results. A strict interpretation of a general policy aimed at preventing development in the open countryside would result in all modern wind farms failing the basic policy test. Attention should turn very quickly to the "other material considerations" which in this particular case would be every renewable energy specific policy document since 1993. In shorthand, that means all of them. In this case, the pivotal issue remains the acceptability of the effects on outlook from local properties.

### ***Renewable energy targets***

112. Policy ENG2 of the RSS sets specific targets for installed renewable energy capacity.
113. It is an agreed position that the 2010 target was not met. The onshore installed capacity figure for 2010 is 820 MW and as at December 2009, there was 436.5 MW of installed capacity. This very substantial shortfall results in an urgent and compelling need for renewable energy projects such as the proposed development. The Inspector in the Carsington appeal [CD4.2] rightly placed great weight on the prevailing shortfall. It is not the case that the 2010 target should simply be forgotten until the 2020 target arrives; any shortfall has to be made up quickly before progress towards meeting the greater target can commence. Again, this is agreed.
114. PPS22 makes plain the importance that Central Government attaches to the setting and achievement of regional targets, as a tool to ensure timely achievement of national renewable targets. Targets at RSS level are all that is required. Disaggregation of sub-regional targets to County or District level may be useful but is neither required nor endorsed by PPS22 and cannot be used as a device for obfuscation or unacceptable delay. Drawing the agreed facts and figures together:
  - The shortfall between current provision of renewable energy production capacity and adopted policy targets is very substantial. The 2010 target has been missed.
  - There is no evidence to suggest that development is occurring or being planned at anywhere near sufficient levels to match the shortfall. The statistics are a depressing read with scheme after scheme being refused planning permission, getting caught up in the appeal system or being snagged by legal challenges.

### ***Wind Turbine Development Policy Guidance***

115. The proposed development lies in the zone between 400 m and 2 km in which all schemes require to be properly assessed in terms of their relationship with settlements and properties. This is not a "pass or fail" criterion; it is one calling for individual assessment. In the view of the Appellant, the scheme is acceptable. Against all other criteria, Burnthouse would comply with the WTG. It would comply with it more closely than would the Flood's Ferry Farm proposal.

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## ***The ARUP Study***

116. To inform the future review of the RSS, ARUP was commissioned to undertake a study of the region's capacity to accommodate renewable energy schemes and to provide a framework for meeting challenging targets [CD5.6]. One of the aims of the ARUP Study was to define broad areas of greater potential; that is, greater than other areas as opposed to the exclusive areas to be used.
- The appeal site lies within the "area of likely concentration".
  - Even in the "business as usual" lower scenario, wind farms would be located all over the unconstrained and variably constrained areas.
  - 370 MW of small scale wind is relied on by the study as a windfall allowance to get to the target capacity; all indications are that this just isn't going to happen.
  - The authors identify that on the realistic scenario, over 500 commercial wind turbines will be needed across the region, that is, over one hundred and sixty Burnthouse Farm equivalents. This stepped change in renewables' development is the reality of what is required to meet the 2020 target given the indicative technology mix. If binding targets are to be met then landscape character across the region is going to change.

## ***Landscape and visual effects***

117. The acceptability of the proposed development does not depend on whether someone thinks it is good or bad or a head count or a show of hands. Modern wind turbines inevitably bring with them significant change by reason of them being wind turbines and this is written in to PPS22 and every policy document published since. As the Appellant's landscape witness explained, he has adopted a precautionary approach and assumed an adverse environmental effect whilst all the time recognising that there is a wide spectrum of response from the negative through to the extremely positive.
118. It is agreed with the Council that there are no reasons for refusal relating to landscape impacts, impacts on landscape character or cumulative landscape and visual effects.

## ***Visual component of residential amenity***

119. The single outstanding issue remains the likely effects upon outlook from a limited number of local properties. The Appellant's landscape witness has undertaken a detailed residential receptor analysis, upon which the planning witness is able to draw in reaching his conclusions. The separation between what is a private interest and what should be protected in the public interest is tolerably clear; it has been the subject of particular focus in wind farm cases since the decision at Enifer Downs in April 2009 [CD4.3]. No individual has the right to a particular view but there comes a point when, by virtue of the proximity, size and scale of a given development, a residential property would be rendered so unattractive a place to live that planning permission should be refused. The test of what would be unacceptably unattractive should be an objective test.

120. There needs to be a degree of harm over and above an identified substantial adverse effect to take a case into the category of refusal in the public interest. Changing the outlook from a property is not sufficient. Indeed, following Beech Tree Farm [CD 4.22], even a fundamental change in outlook is not necessarily unacceptable. The Appellant's landscape witness clearly identified what factors he had taken into account in his determination that no effects were unacceptable. The Council failed to set out how it moved from identification of a substantial adverse effect to identification of an unacceptable effect objectively assessed.
121. The visual component of residential amenity should be assessed "in the round" taking into account factors such as distance from the turbines, the orientation, size and layout of the dwelling, internal circulation, division between primary and secondary rooms, garden and other amenity space, arc of view occupied by the wind farm and the availability of screening. The landscape witness has provided the visual assessment and made his decision in the round. It has then been for the planning witness to make his overall assessment of residential amenity.
122. Each case has to be decided on its own merits but the Council agreed that other appeal cases provide a useful benchmarking exercise. Specific consideration has been given to Enifer Downs [CD 4.3], Earls Hall Farm [CD 4.6], Hempnall [CD 4.7], Wadlow Farm [CD 4.10], Carland Cross [CD 4.17] and Beech Tree Farm [CD 4.22]. Granting permission here at Burnthouse would be entirely in line with such decisions.
123. Given the small scale nature of the development, spacing of the turbines, distances involved, orientation of properties and amenity space and openness of view, any effects on outlook would not cross the public interest line here at Burnthouse. The factors relied on by the Appellant in the case of each of the identified properties is set out in the Appellant's Residential Impact Note prepared jointly by the landscape and planning experts [F3].
124. The dwelling likely to sustain the highest degree of change would be Willow Farm. However, properly analysed, the visual effect from this property is akin to that from a single turbine by reason of the substantial outbuildings to the South East of the main house. Whilst it is not necessary for the grant of planning permission, as a matter of good neighbourliness and in the public interest, the Appellant has offered to fund a mitigatory planting scheme. Such a scheme was held to be a material factor in the grant of planning permission at Earls Hall Farm.
125. What became clear during the Council's evidence was that the Council's assessment was overly cautious, too protective and if followed would be out of kilter with what has happened nationally. In other words, the Council has calibrated its scale of harm too pessimistically. If such calibration were to be followed then as a matter of fact, a large number of wind farms already approved would not have been approved and few would come forward in the future. One very telling piece of evidence is that the same landscape witness gave evidence at the Wadlow Farm inquiry [CD 4.10]. The calibration of harm was rejected at that appeal. The Council has

relied entirely on the landscape witness and if he has been too restrictive then it necessarily follows that the Council has been too restrictive.

### *Cumulative visual effects*

126. There would be no significant cumulative landscape and visual effects arising from the proposed development in conjunction with existing constructed or consented sites or with the proposed Boardinghouse extension to Ransonmoor, should this be consented. From some viewpoints in close proximity to the proposed development, there would be some significant cumulative visual effects that would arise in relation to Burnthouse in combination with Flood's Ferry. This is a result of the Flood's Ferry proposal being much larger in nature and scale in comparison to the proposed.
127. Whether regarded as positive or adverse, the visual and landscape effects of the proposed development can be substantially reversed. The proposed development would be a sustainable form of development from the perspective of safeguarding a landscape resource and the perspective of long term visual amenity. The link between climate change and character must also be acknowledged and given significant weight. The Council has placed no weight on it at all and as a result has failed to take into account a material consideration.

### **Noise**

128. The Council does not object to the proposed development on the basis of noise. PPS22 and its Companion Guide, together with various Government Statements in other places and previous appeal decisions both by Inspectors and Secretaries of State, make clear that assessment and rating of noise from commercial wind farm developments in England is to be made through the application of ETSU-R-97. The assessment demonstrates that predicted wind turbine immission levels using a candidate turbine meet the ETSU-R-97 derived noise limits under all conditions and at all locations for both quiet daytime and night-time periods with comfortable margins.
129. Suitably worded conditions have been proposed which would secure adequate control. The limits set out in the proposed condition were derived from an ETSU-R-97 compliant noise monitoring exercise, carried out over an extended study period in summer months. The data set is robust and reliable. Tempting though it might be for the Council to mix and match lowest values from the Burnt House assessment with those from the Floods Ferry assessment, this would produce a corrupt and inappropriate result. The ETSU-R-97 system is an hermetically sealed one. The Appellant is quite firm in its submission that the scheme specific assessment and resulting derived levels should apply.

### **Other material considerations**

130. The aviation objection from the Ministry of Defence has been withdrawn.
131. In relation to ecology, the Appropriate Assessment concluded that the Burnthouse scheme would have no adverse effects on

the integrity of the designations whether on its own or in combination with Flood's Ferry. Collision rates would not come close to approaching the threshold of significance, let alone undermining the integrity of the designated areas. In the event that both the Burnthouse and the Flood's Ferry proposals were consented together, it is clear that the greater effect would result from the latter but the absolute levels remain incredibly low. Following the conclusions of the report, the Appellant submits that a post-construction monitoring and mitigation condition is neither necessary nor reasonable within the terms of Circular 11/95.

132. The Statement of Common Ground records that there is no dispute between the appellant and the Council regarding:
- Ecology including impacts on protected species and designated sites
  - Impact on tourism
  - Impact on cultural heritage features
  - Impact on landscape character
  - Impact on the local highway network, including construction traffic routing and any disturbance to other road users arising therefrom
  - Shadow flicker
  - Horse and pony riding
  - Impacts on radar or aviation interests both civil and military
  - Public safety, ice throw or driver distraction
  - Infrasound, Low Frequency Noise, amplitude modulation, the effects of wind shear and overall noise impacts during construction, operation and decommissioning (subject to the imposition of suitable conditions to control the impacts of construction and operational noise)
  - Loss of agricultural land
  - Human Rights under Article 8 and Article 1 of the First Protocol to the ECHR and the Human Rights Act 1998, including diminution in the value of residential property
  - Hydrology and hydrogeology, including flood risk and surface water runoff from the site during construction and operation
  - The effects of electro-magnetic interference on telecommunications and public broadcast services.

### ***Flood's Ferry***

133. The Appellant has set out its position in relation to the Flood's Ferry scheme both in its Statement of Case to that inquiry and in its evidence to this one. The starting position of the Appellant is largely neutral about Flood's Ferry. Accordingly, the Appellant's primary submission is that the Inspector should consider whether (1) planning permission can be granted for Burnthouse on a solus basis and (2) go on to consider whether planning permission could be granted for both.

134. However, in the event that the decision-maker forms the view that there is insufficient capacity in the local landscape to accommodate both wind farms, it is open to him and in the submission of the Appellant incumbent upon him to consider the comparative merits of the two schemes. In the leading authority on this topic *R on the application of J (by his litigation friend (VJ) and TH (by his litigation friend (LH) v North Warwickshire Borough Council* [2001] EWCA Civ 315, after a review of the authorities, Lord Justice Laws in the Court of Appeal held that



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*"If I may say so, with respect, it seems to me that all these materials broadly point to a general proposition, which is that consideration of alternative sites would only be relevant to a planning application in exceptional circumstances. Generally speaking-and I lay down no fixed rule, any more than did Oliver LJ or Simon Brown LJ-such circumstances will particularly arise where the proposed development, though desirable in itself, involves on the site proposed conspicuous adverse effects that the possibility of an alternative site lacking such drawbacks necessarily itself becomes, in the mind of a reasonable local planning authority, a relevant planning consideration upon the application in question".*

135. This has not been considered as an "alternatives case" but when a comparative exercise is undertaken, the proposed development has fewer drawbacks than the Flood's Ferry proposal. In particular:
- The degree of effect on landscape character and visual amenity is of a different degree of magnitude to the alleged harm to outlook from residential properties resulting from Burnthouse.
  - The issue of cumulative visual effects, both static and sequential was considered in the recent Monkwith appeal decision [CD4.36]. There are a number of similarities between that part of the East Riding and this part of the Fens. In plan view, the point is obvious. Using the 'thumb test' it becomes clear that in spatial terms, the introduction of Flood's Ferry would mark a transformative change. There would be little respite from the presence of turbines in large wind farms, a point which lies at the heart of the Council's case. By way of comparison, a combination of Burnthouse and Boardinghouse extension, with or without the solar farm, would result in clear and continued separation between installations and no sense of coalescence. On the ground, an observer in the local area would enjoy little respite from the presence of turbines either travelling by car on routes such as that from March to Benwick or walking along the Hereward's Way
  - Flood's Ferry would bring about a greater change in the background noise environment than would Burnthouse. In order to operate, a day time absolute noise limit of 37.5 db(A) at all properties is required. Burnthouse would operate with a lower day time noise limit of 35 db(A) at all properties.
  - The reasons why Flood's Ferry performs relatively worse in landscape character, visual amenity and design terms are set out in the Statement of Case to the Flood's Ferry inquiry and in Mr Denney's proof. The basic proposition put forward by Scottish Power, namely that more energy would result from the scheme is no longer correct; the Boardinghouse extension, the solar farm and Burnthouse would deliver a higher installed capacity in a more environmentally acceptable way.

### **Concluding remarks**

136. The proposed development would result in change to the local landscape and this would involve change to the local character and composition of a number of views for a limited number of residential occupiers. But a change in a view is not in itself unacceptable. To refuse planning permission in the public interest, the degree of harm to outlook would have to be such that the turbines dominated, overwhelmed and were

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overbearing on the living experience of residents. In this case, that degree of change simply would not arise at any property.

137. The Council's case has suffered from two serious flaws: Firstly, it has been based wholly upon a visual assessment prepared by the Council's landscape witness which is incorrectly calibrated and unduly pessimistic. This has infected the officer report to committee, the views expressed to members, the reason for refusal and the case put at inquiry. In short, the landscape witness's judgements lie at the heart of the Council's case. If he has got it wrong, the Council has got it wrong.
138. Secondly, in assessing whether or not the public interest test had been failed and in purporting to strike the planning balance, the Council failed to accord any or any significant weight to the wider benefits of the scheme. It is quite clear having identified a substantial adverse visual effect when a turbine would be visible in a view from a dwelling, it moved straight to a finding of unacceptability. Even on the case as it was put by its own landscape witness, this was incorrect.
139. In the evidence it has called, the Appellant has demonstrated that the environmental, economic and social impacts of the proposed development would be satisfactorily addressed and respectfully requests that planning permission should be granted in the form in which it has been sought.

### **The Case for Scottish Power Renewables (UK) Limited (Appeal B)**

The main points were:

#### **A. Introduction**

140. Fenland District Council's objection is limited<sup>1</sup> to alleging unacceptably adverse cumulative impact arising from the development in visual terms, not landscape (emphasis added). Thus the only issues that can here arise in respect of the Flood's Ferry Farm proposal (FF) are as follows: First, whether when added to the relevant baseline – namely one which is assumed to include not only existing wind farms but also those consented but not built and those for which applications have been made – FF has materially adverse visual impact (no allegation of materially adverse landscape impact is advanced<sup>2</sup>); second, even if the answer to the first issue is affirmative, whether any such cumulative visual effects are capable of outweighing the significant benefits of the FF scheme (ie the overall planning balance<sup>3</sup>).
141. A third issue arises if the Secretary of State ("SofS") concludes that, though FF – and either or both of Burnthouse Farm ("BHF") and Boardinghouse ("BDH") – are each acceptable on a solus basis, only

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<sup>1</sup> *ibid*

<sup>2</sup> So far as concerns the late raising of a very limited residential impact point, that is dealt with under separate heading below. As a matter of law, it can form no part of FDC's case; in any event, even if one ignores the legal position, FDC accepts that it is not a major part of its case

<sup>3</sup> FDC, through Mr Nourse (xx Newcombe), accepts that the overall planning balance can only be drawn after all material considerations have been reviewed

one, or two, of the three schemes can be accommodated. Though not in itself a principal issue, a fourth matter arises in the event that both FF and BHF are to proceed; that matter is the terms of any noise condition(s) governing operational noise.

142. FF is a materially bigger scheme than either BHF or BDH and is, in principle, to be preferred or favoured on that ground; Government policy requires<sup>4</sup> any decision on these appeals to secure the highest viable resource and energy efficiency and reduction in emissions. In saying that, Scottish Power Renewables (SPR) in no way resiles from its position that all three schemes can come forward acceptably.

143. The scheme has generated a number of representations from local residents and interested members of the public; at application stage, these amounted to some sixteen letters of support as against thirteen such objections, as Fenland District Council's (FDC) Committee Report records<sup>5</sup>. Whilst planning decisions are not made on the basis of 'votes', third party representations are a material consideration where they relate to planning matters<sup>6</sup>. FDC, having considered the various third-party objections to FF, chose only to advance the very narrow objection identified above; thus, although quite properly FDC invites the SofS to have regard to the objections, it has considered them and decided not to object on grounds other than that specified above.

144. The Planning System: General Principles correctly identified that it does not exist to protect the private interests of one person against the activities of another. The basic question is whether the proposal would unacceptably affect amenities and the existing use of land and buildings which ought to be protected in the public interest.

## ***B. Policy context (and need)***

### Overview of (inter)national policy and legal obligations

145. In the case of renewable energy the relevant policy inter-relates with various domestic and international legal obligations and cascades down from international through European, national and regional to the local level. The development plan takes effect as a product of that overall chain. Notwithstanding its statutory status, it falls to be considered in the context of the higher legal and policy tiers. In so far as the development plan fails to accord with those higher tiers, the latter are most material considerations indicating otherwise.

146. The Annex to the latest EU Directive<sup>7</sup> identifies various overall targets for Member States (2020) for the percentage share from renewable sources in final energy consumption. The UK failed to meet the

<sup>4</sup> CD 3.1 – Supp to PPS 1 on Climate Change at para 9

<sup>5</sup> CD 10.5 page 3. Only four later representations have been received – one each from RSPB and Natural England; one from Doddington parish Council and one from Pauline Dear of 4 Ransonmoor Farm. It is only the last two which are objections

<sup>6</sup> Additionally, in the case of individual residential receptors, a letter of support is, as a matter of law, a material consideration – see Inquiry Doc 10, the Consent Order in the **Nuon** case. By parity of reasoning an absence of such objection is also material

<sup>7</sup> CD 5.9

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2010 target of 10%. The UK Renewable Energy Strategy<sup>8</sup> identifies a much more ambitious lead scenario for the UK in 2020 of 30% of the country's renewable energy generated from renewables. This means that in drawing any planning balance, considerable weight is to be attached to bringing forward any relevant renewable energy project. Thus there must be an imperative and overriding reason for refusal.

147. The content of Government policy is not an appropriate subject for discussion and review at a public inquiry; the inquiry's role is, rather, to apply such policy<sup>9</sup>. Additionally, where policies in other PPSs (and, logically, elsewhere) differ in emphasis from those in the relevant policy document on Planning and Climate Change, the latter prevails<sup>10</sup>. The prevailing policy matrix fully reflects the general acceptance of the urgency and importance of responding to climate change by, inter alia, bringing forward renewable energy projects. The question is not of maintaining the status quo and comparing the existing situation with and without the wind farm. The question is rather whether this proposal should come forward to assist in responding to climate change.
148. The Government's Energy White Paper 2007<sup>11</sup> stated, amongst other things that new renewable projects may not always appear to convey any particular local benefit, but they provide crucial national benefits. Moreover, the present site and its surroundings (including landscape and visual interests) are – and will remain – as much subject to the adverse effects of climate change as are other places. Here the FDC objection advances reasons why, in essentially local terms, FF should be refused. SPR's case is that any impacts of the FF proposal will not be unacceptable. But, even were SPR wrong in that, any adverse impact must still be weighed against the wider regional, national and global imperative.
149. PPS 22 embodies an important recognition of the fact that any specified renewable energy targets are minima; the prescribed target figures are to be expressed as the minimum amount of installed capacity to be achieved<sup>12</sup>. PPS 22 also confirms that (1) targets should be reviewed upwards (if met, and subject to the stated criteria) and (2) the fact of a target having been reached should not be used in itself as a reason for refusing consent.
150. The region has not performed well in terms of meeting the 2010 minimum target for the provision of energy from renewable sources. In any event, even were the targets here being (or about to be) met that would still not be a reason for refusal and, further, targets are to be revised upwards<sup>13</sup>. The failure, at all levels, to meet relevant targets, necessarily reinforces the already urgent requirement to bring forward renewable energy projects.

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<sup>8</sup> CD 5.2 at eg page 8

<sup>9</sup> **Bushell v SoSE** [1980] 2 All ER 608 HL

<sup>10</sup> PPS 1 Supplement on Planning and Climate Change at page 1 – CD 3.1

<sup>11</sup> CD 5.1 May 2007 – Box 5.3.3

<sup>12</sup> PPS 22 para 3

<sup>13</sup> PPS 22 para 3

## Development Plan

151. Section 38(6) of the 2004 Act provides the correct approach. The RSS still forms part of the development plan for the moment<sup>14</sup>. For present purposes: (1) the RSS, including the renewable energy targets (as referred to in PPS 22), exists and is part of the development plan; (2) the policies therein are most material – indeed, one can conclude that their weight is the greater given the agreed lack of relevance of the Structure Plan and wholly outdated character of the Local Plan (LP); (3) even assuming the RSS had been revoked, no other reliable source exists for considering what the relevant renewables targets should be. Thus the figures in the RSS (and the background study work which underpinned them) remain relevant and of weight, irrespective of (i) the precise legal status of the RSS as a whole and (ii) of whether one should or should not – and does or does not - have regard to the Government's stated intention to revoke the RSSs. The RSS is here a material consideration. SPR submits it is a significant one.
152. The Council accepted<sup>15</sup> that, as between the substantially up-to-date RSS (May 2008) and the Local Plan (adopted 1993 and reaching the end of its intended life at the end of 2001<sup>16</sup>), the preferred starting point must be the RSS. Policies ENG 1 and 2 contain the dominant development plan policy or theme for present purposes. Policies E1 and E8 of the LP are cited in the reason for refusal of FF; they are thus, by definition and at least to that extent, 'relevant'<sup>17</sup>. But the LP was adopted some seventeen years ago and pre-dates much of the later policy and legal requirements in respect of renewables and climate change. The LP, including the 'saved' policies was never intended or designed to guide development after 2001. The Council's Wind Turbine Development Planning Guidance (WTG) itself recognizes<sup>18</sup> this when it states that the LP did not provide any specific guidance on wind turbine development and refers only to Policy PU2, wisely ignoring Policies E1 and E8.
153. Policy E1 or E8 were applied in an unduly restrictive fashion by FDC. It is common ground that commercial wind farms cannot be brought forward without significant (adverse) landscape and visual impacts. Moreover, Policy E1 uses the word 'minimize' in terms of visual impact (the same qualification must be assumed to Policy E8). Thus, notwithstanding their age these two policies still cannot be read as requiring the elimination of all such (adverse) impacts. The FF proposal has been the subject of an iterative design process expressly to achieve an appropriate minimisation.
154. FF here accords with a proper construction of Policies E1 and E8 of the LP. In any event, it accords with the dominant theme or policy of the development plan, read, as it should be, as a whole; that

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<sup>14</sup> SoCG para 4.4 (reflecting agreement as at 1.ix.10) is clearly overtaken by the later decision in **Cala Homes** [2010] EWHC 2866 (Admin). See also the proposals in the Localism Bill. The case of **Cala Homes (No 2)** [2011] EWHC 97 (Admin) does not alter matters

<sup>15</sup> xx Newcombe

<sup>16</sup> Cd 1.2 at para 1.1 identifies that the LP was only designed to guide development up to 2001

<sup>17</sup> SoCG para 4.3

<sup>18</sup> CD 2.1 at para 1.9

dominant theme or policy, for present purposes is to be found in Policies ENG 1 and 2 of the RSS. Even were there some material failure to accord with the development plan, other material considerations indicate decisively that FF should be permitted.

### White Paper and the UK Renewable Strategy

155. The Council has failed to consider all relevant national and local policy issues. It did not weigh the White Paper in the balance, a most material consideration. The latest UK Renewable Energy Strategy<sup>19</sup> builds on and strengthens earlier policy and FF is wholly consistent with it. Again, FDC does not allege otherwise.

### Need, targets, benefits

156. The regional on-shore wind targets are set for 2010 and 2020<sup>20</sup>. The RSS indicates<sup>21</sup> that for the East of England, the combination of vulnerability to the effects of climate change and the level of development with its potential contribution to emissions means that addressing climate change is particularly urgent and challenging (emphasis added) and the development of new facilities for renewable power should be supported. First, the 2010 target has still not been met and, far from becoming irrelevant after 2010, will become yet more urgent.

157. Even were one to ignore the regional targets, RSS Policy expressly directs consideration to national and international climate change objectives; the mismatch in the UK between renewables provision and need is a most material contributor to the bringing forward of schemes such as FF<sup>22</sup>. It is accepted by all parties that, where targets are not being met, the weight and urgency of the need becomes yet more important in the drawing of any planning balance.

158. PPS22 requires regard to be had to the wider environmental and economic benefits of FF and significant weight attached to them. As the Swinford Inspector identified<sup>23</sup>, it is not enough to pay lip-service to such benefits merely because they are common to other renewable energy schemes. So far as concerns benefits:

- the Council could not readily identify the environmental and economic benefits it had actually taken into account. Reference was made generically to renewable energy benefits, which is no substitute for a full consideration of the scheme-specific benefits. The witness was unable to recall what Stern had said<sup>24</sup>: including that ignoring climate change will

<sup>19</sup> CD 5.1 and 5.2

<sup>20</sup> CD 1.1 RSS Policy ENG 2 and para 9.6

<sup>21</sup> *ibid* para 1.1 and ENG 2

<sup>22</sup> Para 16 of the Climate Change Supplement to PPS 1 indicates that strategic targets for renewable energy should not be applied directly to individual planning applications. The Carsington Inspector robustly rejected any suggestion that this meant he must ignore regional targets and that approach was equally robustly endorsed by Carnwath LJ in the subsequent, unsuccessful High Court challenge by the LPA – see the **Carsington** judgment (CD 4.5) at paras 38 to 42

<sup>23</sup> CD 4.15 at para 236. The SofS agreed with the Inspector's approach at decision letter para 22

<sup>24</sup> CD 5.24 Exec Summary page ii

eventually damage economic growth and could lead to major economic and social disruption which could be difficult to reverse. There was no evidence that any weight had been given to these fundamental matters, nor that any consideration had been given to the Landscape & Visual benefits of the SPR scheme.

- the Council's overall weighing of the planning balance was virtually non-existent. As suggested elsewhere in, for example, the Committee Reports, FDC feels it has done its bit and seems to feel it can thus ignore Government policy. Paragraph 1(iv) of PPS22 is of central importance: "The wider environmental and economic benefits of all proposals for renewable energy projects, whatever their scale, are material considerations that should be given significant weight in determining whether proposals should be granted planning permission."

### ***C. The landscape and visual impacts of the proposed development***

159. FDC's objection<sup>25</sup> is materially limited. Additionally, much of the cumulative visual impact alleged against FF is dependent on BDH and BHF coming forward; if, for whatever reason, those schemes were not consented, the substance of FDC's objection to FF almost entirely disappears.

Additionally:

- The landscape resource is already subject to the deleterious effects of climate change. FF – whether with or without BDH or BHF - will clearly not, of itself, solve global warming. However, provision of renewable-energy generation is predicated on cumulating many schemes.
- Public perceptions of wind turbines vary from person to person and display a marked polarity. Research reveals anticipation often to be worse than actuality; surveys of local residents after the construction of wind farms reveal a shift in favour of turbines, or towards a more neutral stance. Notwithstanding the role for professional judgement in this area<sup>26</sup>, that role includes assessing impacts on 'visual receptors' ie primarily human beings with a pair of eyes; significant visual effects cannot thus be simplistically and automatically characterised as adverse.
- PPS22 recognizes that, of all renewable technologies, wind turbines are likely to have the greatest visual (and landscape) effects<sup>27</sup>. These are big structures but the national policy is clear. Even if the impacts are properly to be viewed as adverse, that of itself is not a sufficient reason for refusal.
- There would be no material effect on any nationally designated landscape area. Moreover, FF is proposed in an area where, as FDC accepts, wind farms will be concentrated or clustered. Indeed, the conclusion of the independent Arup Review for the East of England Regional Assembly suggested that<sup>28</sup>:

*"...this broad area of search is termed an 'area of likely concentration' for onshore wind, to suggest that the intensity of development is encouraged to*

<sup>25</sup> See Reason for refusal CD 10.6

<sup>26</sup> PPS 22 para 19

<sup>27</sup> PPS 22 para 20

<sup>28</sup> CD 5.6 at section 8.4; even were the RSS revoked, this document remains part of the evidential base

*be higher than the regional average. This 'likely concentration' may suggest a slightly different approach to landscape and visual cumulative impact, which will have to be reflected in any detailed policies that are developed. Locally, there is a possibility that 'wind farm landscapes' will develop within this broad area, ie landscapes which are characterised wholly or partly by the presence of wind turbines."*

FDC has not heeded this suggestion.

- The scheme if built would have a finite life and then be decommissioned; the source of any alleged adverse effect, namely the turbines, would thus disappear. Whether wind farm proposals can properly be described as 'temporary' – though that is the word which PPS22 uses<sup>29</sup> - matters not. On any analysis, the development here is reversible.
- The reason for refusal cites only visual impact. The mere fact that there may be a significant (adverse) effect on a view from a residential receptor does not equate to an adverse effect on residential amenity. The addition of FF, even to a baseline extended to include other consented schemes and those subject to planning applications, does not produce such an effect.

#### Wind Turbine Development Planning Guidance ("WTG")

160. SPR advances two strands of cogent criticism to the WTG, as contained in the landscape witness's detailed and wide-ranging critique<sup>30</sup>. In addition, the planning witness criticizes FDC's mathematical approach to the application of that guidance here. SPR has always made clear its approach as being two-pronged in this respect. The SPR Statement of Case summarises it<sup>31</sup>. The WTG's methodology leads to an unnecessary restraint on the inherent capacity of the District to accommodate wind turbine development. The 'thresholds' set out in the Guidance impose a degree of prescription on the acceptability of the individual wind turbine proposals which is inappropriate in the context of the Fenland landscape, and is not in accordance with the approach in PPS22. The weight to be attached to the thresholds in the Guidelines in the determination of the application was therefore inappropriate. The Appellant thus (1) retains its criticisms of the WTG but (2), and in any event, submits that on a proper consideration of that guidance, Floods Ferry complies. That remains SPR's case.

161. In both the WTG and the Report to Committee on the FF proposal<sup>32</sup>, FDC and its advisers, set out an inappropriate but very revealing starting point for its analysis of FF. As the Committee Report puts it: *"The Council fully supports the requirements of PPS22 as witnessed by the high concentration of wind turbines in Fenland compared to neighbouring authorities. In recent years the Council has fully supported Government targets for renewable energy generation. As a result FDC has more than met the renewable energy targets set for it by the East of England Regional Authority to 2010."*

<sup>29</sup> PPS 22 para 20

<sup>30</sup> Welch Proof section 7 and Appendix C; Welch Rebuttal

<sup>31</sup> SPR Statement of Case at paras 9.4 to 9.5

<sup>32</sup> CDs 2.1 at para 1.7 and CD 10.5 at page 8



162. Not dissimilar wording appears in the WTG. The assertion of what amounts to 'we've done our bit' is irreconcilable with Government policy. And the assertion about complying with targets is wrong.
163. The WTG expressly accepts<sup>33</sup> that it is not to be read in isolation and is not intended to replace the ES for a given project; further, 'detailed consideration of a site may identify factors specific to a site that counteract issues identified in this document.' Nor does non-compliance with a particular criterion necessarily preclude turbine development. (3) Even were the decision-maker here to find some material conflict or tension between FF and the WTG, it is common ground that this is still not determinative; there remains the overall planning balance. Significantly, the reason for refusal specifies no failure to accord with the WTG.
164. The Council's landscape evidence set the bar too high, finding adverse effects where none exist; the overall conclusions are undoubtedly coloured by various fundamental failures to have regard to important material considerations.
- PPS22 requires the wider environmental benefits of any given renewable energy project to be considered<sup>34</sup>. It was accepted by the Council that this included the landscape and visual ("L&V") benefits, which would follow as part of FF's putative contribution to combating climate change. It was further accepted that these had not been identified or considered, or weighed in the overall L&V balance – as distinct from the overall planning balance. As the Council's evidence expressly referred to the characteristic of The Fens Landscape Character Area and stressed the identified need, amongst other things, to 'conserve and restore or conserve and strengthen' etc that<sup>35</sup>; the benefits of FF would demonstrably be most material in this respect.
  - The Council accepted that both landscape and visual receptors, including within FDC's area, were already, and would continue to be, subject to the deleterious effects of climate change<sup>36</sup>. The relevant professional guidance from the Landscape Institute, the GLVIA, expressly requires<sup>37</sup> that, in establishing both the visual and the landscape baselines, a landscape professional identifies and takes into account any existing trends for change; the Council accepted that the deleterious effects of climate change were such trends and that they had failed to take them into account. This necessarily skewed consideration against FF.
  - No consideration had been given to valency, addressed below.
165. Additionally, there is a failure properly to consider cumulative assessment; that process requires the construction of a baseline which includes not only existing schemes but also those consented (but not yet built) and those the subject of planning applications/appeals. The substance of FF's criticism is set out in written evidence<sup>38</sup>. This failure is fundamental

<sup>33</sup> CD 2.1 para 1.6

<sup>34</sup> CD 3.5 PPS 22 para 1(iv)

<sup>35</sup> WTG CD 2.1 at page 5 of Appx 5

<sup>36</sup> See eg Topic Paper 9 – CD 6.5

<sup>37</sup> See eg paras 6.5 and 7.14 of the GLVIA – CD 6.4

<sup>38</sup> Welch Rebuttal Proof para 3.8

as the only point taken by FDC against FF relates to cumulative effects – and it necessarily undermines all the down-stream appraisal. This alone is a sufficient reason for rejecting the FDC case on L&V considerations.

### Landscape impact

166. Extensive and comprehensive landscape impact reviews are found in the FF Environmental Statement and Supplementary Environmental Information and the evidence of the landscape witness. Additionally :
- It is common ground that the Fens has a high capacity to accommodate wind turbine development<sup>39</sup>.
  - It is agreed that there would be no adverse impact on the overall integrity of the Drained Fen Landscape Character Area but that there would be significant cumulative effects at the local level, primarily in the area between FF and Ransonmoor<sup>40</sup>; substantially limited to the small area where a 2km radius from each wind farm overlapped<sup>41</sup>.
  - The Council further alleges<sup>42</sup> significant cumulative impacts with the superimposition of FF into a baseline including either or both of BDH and BHF. So far as concerns assertions of cumulative effects in landscape terms of FF with BDH, the area where the overlap of the two-kilometre radii occurs<sup>43</sup> is not materially different from that for Ransonmoor; the same response applies. Similarly, the two-kilometre overlap of FF and BHF<sup>44</sup> covers a slightly larger area but any effects are still very localised.
  - The Council further alleges<sup>45</sup> adverse cumulative landscape (and visual) impacts in terms of supposedly incompatible layout and turbine height between FF and BHF. Even assuming there were substance in this point, the point sounds against BHF, not FF. The Council's ES review accepts<sup>46</sup> that, in the case of FF:
    - "... the arrangement of the proposed turbines largely responds to the grain of the local landscape. The turbines would be located in the 'Drained Fenland' Landscape Character Type which has a high capacity to accommodate turbines in small/medium groups dependant on the cumulative proposals".
    - By contrast, it remained critical of the form and site layout of the BHF turbines<sup>47</sup>, preferring, on the whole, that of FF<sup>48</sup>.
    - The Council fairly accepts that, even with the addition of FF, BHF and BDH, either individually or in combination, neither the 25% nor 75% thresholds in the WTG would be exceeded.

<sup>39</sup> See eg Mr Nourse Proof at para 6.5

<sup>40</sup> Billingsley Proof para 8.2

<sup>41</sup> BillingsleyAppendix 1 (FDC/2B) at Fig JB 04

<sup>42</sup> Billingsley proof para 8.11

<sup>43</sup> Billingsley Appx 1 at Fig JB 04

<sup>44</sup> ibid

<sup>45</sup> Billingsley Proof para 8.9

<sup>46</sup> CD 9.5 at para 2.3; FF falls within the category of *Small to Medium Scale Group* – see WTDPG at para 0.3, CD 2.1

<sup>47</sup> TLP Memo to FDC – CD 9.7

<sup>48</sup> See ES Review CD 9.5 at para 5.7 where TLP conclude that *...the Floods Ferry proposals are, on the whole, more acceptable in layout terms in relating to the existing landscape pattern than the Burnt House proposals* [Though the two FF turbines to the north of the Hereward's Way are excepted from this general preference]

- It is common ground that none of the above amounts to a reason for refusal. By contrast, FDC advances adverse landscape impact as the reason for refusal against BDH<sup>49</sup>.

167. It follows that there can be no tenable or rational basis for refusing FF in this regard, and irrespective of whether BHF and/or BDH proceed.

### Visual impact

168. Visual impact (including that on residential receptors) is the only reason for refusal advanced by FDC against FF. Visual impact should be approached having regard to a number of matters. These matters act to qualify landscape assessment as well but, given the absence of objection on that ground, it is more convenient to group them here:

- a. It is impossible to bring forward commercial wind farms without significant visual (and landscape) effects. The Council further accepted that 'something more'<sup>50</sup> is needed before refusing a wind farm on such grounds or something exceptional. FDC has failed to identify what that further element is in the present case. There is thus no evidence from FDC in the case of FF of what translates a significant visual impact into a reason for refusal and rejection of the undeniable (and accepted) benefits of the scheme.
- b. Use of the appellations adverse or neutral or beneficial should be approached with caution. The Council did not consider the topic of valency to be an important one; and it is not to be found in their proof or in the ES Reviews or in the WTG. Yet the landscape witness fairly accepted that it is an important caveat to apply once the magnitude of impact has been identified. This omission is an important one. PAN 45 – albeit Scottish guidance, is relevant here and provides helpful information on what are material considerations; it refers expressly<sup>51</sup> to the extensive research into public attitudes to wind farms. The more recent Sustainable Development Commission document stresses the same point<sup>52</sup>. There is a huge polarity of views on wind farms ranging from outright dislike to those who find them design icons. In between there are those who might ideally wish wind turbines were not necessary but nonetheless see them as a welcome sign that somebody is doing something in response to climate change. Yet neither of FDC's witnesses has had any regard to this important aspect of valency.
- c. The view of the Sustainable Development Commission<sup>53</sup> was put to the Council:  
*"Fossil fuels such as gas and coal, and the uranium for nuclear fission, all rely on the extractive industries for fuel supply. In the case of coal and uranium, this can have a wide and devastating effect on the*

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<sup>49</sup> See eg FDC Statement of Case re BDH

<sup>50</sup> Mr Hardy in xx used the word 'exceptional'

<sup>51</sup> cd 6.15 at page 24

<sup>52</sup> CD 5.23 at 6.6

<sup>53</sup> CD 5.23 para 6.7

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*landscape surrounding the mine, with the associated infrastructure and waste production contributing to a landscape and environmental impact that can last for years... Although many of the landscape and environmental effects of our fuel needs will not be borne in the UK, a sustainable development approach implies that all effects should be considered, wherever they occur in the world. It would not be equitable to suggest that landscape destruction in other countries is justified in order that UK landscapes are preserved."*

- d. PPS22 expressly use the word temporary to describe the L&V effects. And the SDC stresses the same point<sup>54</sup>. The FF scheme, were it built, would be subject to a condition requiring decommission at the end of 25 years. It remains important that the sensitivity and magnitude of effect are considered before turning to questions of their duration. Thus the apparent approach of BHF's Updated ES is open to criticism, as the effects have been assessed on the basis of their being temporary/reversible<sup>55</sup>. The duration of impacts is a material consideration, but did not feature in the Council's assessment<sup>56</sup>.
- e. The Council accepted that climate change represented a force for past, present and continuing change in the baseline for both visual and landscape assessment. It further accepted the requirement under the GLVIA<sup>57</sup> to take account of such change in any assessment. Yet this is another matter which was ignored when assessing the proposal. This contributed to an exaggerated view of, inter alia, visual impact.
- f. The overall planning balance is a matter for the planner, based on the input from other experts. But three points arise in relation to the landscape and visual benefits, in terms of a response to climate change, which merit attention. First, PPS22 expressly requires not only that they be taken into account but that they be accorded significant weight. It follows that there should be a balancing exercise by the L&V expert; not all impacts should be regarded as adverse and given no credit whatsoever, much less significant weight. The Council failed to carry out any L&V balance. Third, this failure carried through into the overall planning balance.

As a result, the Council's L&V conclusions must at the very best be taken as materially and excessively pessimistic.

169. The Council advances four limbs of objection in terms of cumulative visual impact:

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<sup>54</sup> CD 5.23 at paras 6.1 and 6.7

<sup>55</sup> BHF Updated ES at para 8.5.1. There is additionally the other aspect of this point, namely the mismatch between that assumption and the definition of magnitude of change, making it impossible using that methodology for a *high adverse impact* to arise – See Welch Appx E at para E13

<sup>56</sup> xx Newcombe

<sup>57</sup> See CD 6.4 at eg paras 6.5 and 7.14; the importance and extent of such baseline change is dealt with extensively in, eg, Topic Paper 9 (CD 6.5) produced by SNH and the former Countryside Agency

- Adverse visual impact with addition of FF (1) to Ransonmoor<sup>58</sup>, (2) to BHF<sup>59</sup>, (3) to BDH<sup>60</sup> and (4) to BHF and BDH together<sup>61</sup>. These include an assertion of cumulative visual impacts in respect of various residential locations broadly within c. 2 km of the nearest turbine<sup>62</sup>.
- Adverse visual impact on Floods Ferry Marina with the addition of FF to Ransonmoor and BHF<sup>63</sup>.
- Adverse visual impact on various recreational routes (including the Hereward Way, River Nene (Old Course), NCR 63 and various rights of way<sup>64</sup>. [NB it was accepted that the over-sailing concern with regard to the Hereward's Way can be dealt with by way of condition].

170. FF's landscape witness made a detailed consideration of these matters and rebuttal of the Council's points. That analysis and conclusion is commended to the SofS. There was very limited challenge to it; this contrasts with the much more extensive and detailed cross-examination of the other parties' evidence on this matter.

171. (1) Even if the Council's L&V assessment were 100% correct about FF, FF still achieves a materially positive overall planning balance and should be permitted; (2) the Council has, on any reasonable analysis, adopted too pessimistic an approach and, as has been accepted, has effectively left out of account all positive aspects; (3) a substantial amount of the criticisms of FF occur only in combination with BDH and BHF; if either, or both, of those schemes were not to come forward the substance of the case against FF evaporates, leaving but little scope for allegations of adverse effects.

#### ***D. Residential amenity***

172. FDC now makes no such objection to the FF proposal.

A There are only six properties within the guideline figure of 800 m<sup>65</sup>. Of these, Australia Farm is considered to be 'derelict'<sup>66</sup>. Gaulka Bungalow is apparently unoccupied<sup>67</sup>. Moreover, these two properties stand on land of which the relevant landowner is proposing (at Scoping Opinion stage<sup>68</sup>) four turbines at 120 m and materially closer to the two properties than are any of the Floods Ferry turbines; it would thus seem that the prospect of turbine development and impact on residential amenity is not a matter of concern for the landowner in respect of these two properties. Self-evidently there is no occupier objection in respect of either. So far as concerns the other four

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<sup>58</sup> Billingsley Proof para 8.1 and 8.3

<sup>59</sup> Billingsley para 8.4

<sup>60</sup> Billingsley proof para 8.5

<sup>61</sup> Billingsley 8.11

<sup>62</sup> Billingsley proof para 8.6, first two sentences

<sup>63</sup> Billingsley Proof para 8.7

<sup>64</sup> Billingsley Proof para 8.8

<sup>65</sup> *ibid*

<sup>66</sup> Billingsley Appendix 6

<sup>67</sup> Welch in x

<sup>68</sup> Welch Rebuttal at para 3.13

properties, there is a letter of support in each case<sup>69</sup>. There is nothing to support a conclusion of adverse effect on residential amenity, whether in respect of the six properties between 690 and 800 m or those beyond 800 m.

B Concerning the addition of FF to BHF, the first of the two properties is Australia Farm and the other is Airedale Lodge, which is more than 800 m distant from both the nearest FF turbine<sup>70</sup> and the nearest BHF turbine. Significantly, there is also a letter of support from this property. Whilst there may be a significant cumulative visual effect, this falls materially short of the test for interference with residential amenity<sup>71</sup>.

C In so far as concerns cumulative impacts with Ransonmoor, the three properties concerned are all in excess of 1.5 km away from the nearest FF turbine and there can be no basis for concluding a cumulative adverse impact<sup>72</sup>. This is, perhaps, borne out by the apparent absence of objection from any of these properties.

### ***E. Other matters***

#### Noise generated by the proposed development and its impact on residential properties

173. There is no objection from the relevant local environmental health authority. No substantive issue can here arise in respect of noise. Conditions can be imposed were both FF and BHF consented. There is a note from FDC's Environmental Health Officer (EHO) identifying agreement between SPR and FDC. In particular the EHO has expressly considered the situation with both BHF and FF and the lower day-time noise limit; she agrees with FF that this should be 37.5 dB(A). There is also agreement between FDC and SPR as to how to populate the rest of the table of noise limits using the available data. Such agreement does not exist with BHF.

#### Aviation

174. The Aviation Written Note (prepared by Mr Smith of Skylines UK Ltd) confirms the position that (1), in so far as MoD concerns remain live, the MoD is satisfied that they can be met by appropriately worded condition and (2) that there is no other aviation reason why permission here should not issue.

#### Ecology/ornithology

175. Written agreement has been reached with Natural England. Material has been provided to inform both the appropriate assessment already carried out by FDC and for the decision-maker in this appeal. It confirms there is

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<sup>69</sup> The Secretary of State consented to judgment in the **Nuon** High Court challenge on the basis that the Inspector had erred in law in failing to take into account the fact that the occupants of the nearest residential properties were wholly supportive of the development. By parity of reasoning, an absence of objection should also be a material consideration. This approach is common ground given Mr Billingsley's acceptance of it in xx (Newcombe)

<sup>70</sup> Mr Billingsley gives the distance as 840 m – Billingsley Appx 6, property 15 (Property 11 in Billingsley Appx 2). This is Mr Welch's property 12. NB Mr Billingsley calls it Airedale Cottage, Mr Welch Airedale Lodge

<sup>71</sup> See Welch Rebuttal at para 3.13

<sup>72</sup> Welch rebuttal Proof para 3.10

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accordingly no ecological or ornithological reason, whether in terms of European sites or otherwise, why FF should not be consented [CD10.7].

### Conditions etc

176. Fivestones here proffer a section 106 dealing with provision of a decommissioning bond. In the case of FF, decommissioning is dealt with as necessary by way of condition; that condition requires submission of a decommissioning and site-restoration scheme and accords with the guidance on the use of conditions<sup>73</sup>. The approach is agreed between FDC and SPR. It is further agreed that no section 106 is here necessary<sup>74</sup>; no decommissioning bond has been sought. Should the SofS, however, take a different view, SPR anticipates it will be so informed by the SofS in advance of any decision on FF and given an adequate and fair opportunity to respond, including by the provision of a section 106 if the SofS concludes one is here required, before any final decision is made in respect of FF.

### ***F. Overall balance***

177. A full review of the overall balance should be made only after examination of the various other considerations which arise. There is a need to identify and give significant weight to the various environmental and economic benefits of the scheme. This was the approach taken at Swinford<sup>75</sup>. It is not enough to take renewable energy benefits as being common to all projects.

178. Even if FF, as with any such scheme, may produce significant effects which are viewed as adverse, that does not, of itself, amount to a justifiable reason for refusal. The clear evidence from the landscape witness is that, nonetheless, the scheme is acceptable. Even were that not the case, the matter still falls to be weighed in the overall planning balance. Any such balance must here be drawn decisively in favour of the FF scheme.

179. FF here accords with a proper construction of the LP. In any event, it accords with the dominant theme or policy of the development plan, read, as it should be, as a whole; that dominant theme or policy, for present purposes is to be found in policies ENG 1 and 2 of the RSS.

180. Even were there some material failure to accord with the development plan, other material considerations indicate decisively otherwise ie that FF should be permitted. The allegation in the reasons for refusal of a failure to accord with PPS22 is similarly misconceived. First, there is, in fact here, no material failure to accord with any part of PPS22 and compliance when PPS22 is read as a whole. Second, PPS22 (and its reference to 'minimisation') is expressly subordinate to the Supplement to PPS1. Third, PPS22 should be weighed in the overall balance along with all other material considerations; the latter overwhelmingly dictate grant of consent regardless.

181. That there is no allegation of any breach of other, relevant national energy policy is of paramount importance. The context is provided by the Sustainable Development Commission in its guidance on Wind Power in the

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<sup>73</sup> See the Carland Cross decision at para 43 – CD 4.17

<sup>74</sup> FDC/SPR SoCG para 4.5

<sup>75</sup> CD 4.15

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UK<sup>76</sup>: *"With increasing pressures on energy policy and the need to reduce emissions of carbon dioxide, it is hard for any community to be considered exempt from the task of delivering a low carbon future. As climate change presents the most serious threat to UK landscapes, technologies that help limit our contribution to climate change should be encouraged, even where this represents a temporary loss of amenity."*

182. On the only basis for objection here, cumulative visual impact, the objection to BHF and BDH are to those two schemes on a solus basis; the case for them gets no better even if BDH or BHF were permitted in isolation. By contrast, a substantial amount of the FDC case against FF evaporates if either or both of BHF and BDH are refused. Even were all three schemes to come forward together, the objection to FF – cumulative visual impact – is the least serious objection against any of the three schemes. In point of fact, the case against FF is materially over-stated by the Council. Even were that not the case, the overall benefits of FF materially exceed those of either BHF or BDH. There can be no reason for dismissing the FF appeal.

***G. What if only one or two of the schemes are to come forward?***

183. There is no reason why both FF and BHF should not both proceed [S2]. Equally, there can be no good reason why Boardinghouse (BDH) should not also proceed along with FF and BHF. Those promoting BHF take a similar view. If, however, the decision-maker were to take the view that not all schemes should be permitted, SPR's witnesses have set out why FF should be the consented scheme or one of the two consented.

**The Solar Farm Proposal ("SF") -Timescale for bringing forward the SF and whether BHF can lay exclusive claim to cumulate its MW.**

184. The installed capacity of the SF proposal has no relevance in considering which wind farm(s) should come forward. There is no link between SF and BHF such that the former cannot come forward without the latter (or vice versa). Indeed, the promoters of the SF made expressly clear<sup>77</sup> their intention, subject to a favourable planning consent, to start work on site in late spring 2011; and the earliest date at which the SofS might be expected to issue a decision on BHF (or FF or BDH) is July 2011 [F5,F6&S7].
185. BHF opened its case<sup>78</sup> on the basis that the SF installed capacity could be cumulated with BHF (and BDH) so as to trump the larger FF. That point has conspicuously failed to survive closer examination and has been conceded. In respect of looking at total installed capacity from the various combinations of FF and BDH and BHF, presence or absence of the SF would be common to all possible scenarios.

**Potential for Cumulative Impact**

186. The SF does, however, remain relevant in terms of considering the potential for cumulative adverse impact on visual or residential amenity when

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<sup>76</sup> CD 5.23 at section 6.1

<sup>77</sup> See Planning Statement on Solar Farm application at Tab 2 in Solar Farm Application Documents, paras 6.34-36 and Appx 3 (Exhibition Board), second page, top right and corner under "Construction and Maintenance"

<sup>78</sup> BHF Opening Submissions at para 9.3



it forms part of a baseline to which BHF is added. BHF initially argued that, since the SF application post-dated the BHF application, there was no need to consider the potential for cumulative impact. Additionally, the SF application itself was advanced without any consideration by the applicant of any cumulative impacts of imposing the SF on a baseline assumed to include BHF. That this was a flawed approach in both respects was accepted by BHF's witness<sup>79</sup>. An assessment of cumulative impacts was undertaken belatedly after all other evidence (including L&V) had been called and tested. By contrast, SPR's landscape witness gave (unchallenged) written evidence<sup>80</sup> that the presence (or absence) of the solar farm made no difference to the conclusions of the FF EIA Additional L&V Information<sup>81</sup>.

187. Given that BHF is EIA development, and the resulting legal requirement to consider in-combination effects, the appraisal and evidence of BHF's own L&V witness should not have ignored a commercial renewable energy project extending to some 17 ha immediately to the south of BHF and in close proximity to residential receptors. The omission must operate as a significant caveat on BHF's conclusions. The omission of the SF from the evidence (and its conclusions) becomes yet more material when one notes that residential receptors such as 15 and 17 Burnthouse Sidings and Willow Farm are indicated – in the Pegasus SF LVIA - as suffering Moderate or Moderate/Slight Adverse visual effects from the SF in isolation and without regard to BHF in Year 1 of that development<sup>82</sup>.
188. FDC had known all about the SF application, having received a screening application in November and then the formal planning application in, apparently, December. Yet the landscape witness had not been asked to consider it. He was unable to answer questions about the substance or L&V implications of the SF application. This failure to consider the SF represents a most material omission. FDC had, for instance, concluded that BHF (without the SF) would have an adverse impact on residential amenity on Willow Farm. The potential for relevant cumulative effects in the context of BHF and the SF is not then considered. Willow Farm is but one example of this.
189. At a very late stage in the inquiry (Day 6 of 8), BHF finally adverted to the need for cumulative assessment in respect of the SF. The documents now received comprise two separate cumulative impact assessments both for BHF in the light of the SF and vice versa. FF's response identifies various matters. Its criticisms are cogent and call into question the robustness of this exercise. Accordingly the SofS should, we submit, adopt a precautionary approach in examining the potential for cumulative impacts when BHF is added to a baseline including the SF.
190. In conclusion, the SF has no bearing on which wind farm scheme (or combination thereof) can claim the largest installed capacity. It is, however, of relevance in any consideration of BHF's potential for adverse impacts on visual receptors, whether those effects be purely visual or tip over into affecting residential amenity.

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<sup>79</sup> xx Newcombe

<sup>80</sup> Inquiry Doc S7

<sup>81</sup> CD 10.2

<sup>82</sup> Inquiry Doc F6 Tab 4 Table 2

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Comparative assessment of FF and BHF

191. Fivestones proof (Mr Brand, section 8) is materially flawed as was accepted<sup>83</sup>, having failed to mention or consider the requirement to secure the maximum renewable energy resource<sup>84</sup>. This would be a necessary starting point in any consideration of which site(s) should receive consent. The Council expressly accepted when questioned by the Inspector that FDC did not consider there to be a material difference, in terms of alleged adverse impacts, between FF and BHF.
192. Reliance on the North Warwickshire case is mistaken. It was not concerned with how 'alternatives' should be considered but, rather, with the antecedent question of whether other sites are a material consideration<sup>85</sup>. Before one can have an 'alternative' one must first identify what the need is. In N Warwickshire the need was that of a Housing Association for bungalows intended as affordable housing for elderly persons. There were two sites, each of which could have completely satisfied the need. The present case is different. The need is unconstrained; it is for as much renewable energy as can possibly be brought forward, regionally, nationally, even internationally. BHF, FF and BDH cannot, as a matter of the simplest logic, be alternatives in meeting that need; all three are needed and many more besides. Each can make a contribution to meeting need without satisfying it.
193. That requirement on the facts to start with an examination of relative installed capacities is also a matter of Government policy. PPS22, it is agreed, imposes a requirement to maximize installed capacity, subject to environmental capacity. The Supplement to PPS1 requires that any decision here secure the highest viable resource and energy efficiency and reduction in emissions. Comparison only becomes potentially relevant if the SofS concludes that two, or all three, sites are acceptable on a solus basis, but only one of them – or only two of the three – should be consented. The question then arises how should comparison be made.
194. Two scenarios have been considered: (1) the SofS, contrary to the submissions of both FF and BHF, concludes that only one scheme out of three can come forward; and (2) the SofS concludes – again contrary to submissions – that only two out of the three schemes can come forward. In each of these two scenarios, FF must still be allowed. Irrespective of any relative disparity in adverse impacts (as to both the substance and relevance of which, see below), it is acceptable in itself and offers the highest renewables benefits.
195. The point is clear in law. As Laws LJ indicated (citing Simon Brown J – as he then was - with approval)<sup>86</sup> in the very case upon which BHF relies: *"Land ....may be developed in any way which is acceptable for planning purposes. The fact that other land exists which would be yet more acceptable for planning purposes would not justify the refusal of planning permission upon the application site..."*.

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<sup>83</sup> xx Newcombe

<sup>84</sup> CD 3.1 para 9

<sup>85</sup> ibid at para 17

<sup>86</sup> N Warwickshire at para 22. Laws LJ citing from **Trusthouse Forte Hotels v SoSE** (1986) 53 P&CR 293

## **H. Conclusion**

196. This is a carefully, and sensitively, designed scheme which will make a material contribution to the government's renewable energy targets for the sub-region, the region and the country as a whole, whilst respecting its surroundings. SPR commends it to the Inquiry.

### **Representations from Interested Persons**

The following persons spoke at the Inquiry and the material points were:

197. On behalf of **The Secretary of State for Defence (MOD)** it was confirmed that early objections to the proposals, on the grounds that there would be unacceptable effects on aviation safety, principally to the Primary Surveillance Radar and the provision of Air Traffic Services at RAF Cottesmore, could be overcome. In the case of Flood's Ferry Farm, early concerns relating to RAF Lakenheath and the civil airport at Cambridge were unconditionally withdrawn. In December 2010, for both appeal proposals, letters on behalf of the MOD had stated that objections relating to RAF Cottesmore were formally withdrawn subject to imposition by the Inspector of suitable planning conditions. These would have to address the potential effects of wind turbines on radar services in the vicinity of the appeal sites both individually and cumulatively [O1].
198. **Mr Lee** expressed concern about wind farms in general. His main consideration is that the interests of local residents should not be usurped by the 'national need'. He referred to newspaper reports, articles and speeches by academics, engineers and politicians questioning the need for onshore wind turbines given that off shore wind is more efficient [O2].
199. **Mr Salmons** raised doubts about the Swan figures quoted in the core documents. By his calculations there were 13,000 Swans in the area, of which 7,600 were Whooper Swans. He highlighted the lack of support for the Swan population by Natural England in their representation (page 29 of Burnt House Environmental Statement). The Washes are the two main centres for Swans to roost overnight and 70% of crops on or around the sites are root crops which are particularly attractive to Swans.
200. In recommending a visit to the local Wetlands Centre Mr Salmons drew attention to other migrating birdlife and potential for harm to other birds and wildlife. He expressed disappointment over the use of good agricultural land for wind farm development when it seemed that there was resistance to agricultural land take elsewhere [O3].
201. **Mr Stoneman** has for nearly a decade campaigned against wind turbines which he described as "dead end technology". As a member of the public in Fenland, his main concern is the siting of wind turbines close to domestic properties. He gave an example where, without minimum distance guidance in place, a turbine had been sited so close to a dwelling that ice thrown from the blade went into the curtilage. He questioned the validity of energy security through development of onshore wind turbine development claiming that, during December 2010 and January 2011, only 0.4% of full capacity renewable energy was derived from wind turbines. Although this was due to very cold weather conditions, he argued that wind turbines are not an efficient way of securing renewable energy provision. Further issues included

possible blade flicker, social impacts and restless landscapes. He supported Mr Salmons and his general concern over potential impacts to local habitats and wildlife adding that turbines disturb feeding grounds.

202. **Mrs Lock** was concerned about impacts on residents' amenity including outlook and shadow flicker. She pointed out that people need food as well as power and that the turbines would occupy agricultural land.

***Written Representations following Recovery of Appeals***

The main points were:

203. **Natural England** commented on both Flood's Ferry and Burnthouse proposals and the Appropriate Assessment undertaken in relation to the Nene Washes Special Protection Area (SPA) [CD9.6, 10.7]. While the assessment concluded 'no effect on site integrity' for each proposal, either alone or in combination, this was in part based on a suite of mitigation measures proposed for each site being secured as part of a legally binding agreement.
204. Natural England considered that measures would be required to give reasonable certainty of the conclusions of the Appropriate Assessment. The following measures must be secured as part of any permission(s) granted:
- Undertaking precautionary land management action over the life of the permission, in accordance with a submitted management plan;
  - Undertaking post-construction monitoring in accordance with a submitted monitoring programme;
  - Participating in an annual review of monitoring results;
  - Undertaking appropriate actions if unpredicted collision mortalities occur, in accordance with an agreed contingency plan.
  - In particular the commitment to contingency actions being undertaken where necessary, because of uncertainties over bird movements across the development sites, which would be influenced by land management in the wider farming landscape that is outside the Appellants' control.
205. **RSPB** expressed serious concern for both projects where there would be adverse impacts on the bird communities associated with the Nene Washes SPA. In addition, Bewick Swans, Whooper Swans and Golden Plovers are species listed on annex 1 of the birds directive (79/409/EEC) and as such are afforded a high level of protection in their own rights. Principally, concerns centred on the potential losses from collision with wind turbines of migratory wild swans (Bewick Swans and Whooper Swans) that roost at the Nene and Ouse Washes SPA and forage in the landscape between.
206. In the case of both Flood's Ferry and Burnthouse projects, the approach to the Appropriate Assessment was deemed acceptable. However further data on Swan activity at the proposal sites needed to be collected. The two years of support data for Flood's Ferry had shown a substantial difference in Swan activity. Both proposal sites are ornithologically sensitive and the activity of wild swans within their vicinity would vary over time.

**Additional points made against the proposed development at Floods Ferry, are summarised below:**

207. **Doddington Parish Council** objected to the appeal considering that there are enough turbines in the Fens already. The Parish Council are able to

monitor the performance of wind turbines in the surrounding area. During the winter months still air prevented turbines functioning and output was nil. The Parish Council was of the opinion "that more conventional power stations will be required as supply from turbines will cease when they are not working". Parishioners are concerned with the rise in electricity bills which seemingly covers the subsidies of building more turbines.

208. Heavy lorries during the construction phase would cause and had previously caused a great deal of damage to the environment and badly maintained roads.
209. **Pauline Dear** was also opposed to any further wind turbine development in the Fens. Whilst acknowledging the need for renewable energy, she argued that the Fens are becoming saturated with "those monstrosities". Views of the turbines were gained from all directions. Wind turbines should be placed off shore to limit impact on people's homes and take up of valuable agricultural land.

**Additional points made against the proposed development at Burnthouse Farm, are summarised below:**

210. **Mr and Mrs Holman**, residents of Willow Farm, expressed concern that the 3 turbines proposed would be all around their property; turbine 3 having been moved closer in the last application plans. The health and well being of their children was the primary concern and the erection of wind turbines adjacent to their property could jeopardise that.
211. Noise and blade flicker from the turbines would affect every aspect of their property. The proximity of the nearest turbine would be well within European and British Wind Energy Associations good practice guidelines for minimum distance from dwellings and their property could become almost unsaleable. In addition, the development would cause "a sad loss of beautiful open and peaceful countryside" which would affect the wider population. The possibility of ice shards being thrown more than 500m could affect the property and noise during construction were also matters of concern to the Holmans.
212. **Mr C Dunn** opposed the installation of wind turbines in close proximity to his home and small holding as it would be "visually intrusive, pose(s) a severe risk to health, and remove(s) the ability to enjoy my home and living environment". There would be a loss of value to his land and home. He also claimed that the best practice guidelines of the British and European Wind Energy Associations would be breached and noise levels would exceed World Health Organisation guidelines. Additional concerns were blade flicker; construction traffic noise and access; and disruption to television reception.
213. **Mr and Mrs Brown**, residents of Whittlesey question the proximity of the turbines to their property and the impact they could have on their residential amenity. Their understanding is that "all turbines should not be erected within 700m of any private residence". Whilst generally in support of "green energy power" they contend that other sites without property surrounding them should be found.
214. **Mrs Humphrey** objected as she perceived there were already too many wind turbines in the surrounding area; the proposal would further add to the

decline of the unique Fenland landscape. The ecological benefits of wind turbines were unproven and the only beneficiaries would be the developer.

***Written Representations following Applications***

215. The main points were:

216. **Floods Ferry Farm:** *Mr N J Weekes*, and others, wrote in support of the development proposed because renewable energy is an important resource now and in the future, and the site is suitable for wind farm development. *Mr Hugh Whittome* supported the proposal arguing that noise and appearance would not harm living conditions and the diversification to farming would give job security. There could be improvements to Hakes Drove recreational path secured as part of the proposal. Harnessing good wind resource would maximise the use of renewable energy to meet a growing need for power whilst reducing the carbon footprint. *Benwick Parish Council* agreed to support the Floods Ferry application and made a request that any Section 106 monies ought to be made available to the Parish Council.
217. *Anglian Water Services (AWS)* did not object to the proposed development so long as measures were adopted to mitigate any adverse interference with UHF radio scanning telemetry communications in the region. *Cambridgeshire Police* had no objection providing a suitable condition was in place for the provision of navigational lights on each turbine. No concerns were raised regarding the operational activity at *Conington Airfield*.
218. *Cambridgeshire County Council (Highways)* suggested that a joint survey of sections of public highway along the proposed access route 'that give cause for concern' be carried out so that any damage caused by vehicle movement during the construction stage could subsequently be carried out by the developer at his expense. The Countryside Access Team sought a condition to provide a temporary alternative route to the Hereward's Way during construction. The County Archaeologist sought a planning condition to secure a programme of archaeological investigatory work ahead of any development.
219. **Burnthouse Farm :** *March Town Council* opposed the proposal arguing there are already too many wind turbines in Fenland. *Whittlesey Town Council* unanimously rejected the application arguing that the turbines should be sited no closer than 2,000m from a property. Residents would suffer noise and interference from light reflecting off the blades.
220. *The Environment Agency* had no objection in principle but recommended that conditions be appended to any planning permission to raise access roads and electrical equipment above predicted floodwater levels. *Natural England's* presentations on the application reflected their appeal submission as above. *The Wildlife Trusts* (Bedfordshire, Cambridgeshire, Northamptonshire and Peterborough) did not agree with the survey and collision modelling presented in the Environmental Statement because the surveys did not record either Bewick or Whooper swans using the site for foraging. There is alleged to be potential for significant impacts on key bird species associated with the Nene Washes and Ouse Washes SPAs; a precautionary approach should be taken when assessing significance.

221. Of some 40 other representations received by the Council, all objected to the proposed development at Burnthouse. The predominant issues included proximity to dwellings; noise; blade flicker; impact on wildlife and birds; and a lack of consultation. Less frequent points included landscape visual impacts; impact of construction vehicles on the road network; blade throw and ice shards; and the protection of human rights.

***Written comments on Ministerial Statement of 23 March 2011***

222. Mr Greg Clark, Minister of State for Decentralisation, published a written statement entitled Planning for Growth after the Inquiry had closed. However, the main parties to the appeals were asked through the Inspectorate whether they considered that this affected their case. Written responses were received as follows.
223. The Council indicated that the Ministerial Statement did not affect its case in this instance noting that the Statement had not specifically mentioned renewable energy. Fivestone argued that the Ministerial Statement provided further support for the Burnthouse proposal which complied with the relevant development plan and national planning policies and accorded with Government's sustainable development objectives. Scottish Power Renewables stated that granting permission for the Flood's Ferry scheme would be consistent with the Government's commitment to be 'proactive in driving and supporting the growth that this country needs'. It would be in line with 'national planning policies aimed at fostering economic growth and employment given the need to ensure a return to robust growth after the recent recession.' For the MoD, it was pointed out that the expectations and duties to plan positively referenced in the Statement are placed primarily on local authorities and not the MoD. The MoD's case is not altered by it.

**Conditions and Obligations**

224. Draft conditions for both appeal schemes were presented at the Inquiry and discussed [PC5, 8]. There is a close correlation between the two sets and most of the conditions were agreed by the Council. In addition, draft planning conditions were agreed by both Appellants with the MOD to secure the provision of radar mitigation schemes for aviation safety. As already stated, the content of draft noise conditions was not agreed.
225. Two unilateral undertakings pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) in respect of Landscaping at Willow Farm and Decommissioning of the Burnthouse Farm wind farm were submitted by Fivestone Limited [F4].

## **Inspector's Conclusions**

*References in square brackets [x] refer to paragraph numbers in the earlier sections of this report.*

### **Main Considerations**

226. From the evidence submitted on these appeals and having regard for the SoS's reason for recovery, these are:

- the effect on the living conditions of neighbouring occupiers with particular reference to visual outlook;
- the effect on the character and appearance of the area with particular reference to cumulative impact;
- whether any harmful effects would be outweighed by wider economic and environmental benefits which the proposals would bring.

### **Living conditions of neighbouring occupiers**

227. In view of the Council's reason for refusal, I focus on the proposed development at Burnthouse Farm (Appeal A), but also comment on the Flood's Ferry Farm proposal (Appeal B). The living conditions of occupiers of properties may be affected as a result of these proposals in other ways than through changed visual outlook. I address these other matters which include noise and shadow flicker below.

#### *Visual Outlook (Appeal A)*

228. Regarding Burnthouse Farm, the Council asserts that there would be a significant adverse impact on the visual outlook from 17 properties if these three turbines were erected, with a major adverse impact at 8 of them. Seven of those 8 properties would become unattractive places to live. Four out of 7 of them lie within 550m of the proposed turbines and the remaining 3 less than 1km away, with south-facing views from living rooms and gardens towards the appeal site [57-59].

229. The methodology for assessing the visual impact on residential occupiers was considered fully at the Inquiry. I accept that the approach used by Inspectors in the Enifer Downs, Poplar Lane and Carland Cross appeals and elsewhere [62-63,119-120] should not be regarded as a mechanistic 'test' and has no status in terms of being part of statutory documentation or planning policy or guidance. However, it seems to me that a logical, transparent and objective approach to assessing visual impact, as is demonstrated in the Council's own evidence, should be adopted.

230. In my experience, there can be no substitute for site visits to individual properties so that the likely impact can be judged in the particular and unique circumstances of each [64]. Nevertheless, it is helpful to consider the factors and thresholds of acceptability which have guided decision-makers in other cases [51,122].

231. The Council's WTG, to which I give some weight [18-23 & 53-56], categorises the magnitude of visual impact for turbines of differing height at



varying distances from a receptor. I have had regard to WTG's categorisation in assessing impact on visual outlook.

232. As the Council observes, the level of impact is normally assessed in Environmental Impact Assessment (EIA) terms as the result of the 'sensitivity' of the receptor and the 'magnitude' of the impact. Residential locations are normally considered to be of high sensitivity and, where the magnitude of an impact would be moderate or high /major, there will typically be a 'significant' adverse impact. There was agreement that serious harm to living conditions should be distinguished from 'significant effects' identified under the EIA Regulations 1999 [62,105]. Thus, serious harm to living conditions which might lead to a recommendation for planning permission to be refused, in the public interest, is a more stringent requirement than the identification of a significant adverse impact. I consider that when assessing the effect on visual outlook, it is helpful to pose the question: *"would the proposal affect the outlook of these residents to such an extent ie be so unpleasant, overwhelming and oppressive that this would become an unattractive place to live?"*
233. I visited the principal properties highlighted in evidence, surveyed the wider area and sought to visualise how the proposed turbines might appear. In addition to the specialist evidence on landscape and visual impact assessment, I read the appeal decisions made elsewhere regarding the likely impact of wind turbines on residential occupiers including that for Nuts Grove Farm [64]. While each property has its own characteristics relating to size, layout, orientation and potential screening, it was apparent that distance from the proposed turbines would be an important factor in determining the level of impact. Given the flat topography of Fenland District, hills and valleys and differences in ground level have negligible influence. It is noteworthy that no properties would lie within 350m or 400m of a turbine at Burnthouse Farm, where the WTG suggested that a dominant impact could be expected [21].
234. Notwithstanding their limitations, the photomontages and other illustrations were helpful in visualising the likely impact of the proposed turbines during my site visits [66]. I consider that the parties have properly identified the principal residential properties which would be significantly affected by the proposal. My assessment of the likely impact on visual outlook is as follows:
235. **Willow Farm** on West Fen Drove includes a bungalow and is estimated to be some 500-525m from the proposed position of the nearest turbine. A kitchen and sitting area at Willow Farm face south as does the front garden with play area. Turbine T1 at Burnthouse Farm would be very prominent in views from this side of the house and garden, and T2 would also appear in garden views between a substantial barn and children's play equipment. In spite of the relatively short distance between the dwelling and the proposed turbines, I noted that the turbines would occupy only a small part of the wide views available to the south and south-west. One, and sometimes two, would be seen within the context of electricity poles and wires as well as the barn and play equipment. Thus, man-made features already contribute significantly to the outlook.

236. From the rear garden, T3 would be clearly visible as a substantial new feature. However, the panoramic views over predominantly flat, agricultural land to the north-east would be uninterrupted by the Burnthouse scheme. Overall, I conclude that the proposal would not be so overwhelming for occupiers that their visual outlook would be seriously compromised.
237. I have considered the impact of implementing the Flood's Ferry Farm scheme as well as the Burnthouse Farm one on Willow Farm. The Council's illustrations (Appendix 1, Mr Billingsley) show that views from the rear would include eight of the proposed Flood's Ferry turbines. As these would be about 2kms from Willow Farm, they would not appear dominant. I am satisfied that they would not compound the impact of the T3 Burnthouse turbine to such an extent that occupiers would find them oppressive.
238. Whilst the existing turbines at Ransonmoor feature in views to the south-west, they are sufficiently far away that they have limited effect on outlook. The addition of turbines at Boardinghouse Farm would not change this.
239. Regarding the proposed solar farm, the cumulative assessment [F6] undertaken for Fivestone Limited concluded that there would be a moderate adverse impact in year 1 relating to the solar farm. This would reduce over time as the boundary hedging became established [36, 37]. This report was criticised for being hastily prepared and containing errors. However, at Willow Farm, it seems to me that the solar farm would introduce a new horizontal feature of low height which would have quite a different impact from the wind turbines. I accept that once the vegetation has matured, it should not compound any harm to the visual outlook of residents of this property.
240. The s106 unilateral undertaking relating to a landscaping scheme for Willow Farm depends upon consent from the owners of Willow Farm. It is uncertain therefore whether such a scheme would be implemented and, if it were, whether it would provide effective, ameliorative screening for occupiers. I am unable to attach much weight to this document [65,124].
241. **5 Burnthouse Sidings** The rear of the more westerly property, No 3, includes much vegetation with farm storage behind. These features limit views towards the appeal site. From No 5, all three turbines would be seen to the north-east at a close distance of some 430-470m. Rooms at the back with north-facing windows including a living room as well as the rear garden would enable views of the turbines. However, as shown in the Council's photomontage (Appendix 1, Mr Billingsley), the turbines would appear to the side rather than straight down the garden. All the turbines would be partially screened especially in the summer by trees along a drive to the east of the property. The photomontage suggests that the trees would appear as taller and more substantial features than the turbines from the curtilage of the property. Account has to be taken of the fact that they would not be static; their blades would rotate. Nevertheless, I consider that they would not be so dominant as to render the property an unpleasant place to live.
242. 3 & 5 Burnthouse Sidings are estimated to be some 260m west of the site proposed for development as a solar farm. The proposed solar farm if permitted would appear in views from the side of No 5. From the rear it would be seen in succession with the proposed turbines so that the outlook

from No 5 to the east and north-east would be significantly changed. Nevertheless, it seems to me that once the proposed hedge was established, the solar farm, if permitted and developed, would blend into the landscape with its scattered farmsteads and occasional copses. It would not be seriously harmful to the visual outlook of neighbouring occupiers in combination with the proposed turbines.

243. **Burnt House Farm** is a two-storey dwelling with gardens to the front and rear. It is located within some 420-460m of the nearest proposed turbine. Though the front of the dwelling faces south and away from the appeal site, there are living rooms and more private gardens to the rear, albeit enclosed by substantial farm buildings and boundary vegetation. There could be some views of turbines at close quarters from the upper floors of the dwelling. However, the property owner has a financial interest in this scheme.
244. **Forties Farm, Cock Bank** This is a two-storey property at a distance of some 555-620m from the nearest turbine. A living room and kitchen at ground floor look north and would face the proposed turbines, although the Council's photomontage indicates that the turbines would appear against the skyline in the context of existing electricity poles and wires. Windows on the first floor are not oriented to give views towards the site and the principal private garden is south and west of the dwelling. To my mind, the impact of the turbines would not be oppressive for occupiers of this dwelling.
245. The visualisations in Document F6 include a viewpoint close to Forties Farm, and indicate that the proposed solar farm could be blended satisfactorily into the scene. It would not contribute to any harmful cumulative impact with the intended turbines.
246. **Quaker's Drove Farm** is also a two-storey farmhouse just over 900m from the proposed turbines but with principal windows and a rear patio and garden which face south towards the appeal site. The wide and open views of fenland which are generally available in this area are narrowed at ground level at Quaker's Drove Farm by trees. These would frame views of the turbines but because of their distance from the appeal site, I consider that they would not look overwhelming. Whilst there would be a significant impact, this would not amount to it becoming an unattractive place to live.
247. **Glatton Kennels** is a working kennels for greyhounds and a residential property some 870m from the nearest proposed turbine. A kitchen/conservatory at ground level as well as a patio and garden provide wide open views across the countryside. Existing turbines at Glass Moor and Ranson Moor can be seen in the distance. The kennels in the foreground can distract the eye, but the turbines would be prominent, vertical features in the landscape. Again, there would be a significant change but because of the width of view, the fact that only three turbines are intended and the distance from the property, I consider that this property would not be rendered an unattractive place to live.
248. **Bates Cottage** This bungalow in Quaker's Drove would be some 930m from the nearest turbine. With open, south-facing views from living rooms and a front entrance, the turbines would change the visual outlook for occupiers substantially. Because of the distance involved and the limited effect of this small cluster of turbines on the panoramic scene, however, I

cannot find that the turbines would render the cottage an unattractive place to live.

249. **Airedale Cottage/ Hakes Farm** is a bungalow on Hake's Drove at an estimated 920m from the nearest turbine proposed at Burnthouse Farm. With a hangar-like building and other structures/ storage in its curtilage, some views from the dwelling towards the south and south-west may be reduced already. From the southern side of the garden, however, there are currently panoramic views of the countryside. The Council accepts that the Burnthouse cluster would not in itself have such an impact that it would make this an unattractive place to live and I concur with that view.

250. However, it contends that there would be significant additional cumulative impacts from the Flood's Ferry turbines some 860m to the east. As illustrated on Mr Billingsley's photomontage, most of the turbines at Flood's Ferry Farm south of Hake's Drove would be prominently seen within the same wide scene as all the turbines at Burnthouse Farm. Nevertheless, they would be separated by a substantial tract of open farmland and at 800-900m distance, the dominance of the turbines would be reduced. For all these reasons, in my opinion Airedale Cottage/Hakes Farm would not be changed to an unattractive place to live.

251. The visual outlook from a number of other residences within the locality would be significantly affected by this proposal. These locations are listed in the Schedule of Properties (Mr Billingsley Appendix 2). I am satisfied that these would be less seriously affected than those considered in more detail above for reasons of distance from the proposal, orientation of the properties or presence of screening from vegetation or other development.

252. **South Turves** The proposed turbines would appear in views from many properties on the southern and south-eastern edges of this settlement. The effect on visual outlook over open countryside would be significant and adverse, but as a closely located group of three and at a distance of 1.5kms or more, the turbines would not be overwhelming or oppressive.

#### *Visual Outlook (Appeal B)*

253. The Council made it clear in closing that adverse impact on residential amenity was not its concern in relation to the proposal for Flood's Ferry Farm [49,73]. Although the Council's landscape consultant judged that the impact on the visual outlook of a handful of properties would render them unattractive places to live, the evidence including that from my site visits suggests that this would not be the case [172].

#### *Other effects on living conditions*

254. Impacts from noise and shadow flicker are of concern to local residents [201-2, 211, 212]. They were assessed when EIA was undertaken (and updated). There is agreement among the main parties that noise levels would not be raised unreasonably and shadow flicker would be negligible, except at Willow Farm and Blackhall where there would be moderate effects. If the proposals were acceptable in other respects, I am satisfied that planning conditions could be imposed to mitigate these effects and keep noise within prevailing guidelines [94]. In addition, measures could be put in place to manage noise and traffic effects during construction. There is no

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substantive evidence of risk to human health and safety, nor to human rights which should count against the proposals [212].

*Conclusions on effects on living conditions*

255. The Flood's Ferry Farm proposal (Appeal B) would not be harmful to the amenity of nearby residential properties. On Appeal A, whilst the Council concluded that Fivestone had substantially under-estimated the impacts on residential amenity, the Appellant contended that Fenland District's assessment had been overly cautious and too protective [68,125]. The parties followed recognised assessment methodologies though the Council made reasonable criticism of some aspects of Fivestone's approach [61]. Nevertheless, a measure of agreement was reached as to where significant impacts would occur [51].
256. It seems to me that the differences in conclusions as to where harm would arise stemmed from relatively small differences in subjective but professional judgment rather than from methodological flaws or omissions. Though there would be a significant impact on visual outlook for occupiers of a number of properties in the area, I found that no properties would be rendered unpleasant places to live by the Burnthouse Farm proposal; nearby occupiers would not be oppressed, or overwhelmed by the erection of this modest cluster of turbines. If the proposed solar farm were granted permission and implemented, because its impact would be at a low level and could be largely diminished over time by planting, I am satisfied that there would be no cumulative harm arising from it and the proposed wind turbines.
257. With reference to the development plan, the Core Strategy is at a relatively early stage of preparation; its policies could change before adoption and I therefore attach it only limited weight [17]. I shall comment on Policy E1 of the Local Plan later, but consider that the Burnthouse Farm proposal would comply with saved Policy E8 as the scheme design did have regard for the amenities of surrounding properties; the number and layout of the turbines were the subject of changes at application stage [2,16,68].
258. The duration of the turbines may be temporary in historical terms and reversible, but residents would regard 25 years as a long time to put up with any overbearing or oppressive development which made their home unpleasant. I have not therefore taken account of duration in my assessment of impact on residential amenity [93]. However, I conclude that the Burnthouse Farm proposal (Appeal A) would not be seriously harmful to the living conditions of neighbouring occupiers with particular reference to visual outlook, nor would it conflict with Policy E8 of the Local Plan.

***Character and Appearance – cumulative impact***

259. The Flood's Ferry Farm proposal was refused for the single reason that it would have a harmful visual impact in combination with existing wind farms and those in receipt of planning permission. As the proposals for wind turbines at Burnthouse Farm and Boardinghouse Farm have gone forward to appeal, and having regard for the SoS's reason for recovery, it is also necessary to consider the likely cumulative impacts if one or more of these and Flood's Ferry Farm were permitted. The Appellant identified all the existing operational and planned wind turbines in this part of Fenland to establish a baseline for assessment [30-31,140].

260. I consider that this is a suitable basis for assessment. Furthermore, as far as combined/ simultaneous and successive/repetitive impacts are concerned, the interrelationship of the three schemes which are now at appeal and the existing wind farm at Ransonmoor would be the main features.
261. As with the effect on visual outlook for local residents, it is necessary to consider whether any cumulative visual and landscape impacts would be such that they would cause harm to the public interest. This is different from finding that, in EIA terms, the proposal would cause significant cumulative impact. The local landscape is large scale, flat and open, offering extensive views and big skies. With its regular field patterns, lack of hedgerows and many drainage ditches, the landscape has already been heavily modified by humans. Within this context, I consider that there is potential for some additional turbines to be accommodated without causing serious visual harm. The Companion Guide to PPS22 [CD3.5] states that cumulative visual outlook concerns the degree to which development becomes a feature in particular views and the effect this has on the viewers.
262. In assessing cumulative visual impact from various viewpoints, I have considered the extent to which turbines would dominate or come to define views, and whether this would be so substantial that viewers would perceive a seriously detrimental change. There has to be an awareness of valency and the research which supports the notion that there is a wide range of perceptions of wind turbines, which may change over time with experience [159,168]. However, I consider that a precautionary approach assuming that big changes would usually be seen as adverse should be taken [117]. I have had regard for the expert evidence on visual impact from the Council and the Appellant, as well as my own on-site observations [169,170].
263. The Flood's Ferry Farm proposal was refused because of its cumulative visual impact rather than cumulative landscape impact [4]. Cumulative landscape effects are those of a proposed development on the fabric, character and quality of the landscape, and concern the degree to which a development would become a significant defining characteristic of the landscape [CD3.5]. Visual impact concerns the views experienced by receptors (ie residents, road and leisure users etc).
264. The WTG considered the capacity for additional wind turbine development within the District, having regard for landscape character type [23]. Notwithstanding the Appellant's criticism of the WTG, if Burnthouse Farm, Flood's Ferry and Boardinghouse Farm were all permitted and implemented, this would result in the 25% threshold for the Drained Fen landscape type being reached but not exceeded (Mr Billingsley 3.20) [22]. Permitting all three proposals would therefore be acceptable at the overall strategic level in the terms set down by the WTG [160].
265. There would be no adverse effect on any nationally designated landscape area, or any regional or locally designated area, if additional turbines were erected in this part of Fenland [19]. Indeed, this part of the East of England Region has been identified in a recent study by Arup as one where 'wind farm landscapes' could develop [92,159]. I attach weight to these factors.
266. If either **Flood's Ferry Farm alone or in combination with Boardinghouse Farm** went ahead, it was agreed that there would be

significant landscape impact at a local scale in the area between Flood's Ferry and Ransonmoor [72,73, and Page 4, CD10.2]. There would also be a significant landscape impact resulting from implementation of Flood's Ferry Farm and Burnthouse Farm over a small area between Burnthouse Farm, Bottom Hake's Farm and Top Hake's Farm. I concur with these findings.

267. Turning to cumulative visual impact, I take each proposal in turn and examine the effects of adding to the existing and permitted base one or both of the proposals, as well as the Boardinghouse Farm proposal.
268. **Burnthouse Farm** The Council accepts, and I agree that the addition of the proposed 3 turbines to the existing and permitted schemes would not give rise to any significant cumulative visual impacts [69].
269. **Flood's Ferry Farm** If Flood's Ferry wind farm alone were added to the existing and permitted baseline, it would be seen in combination, successively or sequentially with the turbines at Ransonmoor from a number of places along Knight's End Road and the River Nene (Old Course) between Flood's Ferry and Botany Bay Farm [23]. In particular, the residential occupiers at Ransonmoor Farm and Bradney Farm would see turbines on both sides of their homes and gardens, albeit there would be some screening from trees and hedges. Even though the Flood's Ferry turbines would be more than 1.5kms away, I consider that they would contribute substantially to an environment in which wind turbines would seem to surround and encroach. The scheme would lead to significant and adverse cumulative impacts.
270. From Knight's End Road in the vicinity of Boardinghouse Farm, Flood's Ferry Farm turbines would appear to the west, just outside the 2km prominent zone. However, they would be seen in successive or sequential views with Ransonmoor to the south. From Flood's Ferry with the River Nene and footpath alongside, there would be views of the Flood's Ferry turbines to the north and Ransonmoor's to the south-east. At Staffurth's Bridge, the residential properties are so aligned that they would not look towards Flood's Ferry's or other turbines closeby. The holiday homes beside the marina are screened by vegetation to the south although their occupiers, users of the footpaths and people in boats, would have views towards the Flood's Ferry turbines. Overall in this general area, there would be a significant and adverse cumulative visual impact with Flood's Ferry turbines to the north/north-west and Ransonmoor to the south.
271. From Truman's Farm and westwards past Australia Farm, the Glassmoor and Red Tile turbines can be seen in the far distance and Ransonmoor turbines in the middle distance. The proposed Flood's Ferry turbines would be highly visible in the foreground of these views, albeit because of the distances involved they would appear separate from other wind farms, and they would be set within a panoramic and large landscape. Quaker's Drove/Hake's Drove serves a limited number of farmsteads and dwellings and Hake's Drove forms part of the Hereward's Way. Scottish Power Renewables' assertion that this route carries very few walkers was not challenged by other parties. However, it passes through the proposed wind farm which would have a dominant and potentially overwhelming impact for users. Other turbines notably at Ransonmoor and Glassmoor, but also beyond March and elsewhere, would be seen from this route. However, the significant adverse effect would be largely due to the Flood's Ferry proposal.

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272. The road from Doddington and Wimblington to March carries more traffic than the minor routes and 'Droves' close to the appeal site. From north of Wimblington, Flood's Ferry turbines would be seen in views westward across the countryside beyond but in succession with Ransonmoor. From the road north of Benwick, there are already views of Glassmoor, Ransonmoor and Red Tile turbines in different directions. Flood's Ferry Farm proposal would be visible to the north, although the turbines would occupy only part of the middle distance in these wide and open scenes.
273. Overall, I conclude that Flood's Ferry Farm scheme would have significant and adverse impacts on visual outlook along Knight's End Road and the River Nene (Old Course) and on Hake's Drove.
274. **Burnthouse Farm and Flood's Ferry Farm** With implementation of the Burnthouse and Flood's Ferry schemes, there could be some significant effects on views from surrounding locations [69]. From the southern side of Turves, views south and south-east would feature the Burnthouse turbines quite prominently with the Flood's Ferry scheme, behind which Ransonmoor wind farm would be discernible on the skyline. Given the number of new turbines, there would be a significant visual impact, experienced by many people living in Turves and travelling south along Burnthouse Road. From Hereward's Way, east of Quaker's Drove, the Burnthouse turbines would be clearly seen as tall structures in the middle distance together with one or more of the Flood's Ferry turbines very close to the footpath and dominant. Turbines would start to define the views.
275. Blackhall Cottages would be less than 600m from the nearest turbine at Burnthouse Farm and less than 1.5kms from that at Floods Ferry. Because of the orientation of the dwellings, living conditions would not be seriously harmed by the proposals. However, in the area immediately surrounding and giving access for residents and others, turbines would be seen at close quarters to the west and east. Ransonmoor wind farm would also be viewed in the middle distance to the south-east. I agree with the Council that there would be a high magnitude effect and major adverse cumulative effect, largely because of close proximity to the Burnthouse Farm site.
276. From Whittlesey Road close to Australia Farm, Burnthouse Farm turbines would be a major new feature to the south-west adding to the change which Flood's Ferry's nine turbines at closer quarters would bring to views to the south-east. Other turbines at Glassmoor, Ramsey, Red Tile and Ransonmoor would be perceptible in the background. There would be a visual gap between the Flood's Ferry and Burnthouse turbines but turbines would occupy an important portion of sequential views. From Cock Bank in front of Forties Farm and beside the navigable Whittlesey Dike/Dyke, the two proposed schemes would be seen simultaneously, with Wryde Croft and Nuts Grove, Longhill Road and Hundred Road turbines in the far distance to the north. Burnthouse and Flood's Ferry turbines would be prominent, even though they would be accommodated in a wide and open landscape with big skies.
277. From Benwick Road near Delavals Farm looking east, turbines at Burnthouse Farm would be seen prominently and in combination with those at Flood's Ferry Farm. Ransonmoor turbines would be seen in wider views, and turbines north and west of March would just be perceived. To the west, Glass Moor's turbines would be visible giving a sequential impact. However,



the existing and proposed additional wind farms would all be 2.5kms or more away. From the edge of the settlements of Benwick, Coates and Eastrea, Burnthouse Farm would appear in scenes with other turbines, but all would be at a substantial distance from the viewing points.

278. The viewpoints chosen for analysis are representative of wider effects [70]. In particular, along Whittlesey Road past Dodd's Farm and on the eastern edge of Turves, there would be significant impacts for residents and travellers. I have considered the Council's concern that there would be design differences between the two schemes with neither directly responding to the other in terms of form or layout. However, I consider that the differences would not be so great and the proximity to each other would not be such that the two schemes would appear substantially discordant.

279. In summary, there would be some significant and adverse cumulative effects on visual outlook. In the locality of Blackhall Cottages, these would result from the Flood's Ferry Farm and Burnthouse Farm proposals, but be largely attributable to the latter. In views from the southern edge of Turves, Whittlesey Road past Australia Farm and from Cock Bank and Whittlesey Dyke, turbines would start to define the surrounding area.

280. **Flood's Ferry Farm with Boardinghouse Farm** The Boardinghouse turbines would be seen from most vantage points as an extension of the cluster of existing turbines at Ransonmoor. This close relationship to Ransonmoor would reduce their contribution to the perception that turbines were spreading too widely across the area. However, I accept that, with turbines at Boardinghouse Farm, the adverse cumulative visual impact involving Ransonmoor and Flood's Ferry Farm along Knight's End Road would be exacerbated [209]. In addition, views of turbines would be enhanced looking west from the road and from properties between Doddington, Wimblington and the edge of March.

281. **Flood's Ferry Farm with Burnthouse Farm and Boardinghouse Farm** I agree with the Council's conclusions as to where the main impacts would arise [74]. A significant number of residents of dwellings on the southern and eastern edge of Turves as well as road users would experience a changed visual outlook with Flood's Ferry Farm's turbines and Burnthouse Farm at less than 2kms and Ransonmoor and Boardinghouse beyond them. A substantial portion of the views out of the settlement over open countryside would be taken up and in my judgment this would amount to a significant, adverse effect. Views further east on Whittlesey Road would be similarly affected. From Cock Bank road and Whittlesey Dyke, there would be an arc of wind turbines comprising Burnthouse Farm in the foreground with Flood's Ferry Farm behind, and Ransonmoor Farm/ Boardinghouse Farm to the east. There would be a significant adverse visual impact over a sizeable area.

#### *Conclusions on character and appearance*

282. Positioned between the proposed Burnthouse Farm wind farm and the Ransonmoor/ Boardinghouse Farm cluster, the Flood's Ferry scheme would contribute substantially to cumulative visual effects with other existing and proposed wind turbines. The outlook for residents, road users, pedestrians and holiday/ leisure users over a broad area from south of Turves to the edge of Doddington would be significantly changed. In addition, there would be a

significant effect on the character of the landscape along a portion of Knight's End Road and the River Nene (Old Course) and in a second small locality north of Burnthouse Farm and along Hereward's Way. I conclude that the Flood's Ferry scheme would be the principal cause of materially harmful cumulative visual effects in the surrounding rural area.

283. The Appellant, correctly in my opinion, argued that these landscape and visual effects of the proposal should be considered alongside any environmental benefits. Statements by Natural England [CDs 5.12-5.16] provide information of the risks to the country's landscape and ecology from unmitigated climate change from which Fenland District would not be exempt [148,164]. The effects of climate change on the landscape character of this area could be deleterious, although specific evidence enabling any likely effects to be measured or considered in more detail was not given. I cannot conclude that such potential benefits would wholly outweigh the harm but they are a material consideration in favour of the proposal [168].
284. Regarding the development plan, the Local Plan is now dated and was clearly written before modern wind farms were being planned and put in place [79, 111]. PPS22, an important material consideration, observes that wind turbines, of all renewable technologies, are likely to have the greatest landscape and visual effects. The Companion Guide adds that modern wind turbines are large structures and inevitably will have an impact on the landscape, and the visual environment. However, PPS22 is clear that renewable energy development should be capable of being accommodated throughout England where the technology is viable and environmental, economic and social impacts can be addressed satisfactorily.
285. In my view, Policies E1 and E8 have to be applied in the context of the changed national planning policy. If applied otherwise, no proposal for wind turbines could comply with Policy E1. It is dated and this reduces the weight which should be attached to it. However, I consider that the proposal would conflict with the more up-to-date Policy ENV2 of the East of England Plan. The need to protect residential amenity as reflected in Policy E8 however still exists. The Flood's Ferry scheme would be contrary to E8, as would the Burnthouse Farm scheme because of the potential impact at Blackhall.

### ***The wider economic and environmental benefits***

286. The Government Energy White Paper referred to the benefits of renewable projects to the wider community through reduced emissions and diverse supplies of energy which are a material consideration for the planning system [148]. The Stern Report confirms that the future impact of climate change will not be merely physical and environmental but will extend to economic growth and development. Investment in the next 10-20 years will have a profound effect on the climate in the second half of this century and thereafter. Strong, early co-ordinated action against climate change will far outweigh the costs of doing nothing. The Annual Energy Statement July 2010, Ministerial Statement October 2010 and the Draft National Policy Statements for Energy Infrastructure indicate that, despite a change in Government last year, the transition to a safe, secure, low carbon, affordable energy system in UK remains a high priority. The recent Planning for Growth statement indicates that the SoS will attach significant weight to the need to

secure economic growth and employment [222]. It seems to me that both these schemes would help support local and national economic wellbeing.

287. In the Key Principles of national planning policy, PPS22, it states “(iv) *the wider environmental and economic benefits of all proposals for renewable energy projects, whatever their scale, are material considerations that should be given significant weight in determining whether proposals should be granted planning permission.*” Key principle (vi) emphasises that small-scale projects should not be rejected simply because their output would be small. The role of the current proposals in meeting national and regional targets for renewable energy generation should not be downplayed [148]. The UK failed to meet its target for renewable energy for 2010 and, though there is uncertainty as to the size of future targets, there is no evidence that it will be easy to meet even the more modest ones [113,146].
288. PPS22 describes the importance of setting regional targets and achieving them [114]. Current targets for the East of England in the RSS are up to date in relation to renewable energy generation [109]. The 2010 target has been missed and to date development is not being planned and progressed in such a way that the shortfall will be made up quickly or the future target for 2020 delivered [114, 156]. Although the Government intends to abolish the RSS, I accept that the targets for renewable energy, underpinned by technical evidential studies, will remain relevant [157]. The Council accepts that the shortfall against regional targets is a material consideration which carries weight in determining these appeals [88].
289. As the parties advised and agreed, Government policy is not a matter for discussion and review in these cases. Government policy supports the increased development of a broad range of renewable energy resources including wind. If wind turbines have not operated well in Fenland during the last cold winter, that does not count against these appeals [147, 201].
290. The Burnthouse Farm turbines would provide up to 6MW of installed capacity and Flood’s Ferry Farm would provide up to 18MW, thereby offering the higher level of benefit. Perhaps unsurprisingly, the Flood’s Ferry proposal would have the larger detrimental impact and be the main contributor to significant cumulative impact. Comparing the two schemes is however like comparing “apples and pears” and the Council did not express a preference between them [99]. The schemes were not put forward as alternatives, and though Lord Justice Laws’ judgment in the North Warwickshire Court of Appeal case should be considered, so should its context and the fact that the need for renewable energy is unconstrained [134, 192].
291. The Burnthouse scheme and the proposed wind farm at Boardinghouse in combination would provide installed capacity roughly equivalent to the proposed Flood’s Ferry windfarm. Adding the solar farm at Burnthouse would give a higher overall output [F7 and S11]. I have considered the argument that this would represent a means to provide substantial additional installed renewable capacity with a “lighter environmental touch” than implementing the Flood’s Ferry proposal [102]. However, there is no good reason why the Boardinghouse windfarm and the Burnthouse solar farm should not be implemented independently or alongside Flood’s Ferry Farm [184, 185]. I am satisfied that the Flood’s Ferry Farm proposal would offer a high level of

environmental and economic benefits. The Burnthouse Farm scheme would offer a lower but material level of benefits.

### ***The Planning Balance***

292. The seriousness of climate change and its potential effects, the seriousness of the need to cut carbon dioxide emissions and the seriousness of Government's intentions to encourage renewable energy generation were not questioned in these cases [106,107]. Whether one begins by examining international and national legal obligations, the Government's White Paper on Energy and the UK Renewable Energy Strategy etc., or one starts by considering the development plan and relevant national planning policy in PPS22 and PPS1: Supplement on Climate Change, I consider that the same conclusions would be reached about the importance and seriousness of tackling climate change and expanding renewable energy resources [79,145]. Even if PPS1 Supplement refers to giving "expeditious and sympathetic handling" to proposals for sustainable development rather than to "look(ing) favourably" on them, this cannot be supportive of an inherently restrictive approach [86,105].
293. It is clear that all the key principles of PPS22 have to be looked at in the round. The need to consider environmental, including landscape and visual, impacts is essential [89]. Even if the WTG had proper regard for the planning policy context, there is evidence that the potential economic and environmental benefits from these proposals for renewable energy generation were given limited weight when the Council reached its decisions to refuse the proposals [90,138,177-8].
294. The Burnthouse Farm proposal would be the main cause of a detrimental cumulative effect on visual outlook in the locality of Blackhall Cottages, giving rise to conflict with the Local Plan. However, the proposals are in line with Policies ENG1 and ENG2 of the RSS, and with national planning policy for the promotion of more sustainable development and renewable energy capacity. I concluded that the Burnthouse Farm scheme would not cause material harm to the living conditions of neighbouring residents, and the area over which visual outlook would be adversely affected would be very localised. I conclude that the harm from this cluster of three turbines would be substantially outweighed by the ensuing economic and environmental benefits from the increased capacity for renewable energy generation.
295. Turning to Flood's Ferry Farm, I have concluded that the proposed turbines would give rise to adverse cumulative visual impact over a sizeable area and conflict with the development plan. However, if the regional targets for renewable energy in the East of England are to be achieved over the next decade, some intensification of wind farm developments seems to me to be inevitable [105,113]. Some localities will have to experience a greater concentration of turbine development than exists now. This area of Fenland has obvious suitability for wind farms, the landscape value is ordinary and the Council's strategic assessment of capacity indicated that the Flood's Ferry, Burnthouse and Boardinghouse schemes could all be accommodated without breaching the defined threshold of the WTG. The scheme would not result in serious harm to the living conditions of any neighbouring residents.

296. The Flood's Ferry project has the greatest potential (on its own) of the schemes at appeal to enhance the capacity for renewable energy [142]. In my opinion, the material harm to visual outlook is outweighed by the contribution which the scheme in Appeal B would make to meeting national and regional targets for renewable energy installation and for helping to combat the threat of climate change.

297. Overall, I consider that both appeals should be allowed and planning permission granted.

### **Planning Conditions and s106 planning obligations**

298. Conditions for the proposed wind farms at Burnthouse Farm and Flood's Ferry Farm are shown in the attached schedules. These follow very closely the schedules submitted by the Appellants and discussed at the Hearings. Changes have been made to secure compliance with Circular 11/95: The Use of Conditions in Planning Permission. The Appellants have sought to achieve a measure of consistency between the two sets of conditions which I support as it should facilitate future enforcement by the local planning authority.

299. **Burnthouse Farm (Appeal A)** The Appellant argued that it could take more than 3 years to carry out the preparatory work necessary before development started on site. I understand the local planning authority's wish that, if the appeal is to be allowed, then the developers should 'get on with it' and start to operate from the site as soon as possible. However, in view of the requirements for air safety measures, a construction method statement, etc, I consider that the longer (5 rather than 3 years) time limit in condition 1 would be reasonable.

300. Condition 2 is needed to clarify which plans apply. Nos 3, 4 and 5 should ensure that de-commissioning and the removal of any non-functioning turbine takes place in a manner which does not harm the local environment or the amenity of local people. Having regard for similar conditions imposed on other wind farm schemes, I consider that the time periods in conditions 4 and 5 are reasonable in that they would give time to prepare for and carry out de-commissioning, and to investigate any faults and obtain spare parts.

301. On ecology, the Appropriate Assessment concluded that the Burnthouse proposal would have no adverse effects on the integrity of the Nene Washes SPA either individually or cumulatively [CD9.6]. The Appellant had revised the number of turbines to reduce collision risks at an earlier design stage, and questioned the necessity for any post-construction monitoring and mitigation measures [2, 131, 203-6]. Local people are clearly concerned that wildlife in particular swans should thrive in the local area and observed that surveys of swans may have under-estimated the numbers concerned [199].

302. Although the predictions contained in the Appropriate Assessment were described as theoretical, it is clear that a precautionary approach was used and that the estimated levels were well below the threshold of 1% for loss of populations or habitats. The document suggested that a s106 or condition would "give additional confidence" to its conclusion that there would be no adverse effect. I agree with the Appellant that this falls short of the necessity and reasonableness tests in Circular 11/95 and 05/05.

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303. The Appellant has however put forward possible conditions 6, 7 and 8 to protect nature conservation interests. Conditions 6, 7 and 8 would strengthen the evidence base on bird activity, safeguard wildlife during construction, and provide an Ecological Management Scheme for application thereafter. I consider it reasonable to adopt the Appellant's suggested conditions but shall not recommend imposing the additional condition relating more specifically to the Nene Washes SPA [PC5].
304. To prevent pollution of controlled waters and reduce risk of flood damage to the development and the access roads, conditions 9, 10 and 13 are necessary. Conditions 11, 12 and 16 would safeguard highway safety; 14 on construction method would also protect residential and visual amenity and the wider environment. I have omitted item "o" from No 14 because it is duplicated in the ecology conditions. The phrase "subject to any variations agreed in writing by the local planning authority" could be regarded as insufficiently precise, but on balance I consider that it could facilitate the efficient implementation of necessary works. Conditions 15 and 16 on construction hours should protect the amenity of local residents. The appearance of the area would be protected by necessary conditions 17-22. On interference with television reception, condition 23 should enable any such occurrence to be satisfactorily addressed, in the interests of residents' amenity. Condition 24 is necessary to address shadow flicker but the suggested phrase "unless the local planning authority agrees to any variation" omitted as unnecessary and imprecise.
305. Concerning provision of a radar mitigation scheme to ensure air safety at RAF Cottesmore [197], in correspondence the MoD expressed scepticism as to whether the proposed mitigation programmes for either of the appeal schemes could be achieved. However, it felt unable to maintain that those programmes had no prospect of being achieved within the lifetime of any planning permission granted. Planning conditions were indeed agreed by the Appellants and MOD, and I consider that they would satisfy the tests including enforceability. The exact wording of conditions was discussed at the Inquiry having regard for Circular 11/95, paragraph 39, the footnote below model condition 39 and the 'unacceptable' condition 2 in Appendix B. It remains my opinion that as a third party, the Ministry of Defence should not be named in these conditions and I have re-worded conditions 25, 26 and 27 accordingly, in the interests of reasonableness and enforceability. Condition 27 seeks to achieve infrared aviation lighting which, whilst aiding flight safety, should mean that this rural area would not experience light pollution.
306. The ES found that the potential impact on archaeology would be negligible and the County Archaeologist sought nothing further in respect of Burnthouse Farm. The Supplementary Environmental Information document covered Cultural Heritage but did not suggest that archaeology was an issue. I consider that the proposed condition would be unnecessary.
307. Condition 28, with its tables, graph and notes which all form part of the condition, is designed to prevent noise nuisance from the development and protect the living conditions of neighbouring residents. The noise surveys indicated that there should be no detrimental impact on any of the residences closest to the proposed turbines. The minor exceedance (0.4dBA) found at Willow Farm would be smaller than anyone could be expected to hear and

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would occur very infrequently only when specific wind speeds and directions occurred [43].

308. Experience suggests that wind turbines may be a source of noise and I consider that a condition to limit noise is necessary. Both Fivestone and Scottish Power Renewables put forward 'alternative' noise limits, to cover circumstances (a) where their scheme would operate alone, and (b) where both wind farms were operational. This approach of alternative limits was used in the Nuts Grove Farm appeal and I consider it appropriate to use it here [CD4.30].
309. Different noise limits were put forward by the two Appellants for the situation where both appeals were allowed and became operational. It seems to me that a single set of figures for each property would enable application and enforcement in a clear and precise way [95, 129, 173]. However, different figures were put forward for Willow Farm, Burnthouse Sidings, Quaker's Drove Farm, Tokai/Blackhall and Hake's Farm. The reasons for the differences were discussed at the Inquiry. It seems to me that the variances cannot be explained away by mathematical errors or flaws in thinking. ETSU-R-97 allows for alternative ways of setting noise limits indicating that there would be no universal 'correct' set of limits for the chosen receptors in this area.
310. I appreciate the efforts made by the Council to find a middle way if both proposals were to be permitted and note its preferences for adopting the total wind farm noise limits (cumulative) from Scottish Power Renewables and lowest of the limits for Blackhall/Tokai [PC1]. Its note correctly identifies the key factors in the ETSU report, but the ETSU system is 'hermetically sealed' in the sense that it relies on a statistical relationship between wind speed at 10m height at a specified location within a wind farm and background noise levels at nearby receptors. The relationship is unique to those receptors. Nevertheless, noise limits should relate to the cumulative effect of all wind turbines in the area at the properties in question (CD8.1 page vi paragraph 16). Reaching a single set of figures in this case is made difficult because surveys were carried out at different times of the year. ETSU acknowledges that seasonal variation in background levels will occur.
311. Bearing in mind all the above and that planning conditions have to be reasonable and not too onerous, I have put forward the noise limits proposed by Fivestone Limited for nearly all the receptors for which there are alternative figures. This is because those receptors are closer to the Burnthouse than Flood's Ferry proposed turbines and noise levels are likely to be more affected by the nearest turbines. The exception is Hake's Farm where I have preferred the limits put forward by Scottish Power Renewables. Blackhall/Tokai, Willow Farm, Burnthouse Sidings and Quaker's Drove Farm are the relevant receptors, and the resultant figures where both schemes would be operational are shown in condition No 28 for Burnthouse and No 28 for Flood's Ferry.
312. The noise limits recommended are based on this pragmatic approach. However, they are not identical to those put forward and discussed at the Inquiry. If both wind farms are to be permitted, the decision-maker may wish to consult the parties so that the noise conditions do not come as a surprise.

313. **Flood's Ferry Farm (Appeal B)** Possible conditions are shown in the attached schedule. Conditions 1-7, 9-20, 24, 26 and 27 are very similar to conditions for Burnthouse Farm and are necessary for similar reasons.
314. Condition 8 would meet concerns expressed by Natural England and RSPB. Although I concluded that such a condition would not be necessary for the Burnthouse scheme, the Flood's Ferry scheme is more substantial and extends further north towards the Nene Washes (SPA). The Appropriate Assessment showed that it would have the greatest potential impact on loss of species. There was agreement with Natural England that it would be reasonable. Conditions 21 and 22, dealing with micro-siting and controlling the height of turbines, are necessary to protect the appearance of the area and ensure safety on the public highway. Condition 23 is needed to prevent and mitigate any interference with UHF radio communications.
315. Condition 25 regarding shadow flicker is necessary to protect the living conditions of occupiers of the named properties, but only if both Flood's Ferry Farm and Burnthouse Farm are to be permitted. In view of the County Council (Archaeology) view that there may have been prehistoric and Roman activity in this area, condition 27 is necessary to protect archaeological interests. Condition 28 to address noise has adopted the same approach as for Burnthouse Farm with the same noise limits for common receptors if both proposals were permitted and became operational.
316. **Planning Obligations** I have already commented on the unilateral undertaking, pursuant to section 106, from Fivestone Limited and relating to landscaping at Willow Farm [65,124, and 240]. The undertaking to provide a decommissioning bond has been designed to secure the payment of funds to complete the restoration scheme in the event that the developer is unable to fulfil obligations at the decommissioning stage. I consider that this should give reassurance to the Council and local people that the future appearance of the site will be provided for. No such undertaking has been put forward by Scottish Power Renewables for the site at Flood's Ferry Farm. However, the Council seeks none, and I am satisfied that the planning condition should achieve satisfactory decommissioning and site restoration at the appropriate time without the support of a planning obligation.

## **Recommendations**

### **File Ref: Appeal A – Land North of Burnthouse Farm (APP/D0515/A/10/2123739)**

317. I recommend that the appeal be allowed and that planning permission be granted for the erection of 3 wind turbines (Max. height 100m to blade tip) together with ancillary structures and works including erection of a control building, site access tracks and temporary compound (located on West Fen Drove) during construction, subject to the conditions in Annex 1.

### **File Ref: Appeal B – Staffurth's Bridge Farm (Flood's Ferry Farm) (APP/D0515/A/ 2131194)**

318. I recommend that the appeal be allowed and planning permission be granted for the erection of 9 wind turbines with a maximum height of not more than 110.5m from base to blade tip (when vertical), together with ancillary development including control building housing switch gear, on-site



underground cables, on-site access tracks and watercourse crossings, crane hardstanding areas, permanent meteorological mast, two temporary construction compounds and access from Quaker's Drove, subject to the conditions in Annex 2.

*Jill Kingaby*

INSPECTOR

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Mr A Ranatunga of Counsel	instructed by Mr R McKenna, Fenland District Council
He called	
Mr J M Billingsley	Director, The Landscape Partnership, Bedford
MA(Oxon) BPhil CMLI	
Mr G J Nourse BA MRTPI	Area Development Manager, Fenland District Council
Miss L Bradley	Environmental Health Officer
BSc(Hons) MSc IOA Dip	
Acoustics & Noise	
Control, IOA Cert of	
Competence Env Noise	
Measurement <sup>87</sup>	

### FOR THE APPELLANT, FIVESTONE LIMITED:

Mr D Harvey LLB(Hons) BCL(Hons)(Oxon), Partner, Cobbetts LLP, Leeds

He called	
Mr S Arnott	Principal Associate Consultant, TNEI Services
BSc(Hons) MIOA	Limited, Milburn House, Dean St, Newcastle upon Tyne NE1 1LE
Mr B Denney	Landscape and Environmental Planning
BA(Hons), DipLA,	Director, Pegasus Environmental, 4215 Park
CMLI CENV MIEMA	Approach Ave, Thorpe Park, Leeds LS15 8GB
Mr A Brand	Principal Planner, DPP, West One, 63-67
BSc(Hons) MA MRTPI	Bromham Road, Bedford MK40 2FG

### FOR THE APPELLANT, Scottish Power Renewables (UK) LIMITED:

Mr A Newcombe QC, instructed by Pinsent Masons, Solicitors

He called	
Dr A R McKenzie PhD	Hayes McKenzie Partnership, 16a The
BSc MIOA	Courtyard, Dean Hill Park, West Dean,
Mr J Welch BA(Hons)	Salisbury SP5 1EY
CMLI	Optimised Environments Ltd, 6 <sup>th</sup> Floor, 24
Mr P Frampton	Torpichen St, Edinburgh EH3 8JB
BSc(Hons) TP MRICS,	Framptons, Oriel House, 42 North Bar,
MRTPI	Banbury OX16 0TH

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<sup>87</sup> Called to discuss possible noise conditions

## INTERESTED PERSONS:

Mr C Banner of Counsel instructed by Treasury Solicitor's Department, on behalf of  
The Ministry of Defence

Mr G Lee  
Mr I Salmons  
Mr J Stoneman  
Mrs M Lock

## DOCUMENTS

### Proofs of Evidence

From the Council

Mr Billingsley	Proof Summary of Proof Appendices 1 and 2-8 Rebuttal Proof
Mr Nourse	Proof

From Fivestone Limited

Mr Arnott	Proof Summary Proof
Mr Denney	Proof Summary of Proof Appendices
Mr Brand	Proof Summary of Proof Appendix

From SPR

Dr McKenzie	Proof Summary of Proof Appendices
Mr Welch	Proof Summary of Proof Appendices A-E Rebuttal proof
Mr Frampton	Proof Summary of Proof Appendices

### Submitted at the Inquiry

By the Council

- C1 Opening Remarks
- C2 Errata schedule from Mr Billingsley
- C3 Letter to residents re 15 Feb site visit
- C4 Comments on F2 & F3
- C5 E-mail from R McKenna 18 Feb 2011 re F6
- C6 Council's Closing Submissions

By Fivestone Limited

- F1 Opening Submissions
- F2 Comparative study of visual effects

- F3 Residential Impact Note – Mr Brand & Mr Denney
- F4 Draft and complete Unilateral Undertakings
- F5 Solar Farm application details
- F6 Cumulative L&VA, and Additional Cumulative Visualisations: Burnt House Wind Farm and Turves Solar Farm or vice versa (RevA and RevC)
- F7 MW Output note – various scenarios – Mr Brand
- F8 Letter from Mr Hardy dated 2 March 2011 re F6
- F9 Closing Submissions

By Scottish Power Renewables (UK) Limited

- S1 Opening Statement
- S2 Boarding House Farm – bundle of appeal documents
- S3 Corrigenda – Mr Welch's Proof
- S4 Correction/Addendum to proof Dr McKenzie
- S5 HC Consent Order (Nuon(UK) Limited)
- S6 Comments on F2
- S7 Turves Solar Farm – plans, EIA Screening Opinion and comments from Mr Welch
- S8 HC Cala Homes (2)
- S9 Response to Inspector's Qs - Mr Frampton
- S10 Response to Solar Farm cumulative assessment(s)
- S11 Alternative Wind Farm Output Scenarios
- S10 Closing Statement

By Other Parties

- O1 Correspondence with TSol re aviation/radar condition sought by MOD
- O2 Statement to the Inquiry from Mr Lee
- O3 Welney Wetland Centre details from Mr Salmons

By the Main Parties concerning Possible Conditions

- PC1 Comments re noise limits from Council's Environmental Protection Team
- PC2 Noise conditions from Fivestone
- PC3 Noise conditions from SPR
- PC4 Draft Burnt House conditions – response to Council 10 Feb 2011 with Road Survey Plan
- PC5 Draft Burnt House conditions – Final Draft 14 Feb 2011
- PC6 Draft Floods Ferry conditions
- PC7 Revised Draft Condition 13 – Floods Ferry
- PC8 Updates to Draft Planning Conditions 10 Feb and 14 Feb 2011 for Floods Ferry

## Core Documents

		Document
<b>1 Adopted Development Plan Documents</b>		
<b>Requested by</b>		
SPR FL	1.1	The East of England Plan (revision to the RSS for the East of England) (May 2008)
FDC	1.2	Saved policies of the Fenland District Wide Local Plan (August 1993) including Saving Direction of September 2007
SPR	1.3	Saved Policies of the Cambridgeshire and Peterborough County Structure Plan 2003 including Saving Direction
<b>2 Other Fenland District Council Documents</b>		
FDC	2.1	Wind Turbine Development Policy Guidance and accompanying maps (2009)
FDC	2.2	Fenland District Council Local Development Framework (LDF) Core Strategy and Development Policies: Preferred Options 2 (2006)
FL	2.3	Fenland District Council, Annual Monitoring Report (December 2009)
<b>3 National Planning Policy</b>		
FL SPR	3.1	PPS 1: Delivering Sustainable Development (2005) and Supplement on Climate Change (2007)
SPR	3.2	PPS 5: Planning for the Historic Environment (2010)
FL SPR	3.3	PPS 7: Sustainable Development in Rural Areas (2004)
SPR FL	3.4	PPS 9: Biodiversity and Geological Conservation (2005)
FL SPR	3.5	PPS 22: Renewable Energy (2004) and Companion Guide (2004)
FL SPR	3.6	PPG 24: Noise (1994)
<b>4 Various Wind Farm Appeal and Application Decisions</b>		
FL	4.1	Bradwell (APP/X1545/A/06/2023805) (decision letters dated 10 September 2007 and 25 January 2010)

FL	4.2	Carsington (APP/P1045/A/07/2054080)
FL	4.3	Enifer Downs (APP/X2220/A/08/2071880)
FL	4.4	Crook Hill – Coronation Power (APP/P4225/A/08/2065277) (Inspector's Report and Decision Letter)
FL	4.5	Derbyshire Dales District Council v Secretary of State for Communities and Local Government [2009] EWHC 1729
FL	4.6	Earls Hall (APP/P1560/A/08/2088548)
FL	4.7	Hempnall (APP/L2630/A/08/2084443)
FL	4.8	Foundry Way (APP/D0515/A/09/2114817)
FL	4.9	Crosslands Farm (APP/M0933/A/08/2090274)
FL SPR	4.10	Wadlow (APP/W0530/A/07/2059471) (Inspector's Report and Decision Letter)
FL	4.11	Routh (APP/E2001/A/07/2050015) (Inspector's Report and Decision Letter)
FL	4.12	Shooters Bottom (APP/Q3305/A/05/1181087)
FL	4.13	Land at Inner Farm, Burnham-on-Sea (APP/V3310/A/06/2031158)
FL	4.14	Sixpenny Wood (APP/E2001/A/09/2101851)
FL	4.15	Swinford (APP/F2415/A/09/2096369) (Inspector's Report and Decision Letter)
FL	4.16	Silfield, Kendal (APP/M0933/A/09/2099304)
FL SPR	4.17	Carland Cross (APP/D0840/A/09/2103026)
FL	4.18	Thackson's Well (APP/E2530/A/08/2073384)
FL	4.19	Withernwick (APP/E2001/A/08/2088796)
FL	4.20	Knabs Ridge (APP/E2734/A/04/1161332)
FL FDC	4.21	Shipdham, Norfolk (APP/K2610/A/05/1180685 and APP/F2605/A/08/2089810) (first and second decision)
FL	4.22	Beech Tree (APP/K1128/A/08/2072150)

FL SPR	4.23	Willow Bank Farm (APP/C3105/A/09/2116152)
FL	4.24	Cliffs Farm (APP/D2320/A/08/2069152)
FL	4.25	Agricultural land to the east of Grove (APP/A3010/A/06/2017850)
FL	4.26	Penny Hill, Rotherham
FL	4.27	Hazlehead, Barnsley
FL	4.28	Creek Road, March (APP/D0515/A/08/2089046)
FL	4.29	Cotton Farm (APP/H0520/A/09/2119385)
SPR	4.30	Land at Nuts Grove Farm, Scolding Drive, Thorney (APP/J05040/A/08/2083801)
SPR	4.31	Land north east of Thorney, Wryde Croft, Peterborough (APP/J0540/A/08/2090541) – (See 4.30)
SPR	4.32	Land to the south east of North Taunton and South West of Bow (Denbrook) (APP/Q1153/A/08/2017162)
FDC	4.33	Poplar Lane (APP/L3245/A/08/2088742)
FDC	4.34	Boxworth and Connington (APP/W0530/A/05/1190473)
FDC	4.35	Skitfield Road, Guestwick (APP/K2610/A/05/1180685)
FDC	4.36	Hogsea Lane, Tunstall (APP/E2001/A/10/2130670)
<b>5 Renewable Energy and Climate Change Documents</b>		
FL SPR	5.1	DTI Energy White Paper "Meeting the Energy Challenge" (2007) (Extracts)
SPR FL	5.2	DECC: Renewable Energy Strategy (2009)
FL	5.3	DECC: The UK Low Carbon Transition Plan, (LCTP) White Paper in (July 2009)
FL	5.4	DECC: Draft Overarching National Policy Statement for Energy EN-1 (2010)
FL	5.5	DECC: Draft National Policy Statement for Renewable Energy Infrastructure EN-3 (2010)
FL SPR	5.6	Arup: "Placing Renewables in the East of England", East of England Regional Assembly (2008)

FL	5.7	Consultation on a Planning Policy Statement: Planning for a Low Carbon Future in a Changing Climate
SPR FL	5.8	Renewables East, East of England Renewable Energy Statistics (December 2009)
FL SPR	5.9	European Commission: Directive on the Promotion of the Use of Energy from Renewable Sources 2009/29/EC (2009)
FL	5.10	DECC: UK Renewable Energy Action Plan, July 2010
FL	5.11	"Climate Change Scenarios for the United Kingdom", Tyndall Centre for Climate Change Research, April 2002
FL	5.12	Natural England, 'Making Space for renewable Energy' 2010
FL	5.13	Natural England, "Sustainable Energy Policy", 2008
FL	5.14	Natural England, "Position on Wind Energy", March 2009
FL	5.15	Natural England, "Future Landscapes" (Draft Policy for Consultation) 2009
FL	5.16	Natural England "Climate Change Position", 2008
FL SPR	5.17	DECC: Annual Energy Statement, July 2010
FL	5.18	DCLG: Renewable Energy Capacity in Regional Spatial Strategies, July 2009
FL	5.19	East of England Annual Monitoring Report 2007-2008, East of England Regional Assembly (extracts)
FL	5.20	Statement to the House of Commons by the Secretary of State for Energy and Climate Change 18 October 2010
FL	5.21	Government Response to the Consultation on the Draft National Policy Statements for Energy Infrastructure (October 2010)
FL	5.22	Draft Revision to the East of England Plan, March 2010
SPR	5.23	Wind Power in the UK: A guide to the key issues surrounding onshore wind power development in the UK (Sustainable Development Commission, 2005)
SPR	5.24	Stern Review Economics of Climate Change (UK Treasury, 2006)
SPR	5.25	Extracts from The Energy White Paper (Department of Trade & Industry, 2003)
SPR	5.26	The Energy Challenge (Department of Trade & Industry, 2006)



SPR	5.27	Ministerial Statement 21 July 2005
SPR	5.28	Technical Paper 'Renewable Energy Targets for the East of England 2010 and 2020' (Global to Local Ltd & ESD Ltd)
SPR	5.29	Climate Change Act 2008 (Office of Public Sector Information, 2008)
<b>6 Landscape and Visual (including public perception) Documents</b>		
FL	6.1	Scottish Natural Heritage "Guidelines on the Environmental Impacts of Windfarms and Small Scale Hydro Electric Schemes" (2001)
FL SPR	6.2	Scottish Natural Heritage "Siting and Design Windfarms in the Landscape, Version 1" (December 2009)
FL	6.3	The Countryside Agency "Landscape Character Assessment: Guidance for England and Scotland" (2002)
FL SPR	6.4	The Landscape Institute, Institute of Environmental Management and Assessment, 2002, "Guidelines for Landscape and Visual Impact Assessment", Second Edition
FL SPR	6.5	Scottish Natural Heritage and The Countryside Agency Landscape Character Assessment Series "Topic Paper 9: Climate change and natural forces – the consequences for landscape character" (2003)  <a href="http://www.countryside.gov.uk/Images/TP9%20final_tcm2-16285.pdf">http://www.countryside.gov.uk/Images/TP9%20final_tcm2-16285.pdf</a>
FL SPR	6.6	Countryside Agency and Scottish Natural Heritage, "Landscape Character Assessment Series: Topic Paper 6 – Techniques and Criteria for Judging Capacity and Sensitivity" (2003)
FL	6.7	Landscape Research Group, University of Newcastle, "Landscape Appraisal for Onshore Wind Development, Final Report" (July 2003)
FL SPR	6.8	Scottish Natural Heritage, "Cumulative Effects of Windfarms Version 2 (2005)
FL SPR	6.9	Visual Representation of Wind Farms – Good Practice Guidance, SNH 2006
SPR	6.10	Natural England Character Map of England – National Character Area 46 The Fens (Natural England, 2005)
SPR	6.11	SNH Revised Draft Cumulative Assessment (Scottish National Heritage, 2009)
SPR	6.12	Landscape Institute Advice Note 01-09 Photomontage in Landscape and Visual Assessment
SPR	6.13	Review of Fenland Wind Farm Strategy (EDAW)
FDC	6.14	Visualisation Standards for Wind Energy Developments – Highland Council (2010)

FDC	6.15	Extracts from PAN45: Renewable Energy Technologies – Scottish Executive (2002)
<b>7 Aviation</b>		
SPR	7.1	Civil Aviation Authority, CAA Policy and Guidelines on Wind Turbines, CAP 764, February 2009
SPR	7.2	Civil Aviation Authority, UK Flight Information Services, CAP 774, November 2009
SPR	7.3	CAP 793 Safe Operating Practices at Unlicensed Aerodromes (Civil Aviation Authority, July 2010)
SPR	7.4	CAP 393 Air Navigation: The Order and the Regulations (Civil Aviation Authority, April 2010)
SPR	7.5	Intentionally left blank
SPR	7.6	Wind Energy, Defence & Civil Aviation Interests Working Group, Wind Energy And Aviation Interests – Interim Guidelines, ETSU W/14/00626/REP, 2002
<b>8 Noise</b>		
FL SPR	8.1	ETSU-R-97: The assessment and Rating of Noise from Wind Turbines (September 1996)
FL SPR	8.2	Prediction and assessment of wind turbine noise – agreement about relevant factors for noise assessment from wind energy projects. D Bowdler, AJ Bullmore, RA Davis, MD Hayes, M Jiggins, G Leventhall, AR McKenzie  Institute of Acoustics, Acoustics Bulletin, Vol 34, No 2 March/April 2009
FL SPR	8.3	Department of Business, Enterprise and Regulatory Reform: “Research into aerodynamic modulation of wind turbine noise”, report by the University of Salford (July 2007)
FL	8.4	“Guidelines for Community Noise”, Ed Berglund, Lindall & Schwela, World Health Organisation, Geneva (1999) (extracts)
FL	8.5	The Measurement of Low Frequency Noise at Three UK Wind Farms  URN No: 06/1412
FL	8.6	BS 8233: 1999 ‘Sound insulation and noise reduction in buildings – Code of practice’
SPR FL	8.7	Night Noise Guidelines for Europe, World Health Organization, 2009
SPR	8.8	BS4142: 1997 ‘Methods for Rating Industrial Noise Affecting Mixed Residential and Industrial Areas’
SPR	8.9	Measurement and Evaluation of environmental Noise from Wind Energy Conversion Systems in Alameda and Riverside Counties (Wyle Research Report, 1988)

SPR	8.10	ISO 9613, Acoustics, Attenuation of Sound During Propagation Outdoors (1996)
SPR	8.11	IEC61400-11 Wind turbine generator systems, Part 11: Acoustic noise measurement techniques
<b>9 Planning Application Documents – Burnt House</b>		
FL	9.1	Planning applications and supporting documents (provided in the Appeal Bundle)
FL	9.2	Environmental Statement (provided in the Appeal Bundle)
FL	9.3	Officer Report to the Planning Committee (December 2009)
FL	9.4	Decision Notice
FDC FL	9.5	Review of Environmental Statements for Burnt House Wind Farm and Floods Ferry Wind Farm, on behalf of Fenland District Council, The Landscape Partnership, October 2009
FL	9.6	Appropriate Assessment for Burnt House Farm, on behalf of Fenland District Council by the Landscape Partnership, November 2009
FL	9.7	Memorandum to Fenland District Council on Burnt House Farm wind turbines by the Landscape Partnership, 1 December 2009
FL	9.8	Further Environmental Information, October 2010: Cumulative Landscape and Visual Impact Assessment (Pegasus) already circulated to the parties)
FL	9.9	ETSU-R-97 Noise Assessment: Report by TNEI Services (October 2010) (already circulated to the parties)
FDC	9.10	Review of Environmental Statements for Burnt House Wind Farm and Floods Ferry Wind Farm, on behalf of Fenland District Council, The Landscape Partnership, July 2009
FDC	9.11	Letter of 25/11/09 from DPP to Graham Nourse and supporting view analysis
<b>10 Planning Application Documents – Floods Ferry</b>		
SPR	10.1	Floods Ferry Planning Application and supporting documents (provided in the Appeal Bundle) (2009)
SPR	10.2	Environmental Statement (provided in the Appeal Bundle) and Supplementary Environmental Information
FDC	10.3	Review of Environmental Statements for Floods Ferry & Burnt House Farm and correspondence (The Landscape Partnership, Oct 09) (see CD9.5)
SPR	10.4	Intentionally left blank
SPR	10.5	Floods Ferry Wind Farm Planning Officers Report (Fenland DC, Dec 2009)
SPR	10.6	Floods Ferry Decision Notice (Fenland District Council, Jan 2010)

SPR	10.7	Appropriate Assessment for Fenland District Council: Wind Turbines at Floods Ferry Revision B (The Landscape Partnership, Nov 2009)
SPR	10.8	Appropriate Assessment for Fenland District Council: Wind Turbines at Boardinghouse Farm Revision B (The Landscape Partnership, Nov 2009)
SPR	10.9	Extract correspondence to Fenland District Council in relation to Floods Ferry and Burnt House proposals
SPR	10.10	Review of Environmental Statements for Flood's Ferry and Burnthouse (the Landscape Partnership July 2009)
SPR	10.11	Response by the Landscape Partnership to letter to Fenland DC from Scottish Power Renewables 7/8/09
SPR	10.12	Flood's Ferry statement to inform an Appropriate Assessment for the Nene Washes SPA (Hyder Consulting, July 2009)
SPR	10.13	Flood's Ferry Ornithology Collision Risk Modelling Report (Hyder Consulting July 2009)

## **Annex 1**

### **Schedule of Conditions – Burnthouse Farm (Appeal A) Time Limits and Site Restoration**

- 1) The development hereby permitted shall be commenced within 5 years of the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the plans, Nos. EN12855/DR1.1, EN12855/DR2.1, EN12855/DR1.2 (July 2009), AK0001(rev June 2009), 949908/04, 949908/05A, 05B & 05C (revised Aug 2009).
- 3) The permission hereby granted shall expire not later than 25 years from the date when electricity is first exported from any of the wind turbines to the electricity distribution grid ("First Export Date"). Written notification of the First Export Date shall be given to the Local Planning Authority no later than 14 days after the event.
- 4) Not later than 12 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 ancillary equipment to a depth of at least 0.2 metres below ground. The scheme shall include the management and timing of any works, a traffic management plan to address likely traffic issues during the decommissioning period, an environmental management plan to include details of measures to be taken during the decommissioning period to protect wildlife and habitats and a programme of implementation. The approved scheme shall be fully implemented within 12 months of the expiry of this permission.
- 5) If any wind turbine hereby permitted fails to produce electricity for supply to the grid for a continuous period of 12 months then, unless otherwise agreed in writing by the Local Planning Authority, the wind turbine and its associated ancillary equipment shall be removed from the site within a period of 3 months from the end of the 12 month period. The land shall be reinstated in accordance with a scheme (including management and timing of the works and a traffic management plan) submitted to and approved in writing by the local planning authority.

### **Ecology**

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

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- 7) No development shall take place until a specification for protected species surveys to be carried out has been submitted to and approved in writing by the Local Planning Authority. The surveys shall be undertaken by a suitably qualified ecologist in the last suitable season prior to site preparation and construction work commencing. The survey results and a programme of any mitigation works required shall be submitted to and approved in writing by the Local Planning Authority. The approved programme of mitigation works shall be implemented in full.
  - 8) No development shall take place until an Ecological Management Scheme has been submitted for the approval of the Local Planning Authority. The scheme shall include details of land management measures on the site to deter avian species from foraging in the vicinity of the turbines and built structures; enhancement and maintenance of field margins and dyke verges; and measures to minimise foraging habitat on the site including the maintenance of margins around the access tracks and built structures which comprise the development and the management of surplus crops on the site. The scheme shall be implemented as approved in writing by the Local Planning Authority.

### **Surface and Foul Water Drainage**

- 9) No development shall take place until a surface and foul water drainage scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with a programme of implementation setting out approved details.
- 10) All electrical equipment (critical infrastructure) should be raised to a level of at least 1.5 metres AOD to provide sufficient freeboard above the predicted flood water level.

### **Construction Traffic Management Plan and Highways**

- 11) No development shall take place 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 approved Construction Traffic Management Plan including any agreed improvements or works to accommodate construction traffic where required along the route, shall be carried out as agreed in writing by the Local Planning Authority.
- 12) No development shall take place until a scheme to secure any repairs to the length of the road shown on the attached plan titled "Road Survey Plan" required as a consequence of the development have been submitted to and improved in writing by the Local Planning Authority. The scheme shall include proposals for a condition survey of the length of road shown on the Road Survey Plan and a programme and methodology for any necessary repairs following the completion of construction. The scheme shall be implemented as approved.

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- 13) Access roads should be set no lower than 300 mm above the average surrounding ground level.

### **Construction Method Statement**

- 14) No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the construction of the development shall only be carried out in accordance with the approved Statement, subject to any variations agreed in writing by the Local Planning Authority. The Construction Method Statement shall address the following matters:
- a) Details of the phasing of all construction works
  - b) Details of routeing of the access tracks
  - c) Details of the construction and surface treatment of all hard surfaces and tracks
  - d) Details of the proposed storage of materials and disposal of surplus materials
  - e) Dust management
  - f) Siting and details of wheel washing facilities
  - g) Details of the proposed temporary site compound for storage of materials and machinery (including areas designated for car parking)
  - h) Areas on site designated for the storage, loading, off-loading, parking and manoeuvring of heavy duty plant, equipment and vehicles
  - i) The construction of the site access and the creation and maintenance of associated visibility splays
  - j) 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
  - k) Pollution control: protection of water courses, bunding of fuel storage areas, surface water drainage, sewage disposal and discharge of foul drainage
  - l) Proposals for post construction restoration/reinstatement of the temporary working areas
  - m) Details of emergency procedures and pollution response plans
  - n) Details of the routeing of underground cabling
  - o) Working practices for protecting the nearby residential dwellings, including measures to control noise and vibration arising from on-site activities, such as piling, shall be adopted as set out in British Standard 5228 Part 1: 2009

### **Construction Hours**

- 15) Construction work shall only take place between the hours of 07:00 – 19:00 on Monday to Friday inclusive, 08:00 – 13:00 hours on Saturdays with no such construction work on a Sunday or Public Holiday. Outside these hours, works at the site shall be limited to emergency works and dust suppression, unless otherwise approved in writing by the Local Planning Authority. The Local Planning Authority shall be informed in writing of emergency works within three working days of occurrence.
- 16) The delivery of any construction materials or equipment for the construction of the development, other than turbine blades, nacelles and towers, shall be restricted to the hours of 07:00 – 19:00 on Monday to Friday inclusive, 08:00

- 13:00 hours on Saturdays with no such deliveries on a Sunday or Public Holiday unless otherwise approved in writing by the Local Planning Authority having been given a minimum of two working days notice of the proposed delivery.

### **Appearance**

- 17) Prior to the erection of any turbine, details of the finish and colour of the wind turbines and any external transformer units shall be submitted to and approved in writing by the Local Planning Authority. No name, sign, symbol or logo shall be displayed on any external surfaces of the turbines or any external transformer units other than those required to meet statutory health and safety requirements. The agreed colour finishes of the wind turbines shall not be changed without the prior consent in writing of the Local Planning Authority.
- 18) The temporary construction compound shall be removed from the site within 3 months of the commissioning of the final turbine.
- 19) The blades of all of the wind turbine generators shall rotate in the same direction.
- 20) Construction of a sub-station building shall not commence until details of the external appearance, dimensions, layout and materials of that building and any associated compound or parking area, and details of surface foul water drainage from the sub-station building and any associated compound or parking area have been submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved details.
- 21) All cabling between the turbines and sub-station shall be laid underground.
- 22) The overall height of the wind turbines shall not exceed 100 metres to the tip of the blades when the turbine is in a vertical position as measured from natural ground conditions immediately adjacent to the turbine base.

### **Television Interference**

- 23) Prior to the First Export Date a scheme providing for the investigation and alleviation of any electro-magnetic interference to TV caused by the operation of the turbines shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall provide for the investigation by a qualified 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 wind farm, mitigation works shall be carried out in accordance with the scheme which has been approved in writing by the Local Planning Authority.

### **Shadow Flicker**



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

## **Aviation**

- 25) No development shall take place unless and until a Radar Mitigation Scheme has been submitted to and approved in writing by the Local Planning Authority. The Radar Mitigation Scheme shall address the impact of the proposed development upon air safety.

“Radar Mitigation Scheme” means a scheme proposed by the wind farm operator which is designed to mitigate the impact of the development upon the operation of the Primary Surveillance Radar at RAF Cottesmore (“the Radar”) and the air traffic control operations of the Ministry of Defence which are reliant upon the Radar. The Radar Mitigation Scheme shall set out the appropriate measures to be implemented to mitigate the impact of the development on the Radar and shall be in place for the period the Primary Surveillance Radar at RAF Cottesmore remains in operation.

- 26) No turbines shall become operational unless and until all measures required as part of the approved Radar Mitigation Scheme have been implemented in accordance with timescales within it and the Local Planning Authority has confirmed in writing that the Radar Mitigation Scheme has been implemented. The development shall thereafter be operated fully in accordance with the approved Radar Mitigation Scheme.
- 27) No development shall commence unless and until a scheme for lighting (“the Lighting Scheme”) has been submitted to and approved in writing by the local planning authority. The Lighting Scheme shall include MoD approved infrared aviation lighting to be fitted to the hub of turbines 1 and 3, as denoted on EN12855/DR8.33, and lighting required during the construction period of the development and any periods of planned maintenance. The Lighting Scheme shall thereafter be implemented as approved.

## **Noise**

- 28) The rating level of noise immissions from the combined effects of the wind turbines (including the application of any tonal penalty) hereby permitted when determined in accordance with the attached Guidance Notes, shall not exceed the values for the relevant integer wind speed set out in the tables attached to these conditions and:
- A. Prior to the First Export Date the wind farm operator 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 complaint to it alleging noise disturbance at a dwelling, the wind farm operator shall, at its expense, employ an independent consultant approved by the Council to assess the level of noise immissions from the wind farm at the complainant's property in accordance with the procedures described in the attached Guidance Notes. The written request from the Local Planning Authority shall set out the conditions described in Guidance Note 2(b) and include a statement as to whether, in the opinion of the Local Planning Authority, the noise giving rise to the complaint contains or is likely to contain a tonal component. The wind farm operator shall provide the information relevant to the complaint logged in accordance with paragraph (G) to the Local Planning Authority in the format set out in Guidance Note 1(e).
- C. Where a dwelling to which a complaint is related is not listed in the tables attached to these conditions, the wind farm operator shall submit to the Local Planning Authority for written approval proposed noise limits selected from those listed in the Tables to be adopted at the complainant's dwelling for compliance checking purposes. The proposed noise limits are to be those limits selected from the Tables specified for a listed location which the independent consultant considers as being likely to experience the most similar background noise environment to that experienced at the complainant's dwelling. The 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 representative background noise environment and proposed noise limits shall be submitted for approval in writing by the Local Planning Authority. 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 these conditions, the wind farm operator 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. The wind farm operator shall provide to the Local Planning Authority the independent consultant's assessment of the rating level of noise immissions undertaken in accordance with the Guidance Notes within 2 months of the date of the written request of the Local Planning Authority made under paragraph (B) unless the time limit is extended in writing by the Local Planning Authority. The assessment shall include all data collected for the purposes of undertaking the compliance measurements, such data to be provided in the format set out in Guidance Note 1(e) of the Guidance

Notes. The instrumentation used to undertake the measurements shall be calibrated in accordance with Guidance Note 1(a) and certificates of calibration shall be submitted to the Local Planning Authority with the independent consultant's assessment of the rating level of noise immissions.

- F. Where a further assessment of the rating level of noise immissions from the wind farm is required pursuant to paragraph 4(c) of the attached Guidance Notes, the wind farm operator shall submit a copy of the further assessment within 21 days of submission of the independent consultant's assessment pursuant to paragraph (E) above unless the time limit has been extended in writing by the Local Planning Authority.
- G. The wind farm operator shall continuously log power production, nacelle wind speed, nacelle wind direction and nacelle orientation at each wind turbine all in accordance with Guidance Note 1(d). These data shall be retained for a period of not less than 12 months. The wind farm operator shall provide this information in the format set out in Guidance Note 1(e) to the Local Planning Authority on its request, within 14 days of receipt in writing of such a request.

**Note:** For the purposes of this condition, a "dwelling" is 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 consent.

## TABLES TO BE USED IN THE EVENT THAT BOTH BURNT HOUSE AND FLOODS FERRY BECOME OPERATIONAL

### Total Windfarm Noise Limits (Cumulative)

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

Location	Standardised wind speed measured at 10 metre height (m/s) within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
Burnt House Farm (financially interested)	45	45	45	45	45	45	45	47	51	53	53	53
Willow Farm	37.5	37.5	37.5	37.5	37.5	37.5	37.5	38.5	41.5	42.5	42.5	42.5
17 Burnthouse Sidings	35	35	35	35	35	37	40	43	47	49	49	49
Quaker's Drove Farm	35	35	35	36	38	40	43	47	51	53	53	53
Hakes Farm	37.5	37.5	37.5	37.5	37.5	40	42	46	50	52	52	52
Blackhall/Tokai	37.5	37.5	37.5	37.5	39.5	42.5	45.5	48.5	52.5	53.5	53.5	53.5
3 Burnthouse	35	35	39	39	41	42	45	47	51	53	53	53

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

Location	Standardised wind speed at 10 metre height (m/s) within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
Burnt House Farm (financially interested)	45	45	45	45	45	45	45	45	45	45	45	45
Willow Farm	40.5	40.5	40.5	40.5	40.5	40.5	40.5	40.5	40.5	40.5	40.5	40.5
17 Burnthouse Sidings	43	43	43	43	43	43	43	43	43	43	43	43
Quaker's Drove Farm	43	43	43	43	43	43	43	43	45	45	45	45
Hakes Farm	43	43	43	43	43	43	43	43	47	47	47	47
Blackhall/Tokai	40.5	40.5	40.5	40.5	40.5	40.5	44.5	48.5	51.5	51.5	51.5	51.5
3 Burnthouse Sidings	43	43	43	43	43	43	43	43	43	43	43	43

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

Property	Easting	Northing
Burnt House Farm (financially interested)	533498	294294
Willow Farm	533496	295046
17 Burnthouse Sidings	534227	294226
Quaker's Drove Farm	534082	295930
Hakes Farm	534607	295881
Blackhall	534692	294861
3 Burnthouse Sidings	533555	294252

Note to Table 3: The geographical coordinates references are provided for the purpose of identifying the general location of dwellings to which a given set of noise limits applies.

## TABLES TO BE USED IF JUST BURNTHOUSE IS OPERATIONAL

### Windfarm Noise Limits (Burnthouse)

**Table 4 - Between 07:00 and 23:00 - Noise level dB  $L_{A90}$ , 10-minute**

Location	Standardised wind speed measured at 10 metre height (m/s) within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
Burnt House Farm (financially interested)	45	45	45	45	45	45	45	47	51	53	53	53
Willow Farm	35	35	35	35	35	37	39	41	44	45	45	45
17 Burnthouse Sidings	35	35	35	35	35	37	40	43	47	49	49	49
Quaker's Drove	35	35	35	36	38	40	43	47	51	53	53	53

Farm												
Hakes Farm	35	35	35	35	37	40	42	46	50	52	52	52
Blackhall/Tokai	35	35	37	40	42	45	48	51	55	56	56	56
3 Burnthouse Sidings	35	35	39	39	41	42	45	47	51	53	53	53

**Table 5 – Between 23:00 and 07:00 – Noise level dB L<sub>A90, 10-minute</sub>**

Location	Standardised wind speed at 10 metre height (m/s) within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
Burnt House Farm (financially interested)	45	45	45	45	45	45	45	45	45	45	45	45
Willow Farm	43	43	43	43	43	43	43	43	43	43	43	43
17 Burnthouse Sidings	43	43	43	43	43	43	43	43	43	43	43	43
Quaker's Drove Farm	43	43	43	43	43	43	43	43	45	45	45	45
Hakes Farm	43	43	43	43	43	43	43	43	47	47	47	47
Blackhall/Tokai	43	43	43	43	43	43	47	51	54	54	54	54
3 Burnthouse Sidings	43	43	43	43	43	43	43	43	43	43	43	43

**Table 6: Coordinate locations of the properties listed in Tables 4 and 5.**

Property	Easting	Northing
Burnt House Farm (financially interested)	533498	294294
Willow Farm	533496	295046
17 Burnthouse Sidings	534227	294226
Quaker's Drove Farm	534082	295930
Hakes Farm	534607	295881
Blackhall	534692	294861
3 Burnthouse Sidings	533555	294252

Note to Table 6: The geographical coordinates references are provided for the purpose of identifying the general location of dwellings to which a given set of noise limits applies.

## Guidance Notes for Noise Conditions

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

### Note 1

- (a) Values of the L<sub>A90,10-minute</sub> noise statistic should be measured at the complainant's property, using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN

61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This should be calibrated in accordance with the procedure specified in BS 4142: 1997 (or the equivalent UK adopted standard in force at the time of the measurements). Measurements shall be undertaken in such a manner to enable a tonal penalty to be applied in accordance with Guidance Note 3.

- (b) The microphone should be mounted at 1.2 - 1.5 metres above ground level, fitted with a two-layer windshield or suitable equivalent approved in writing by the Local Planning Authority, and placed outside the complainant's dwelling. Measurements should be made in "free field" conditions. To achieve this, the microphone should be placed at least 3.5 metres away from the building facade or any reflecting surface except the ground at the approved measurement location. In the event that the consent of the complainant for access to his or her property to undertake compliance measurements is withheld, the wind farm operator shall submit for the written approval of the Local Planning Authority details of the proposed alternative representative measurement location prior to the commencement of measurements and the measurements shall be undertaken at the approved alternative representative measurement location.
- (c) The  $L_{A90,10\text{-minute}}$  measurements should be synchronised with measurements of the 10-minute arithmetic mean wind speed and with operational data logged in accordance with Guidance Note 1(d), including the power generation data from the turbine control systems of the wind farm.
- (d) To enable compliance with the conditions to be evaluated, the wind farm operator shall continuously log arithmetic mean wind speed in metres per second (m/s), arithmetic mean wind direction in degrees from north and nacelle orientation as logged by the turbine control system. The mean wind speed data as measured at hub height shall be 'standardised' to a reference height of 10 metres as described in ETSU-R-97 at page 120 using a reference roughness length of 0.05 metres. It is this standardised 10 metre height wind speed data which is correlated with the noise measurements determined as valid in accordance with Note 2(b), such correlation to be undertaken in the manner described in Note 2(c). 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.
- (e) Data provided to the Local Planning Authority in accordance with paragraphs (B), (E), (F), and (G) of the noise condition shall be provided in comma separated values in electronic format.
- (f) A data logging tipping bucket 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 in accordance with the protocol detailed in Note 1(d).

## Note 2

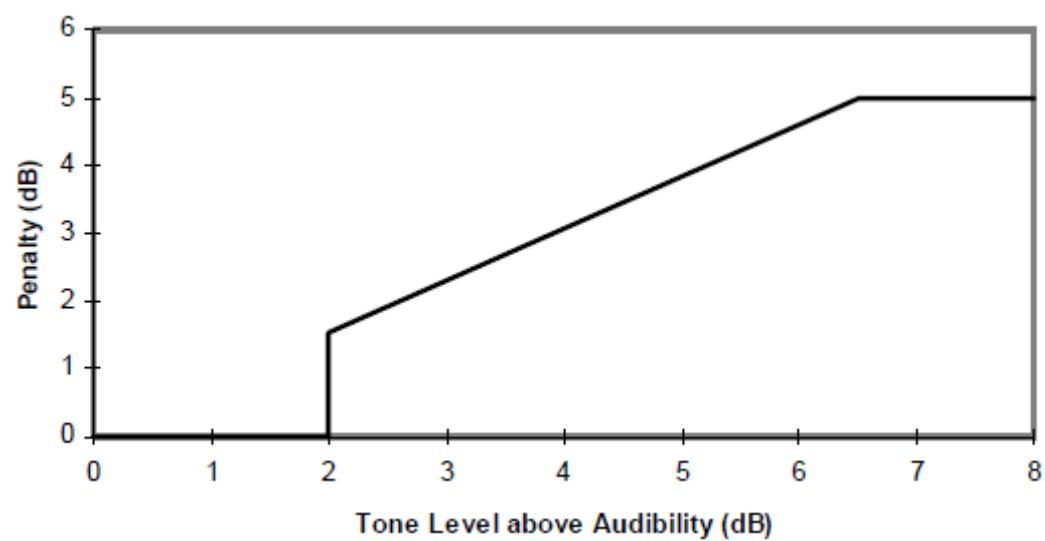
- (a) The noise measurements should be made so as to provide not less than 20 valid data points as defined in Note 2 paragraph (b).
- (b) Valid data points are those measured during the conditions specified by the Local Planning Authority in its written request under paragraph (B) of the noise condition

but excluding any periods of rainfall measured in accordance with Note 1(f). These specified conditions shall include the range of wind speeds, wind directions, times of day and meteorological conditions and power generation. In specifying such conditions the local planning authority shall have regard to those conditions which prevailed during times when the complainant alleges there was disturbance due to noise or which are considered likely to result in a breach of the limits.

- (c) Values of the  $L_{A90,10\text{-minute}}$  noise measurements and corresponding values of the 10-minute wind speed for those data points considered valid in accordance with Note 2 paragraph (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) should be fitted to the data points and define the wind farm noise level at each integer speed.

### Note 3

- (a) Where, in the opinion of the Local Planning Authority as advised to the wind farm operator in its written request under paragraph (B) of the noise conditions, 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 within  $\pm 0.5\text{m/s}$  of each integer wind speed. If there is no apparent trend with wind speed then a simple arithmetic mean shall be used. This process shall be repeated for each integer wind speed for which there is an assessment of overall levels in Note 2.
- (f) The tonal penalty is derived from the margin above audibility of the tone according to the figure below.





## **Annex 2**

### **Schedule of Conditions - Floods Ferry Farm (Appeal B) Time Limits and Site Restoration**

- 1) The development hereby permitted shall be commenced within 5 years of the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the plans listed in paragraph 2.4 of the Statement of Common Ground signed 1 September 2010.
- 3) The permission hereby granted shall expire not later than 25 years from the date when electricity is first exported from any of the wind turbines to the electricity distribution grid ("First Export Date"). Written notification of the First Export Date shall be given to the Local Planning Authority no later than 14 days after the event.
- 4) Not later than 12 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 ancillary equipment to a depth of at least 0.2 metres below ground. The scheme shall include the management and timing of any works, a traffic management plan to address likely traffic issues during the decommissioning period, an environmental management plan to include details of measures to be taken during the decommissioning period to protect wildlife and habitats and a programme of implementation. The approved scheme shall be fully implemented within 12 months of the expiry of this permission.
- 5) If any wind turbine hereby permitted fails to produce electricity for supply to the grid for a continuous period of 12 months then, unless otherwise agreed in writing by the Local Planning Authority, the wind turbine and its associated ancillary equipment shall be removed from the site within a period of 3 months from the end of the 12 month period. The land shall be reinstated in accordance with a scheme (including management and timing of the works and a traffic management plan) submitted to and as approved in writing by the local planning authority

### **Ecology**

- 6) No development shall take place until a specification for a breeding bird survey on the development 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 the methodology and timetable for the survey and submission of a report detailing the results of a survey. The report shall identify any mitigation measures required as a result of this survey for any construction works or clearance of vegetation in relation to construction between 1 March – 31 August in any year. The specification and mitigation measures shall be implemented as approved.
- 7) No development shall take place until a specification for protected species

surveys to be carried out has been submitted to and approved in writing by the Local Planning Authority. The surveys shall be undertaken by a suitably qualified ecologist in the last suitable season prior to site preparation and construction work commencing. The survey results and a programme of any mitigation works required in relation to construction works shall be submitted to and approved in writing by the Local Planning Authority. The approved programme of mitigation works shall be implemented in full.

- 8) No development shall take place until details of a post-construction mitigation and monitoring scheme have been submitted to and approved by the Local Planning Authority. Details covered shall include:
- Measures that will be undertaken to mitigate potential operational impacts to Bewick's swan, whooper swan, marsh harrier, barn owl, bats and water vole;
  - Surveillance of bird species comprising Bewick's swan, whooper swan, lapwing, golden plover, marsh harrier, and bat activity as well as corpse searches around the turbines;
  - Details of (1) contingency mitigation measures in respect of the specified species and (2) a mechanism for defining a level of any collision impact referable to the development hereby permitted (for each of the specified species, and having regard to the population numbers of that species associated with the Nene Washes SPA) which level, were it to be exceeded, would represent a significant impact on that species in the context of the Nene Washes SPA. The specified species are Bewick's swan, whooper swan, lapwing and golden plover.  
Should any of the relevant levels of collision impact so defined thereafter be reached the relevant contingency mitigation measures are forthwith to be implemented.
  - A mechanism for the submission of results of each year of monitoring and review of existing or contingency mitigation requirements with the Local Planning Authority .  
The monitoring shall be undertaken in the years 1, 2, 3, 5, 10 and 15 after the first commissioning of the turbines. The approved Mitigation and Monitoring Scheme shall be implemented in full during the operational life of the wind farm.

### **Surface and Foul Water Drainage**

- 9) Prior to the commencement of development, a surface and foul water drainage scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with a programme of implementation setting out approved details.

### **Construction Traffic Management Plan and Highways**

- 10) No development shall take place 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

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furniture, reinstatement of any signs, verges or other items displaced by construction traffic banksman/escort details. The approved Construction Traffic Management Plan including any agreed improvements or works to accommodate construction traffic where required along the route, shall be carried out as agreed in writing by the Local Planning Authority.

- 11) No development shall take place until a scheme for a condition survey of the highway along the proposed delivery route of the wind turbines has been submitted to and approved in writing by the local planning authority. The survey shall be carried out as approved. Any remedial works to the highway caused by the delivery or necessary to facilitate delivery of the turbines shall be undertaken at the developer's expense.
- 12) No development shall take place until details of the materials and form of construction of the access tracks within the site have been submitted to and approved by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

### **Construction Method Statement**

- 13) Prior to the commencement of development a Construction Method Statement shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the construction of the development shall only be carried out in accordance with the approved Statement, subject to any variations agreed in writing by the Local Planning Authority. The Construction Method Statement shall address the following matters:
  - p) Details of the phasing of all construction works
  - q) Details of routing of the access tracks
  - r) Details of the construction and surface treatment of all hard surfaces and tracks
  - s) Details of the proposed storage of materials and disposal of surplus materials
  - t) Dust management
  - u) Siting and details of wheel washing facilities
  - v) Details of the proposed temporary site compound for storage of materials and machinery (including areas designated for car parking)
  - w) Areas on site designated for the storage, loading, off-loading, parking and manoeuvring of heavy duty plant, equipment and vehicles
  - x) The construction of the site access and the creation and maintenance of associated visibility splays
  - y) 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
  - z) Pollution control: protection of water courses, bunding of fuel storage areas, surface water drainage, sewage disposal and discharge of foul drainage
  - aa) Proposals for post construction restoration/reinstatement of the temporary working areas
  - bb) Details of emergency procedures and pollution response plans
  - cc) Details of the routing of underground cabling
  - dd) Working practices for protecting the nearby residential dwellings, including measures to control noise and vibration arising from on-site

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activities, such as piling, shall be adopted as set out in British Standard 5228 Part 1: 2009.

### **Construction Hours**

- 14) Construction work shall only take place between the hours of 07:00-19:00 on Monday to Friday inclusive, 08:00-13:00 hours on Saturdays with no construction work on Sunday or public holidays. Outside these hours, other than emergency works and works for dust suppression, construction shall only be undertaken in accordance with a scheme that has been submitted to and approved by the Local Planning Authority. The scheme shall address arrangements for monitoring noise levels; a method for reporting, investigating and the remediation of any complaints regarding noise from construction activities outside the hours specified above. The Local Planning Authority shall be informed in writing of emergency works within three working days of occurrence.
- 15) The delivery of any construction materials or equipment for the construction of the development, other than turbine blades, nacelles and towers, shall be restricted to the hours of 07:00 – 19:00 on Monday to Friday inclusive, 08:00 – 13:00 hours on Saturdays with no such deliveries on a Sunday or public Holiday unless otherwise approved in writing by the Local Planning Authority having been given a minimum of two working days notice of the proposed delivery.

### **Appearance**

- 16) Prior to the erection of any turbine, details of the finish and colour of the wind turbines and any external transformer units shall be submitted to and approved in writing by the Local Planning Authority. No name, sign, symbol or logo shall be displayed on any external surfaces of the turbines or any external transformer units other than those required to meet statutory health and safety requirements. The agreed colour finishes of the wind turbines shall not be changed without the prior consent in writing of the Local Planning Authority.
- 17) The temporary construction compound shall be removed from the site within 3 months of the commissioning of the final turbine.
- 18) The blades of all of the wind turbine generators shall rotate in the same direction.
- 19) Construction of a sub-station building shall not commence until details of the external appearance, dimensions, layout and materials of that building and any associated compound or parking area, and details of surface and foul water drainage from the sub-station building and any associated compound or parking area have been submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved details.
- 20) No development shall take place until a scheme for lighting ("the Lighting

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Scheme”), has been submitted to and approved in writing by the local planning authority. The Lighting Scheme shall include (a) MoD approved infrared aviation lighting to be fitted to the hub of turbines 1,3,5,8 and 9 as denoted on Drawing 02/PA and (b) lighting required during the construction period of the development and any periods of planned maintenance. The Lighting Scheme shall thereafter be implemented as approved.

- 21) Each turbine and its site track shall be provided as shown on Drawing 02/PA Site Development Plan subject to a micro-siting allowance of 50m. Micro-siting shall not result in turbine blades oversailing any public highway.
- 22) The overall height of the wind turbines shall not exceed 110.5 metres to the tip of the blades when the turbine is in a vertical position as measured from natural ground conditions immediately adjacent to the turbine base.

### **Television & Radio Interference**

- 23) No development shall take place until a scheme for the safeguarding of UHF radio communications has been submitted to and approved in writing by the Local Planning Authority. The scheme shall address the potential interference to Anglian Water UHF radio telemetry link and shall include measures to be undertaken to remedy any such interference. Such measures, as set out within the approved scheme shall be fully implemented.
- 24) Prior to the First Export Date, a scheme providing for the investigation and alleviation of any electro-magnetic interference to any TV signal caused by the operation of the turbines shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall provide for the investigation by a qualified 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 wind farm, details of the mitigation works which have been approved in writing by the Local Planning Authority shall be implemented as approved.

### **Shadow Flicker**

**This condition should be applied only if both Burnthouse Farm and Flood’s Ferry Farm are permitted**

- 25) Prior to the commissioning of the development hereby approved, a written scheme to alleviate the incidence of shadow flicker at the properties known as Blackhall and Tokai from Turbine No 9 shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in full.

### **Aviation**

26)

- (a) For the purposes of this condition, the Radar Mitigation Scheme ("the Scheme") means a scheme proposed by the developer whose purpose will be to mitigate the impact of the development upon the operation of the Primary Surveillance Radars at RAF Cottesmore ("the Radar") and the air traffic control operations of the MoD that are reliant upon the Radar at the date of this permission. The Scheme will set out the appropriate measures to be implemented to that end. The Scheme shall be implemented in full.
- (b) No development shall commence unless and until the Local Planning Authority ("the Authority") has approved the Scheme in writing.
- (c) No turbines shall become operational unless and until all measures required by the First Export Date in accordance with the Scheme have been carried out in full.

### **Archaeology**

- 27) No development or preliminary groundworks of any kind shall take place until the applicant has secured the implementation of a programme and timetable of archaeological work and recording in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the Local Planning Authority. The approved programme shall then be implemented in accordance with the approved timetable prior to any other works taking place on site.

### **Noise**

28) The rating level of noise immissions from the combined effects of the wind turbines (including the application of any tonal penalty) hereby permitted when determined in accordance with the attached Guidance Notes, shall not exceed the values for the relevant integer wind speed set out in the tables attached to these conditions and:

- H. Prior to the First Export Date, the wind farm operator 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
- I. Within 21 days from receipt of a written request of the Local Planning Authority, following a complaint to it alleging noise disturbance at a dwelling, the wind farm operator shall, at its expense, employ an independent consultant approved by the Council to assess the level of noise immissions from the wind farm at the complainant's property in accordance with the procedures described in the attached Guidance Notes. The written request from the Local Planning Authority shall set out the conditions described in Guidance Note 2(b) and include a statement as to whether, in the opinion of the Local Planning Authority, the noise giving rise to the complaint contains or is likely to contain a tonal component. The wind farm operator shall provide the information relevant to the complaint logged in accordance with paragraph (G) to the Local Planning Authority in the format set out in Guidance Note 1(e).

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- J. Where a dwelling to which a complaint is related is not listed in the tables attached to these conditions, the wind farm operator shall submit to the Local Planning Authority for written approval proposed noise limits selected from those listed in the Tables to be adopted at the complainant's dwelling for compliance checking purposes. The proposed noise limits are to be those limits selected from the Tables specified for a listed location which the independent consultant considers as being likely to experience the most similar background noise environment to that experienced at the complainant's dwelling. The 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 representative background noise environment and proposed noise limits shall be submitted for approval in writing by the Local Planning Authority. 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.
  
  - K. Prior to the commencement of any measurements by the independent consultant to be undertaken in accordance with these conditions, the wind farm operator 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.
  
  - L. The wind farm operator shall provide to the Local Planning Authority the independent consultant's assessment of the rating level of noise immissions undertaken in accordance with the Guidance Notes within 2 months of the date of the written request of the Local Planning Authority made under paragraph (B) unless the time limit is extended in writing by the Local Planning Authority. The assessment shall include all data collected for the purposes of undertaking the compliance measurements, such data to be provided in the format set out in Guidance Note 1(e) of the Guidance Notes. The instrumentation used to undertake the measurements shall be calibrated in accordance with Guidance Note 1(a) and certificates of calibration shall be submitted to the Local Planning Authority with the independent consultant's assessment of the rating level of noise immissions.
  
  - M. Where a further assessment of the rating level of noise immissions from the wind farm is required pursuant to paragraph 4(c) of the attached Guidance Notes, the wind farm operator shall submit a copy of the further assessment within 21 days of submission of the independent consultant's assessment pursuant to paragraph (E) above unless the time limit has been extended in writing by the Local Planning Authority.
  
  - N. The wind farm operator shall continuously log power production, nacelle wind speed, nacelle wind direction and nacelle orientation at each wind turbine all in accordance with Guidance Note 1(d). These data shall be

retained for a period of not less than 12 months. The wind farm operator shall provide this information in the format set out in Guidance Note 1(e) to the Local Planning Authority on its request, within 14 days of receipt in writing of such a request.

**Note:** For the purposes of this condition, a “dwelling” is 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 consent

### TABLES OF NOISE LIMITS TO APPLY IF BOTH FLOODS FERRY FARM AND BURNT HOUSE FARM ARE PERMITTED AND OPERATIONAL

Table 1: Between 23:00 and 07:00 hours (Noise Level in dB  $L_{A90, 10min}$ ):

Location	Standardised Wind Speed at 10 m height (m/s)											
	1	2	3	4	5	6	7	8	9	10	11	12
723 Whittessey Road	43	43	43	43	43	43	43	43	43	43	47	53
Australia Farm	43	43	43	43	43	43	43	43	43	48	55	63
4 Staffurths Bridge	43	43	43	43	43	43	43	43	43	43	47	53
Floods Ferry Marina Park	43	43	43	43	43	43	43	43	43	46	52	60
Tokai / Blackhall Cottage	40. 5	40. 5	40. 5	40. 5	40. 5	40. 5	44. 5	48. 5	51. 5	51. 5	51. 5	51. 5
Burnt House Farm	45	45	45	45	45	45	45	45	45	45	45	45
Willow Farm	40. 5	40. 5	40. 5	40. 5	40. 5	40. 5	40. 5	40. 5	40. 5	40. 5	40. 5	40. 5
17 Burnthouse Sidings	43	43	43	43	43	43	43	43	43	43	43	43
Quaker's Drove Farm	43	43	43	43	43	43	43	43	45	45	45	45
Hake's Farm	43	43	43	43	43	43	43	43	47	47	47	47
3 Burnthouse Sidings	43	43	43	43	43	43	43	43	43	43	43	43

Table 2: At all other times (Noise Level in dB  $L_{A90, 10min}$ ):

Location	Standardised Wind Speed at 10 m height (m/s)											
	1	2	3	4	5	6	7	8	9	10	11	12
723 Whittessey Road	37. 5	37. 5	37. 5	37. 5	37. 5	37. 5	37. 5	37. 5	37. 5	40	44	49
Australia Farm	37. 5	37. 5	37. 5	37. 5	37. 5	37. 5	37. 5	37. 5	40	45	50	57
4 Staffurths Bridge	37. 5	37. 5	37. 5	37. 5	37. 5	37. 5	37. 5	37. 5	37. 5	39	43	48
Floods Ferry Marina Park	37. 5	37. 5	37. 5	37. 5	37. 5	37. 5	37. 5	37. 5	37. 5	39	42	46
Tokai / Blackhall Cottage	37. 5	37. 5	37. 5	37. 5	39. 5	42. 5	45. 5	48. 5	52. 5	53. 5	53. 5	53. 5



Burnt House Farm	45	45	45	45	45	45	45	47	51	53	53	53
Willow Farm	37. 5	37. 5	37. 5	37. 5	37. 5	37. 5	37. 5	38. 5	41. 5	42. 5	42. 5	42. 5
17 Burnthouse Sidings	35	35	35	35	35	37	40	43	47	49	49	49
Quaker's Drove Farm	35	35	35	36	38	40	43	47	51	53	53	53
Hake's Farm	37. 5	37. 5	37. 5	37. 5	37. 5	40	42	46	50	52	52	52
3 Burnthouse Sidings	35	35	39	39	41	42	45	47	51	53	53	53

**[TABLES OF NOISE LIMITS RELATING TO CONDITION TO APPLY IF BURNT HOUSE FARM IS NOT PERMITTED OR IS PERMITTED BUT IS NOT OPERATIONAL]**

Table 1: Between 23:00 and 07:00 hours (Noise Level in dB  $L_{A90, 10min}$ ):

	<b>Standardised Wind Speed at 10 m height (m/s)</b>											
<b>Location</b>	1	2	3	4	5	6	7	8	9	10	11	12
723 Whittessey Road	43	43	43	43	43	43	43	43	43	43	47	53
Australia Farm	43	43	43	43	43	43	43	43	43	48	55	63
4 Staffurths Bridge	43	43	43	43	43	43	43	43	43	43	47	53
Floods Ferry Marina Park	43	43	43	43	43	43	43	43	43	46	52	60
Tokai / Blackhall Cottage	43	43	43	43	43	43	43	43	47	53	60	68
Hake's Farm	43	43	43	43	43	43	43	43	47	47	47	47

Table 2: At all other times (Noise Level in dB  $L_{A90, 10min}$ ):

	<b>Standardised Wind Speed at 10 m height (m/s)</b>											
<b>Location</b>	1	2	3	4	5	6	7	8	9	10	11	12
723 Whittessey Road	37. 5	37. 5	37. 5	37. 5	37. 5	37. 5	37. 5	37. 5	37. 5	40	44	49
Australia Farm	37. 5	37. 5	37. 5	37. 5	37. 5	37. 5	37. 5	37. 5	40	45	50	57
4 Staffurths Bridge	37. 5	37. 5	37. 5	37. 5	37. 5	37. 5	37. 5	37. 5	37. 5	39	43	48
Floods Ferry Marina Park	37. 5	37. 5	37. 5	37. 5	37. 5	37. 5	37. 5	37. 5	37. 5	39	42	46
Tokai / Blackhall Cottage	37. 5	37. 5	37. 5	37. 5	37. 5	37. 5	37. 5	39	44	50	57	66
Hake's Farm	37. 5	37. 5	37. 5	37. 5	37. 5	40	42	46	50	52	52	52

## Guidance Notes for Noise Conditions

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

### Note 1

- (g) Values of the  $L_{A90,10\text{-minute}}$  noise statistic should be measured at the complainant's property, using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This should be calibrated in accordance with the procedure specified in BS 4142: 1997 (or the equivalent UK adopted standard in force at the time of the measurements). Measurements shall be undertaken in such a manner to enable a tonal penalty to be applied in accordance with Guidance Note 3.
- (h) The microphone should be mounted at 1.2 - 1.5 metres above ground level, fitted with a two-layer windshield or suitable equivalent approved in writing by the Local Planning Authority, and placed outside the complainant's dwelling. Measurements should be made in “free field” conditions. To achieve this, the microphone should be placed at least 3.5 metres away from the building facade or any reflecting surface except the ground at the approved measurement location. In the event that the consent of the complainant for access to his or her property to undertake compliance measurements is withheld, the wind farm operator shall submit for the written approval of the Local Planning Authority details of the proposed alternative representative measurement location prior to the commencement of measurements and the measurements shall be undertaken at the approved alternative representative measurement location.
- (i) The  $L_{A90,10\text{-minute}}$  measurements should be synchronised with measurements of the 10-minute arithmetic mean wind speed and with operational data logged in accordance with Guidance Note 1(d), including the power generation data from the turbine control systems of the wind farm.
- (j) To enable compliance with the conditions to be evaluated, the wind farm operator shall continuously log arithmetic mean wind speed in metres per second (m/s), arithmetic mean wind direction in degrees from north and nacelle orientation as logged by the turbine control system. The mean wind speed data as measured at hub height shall be 'standardised' to a reference height of 10 metres as described in ETSU-R-97 at page 120 using a reference roughness length of 0.05 metres. It is this standardised 10 metre height wind speed data which is correlated with the noise measurements determined as valid in accordance with Note 2(b), such correlation to be undertaken in the manner described in Note 2(c). 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.

- (k) Data provided to the Local Planning Authority in accordance with paragraphs (B), (E), (F), and (G) of the noise condition shall be provided in comma separated values in electronic format.
- (l) A data logging tipping bucket 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 in accordance with the protocol detailed in Note 1(d).

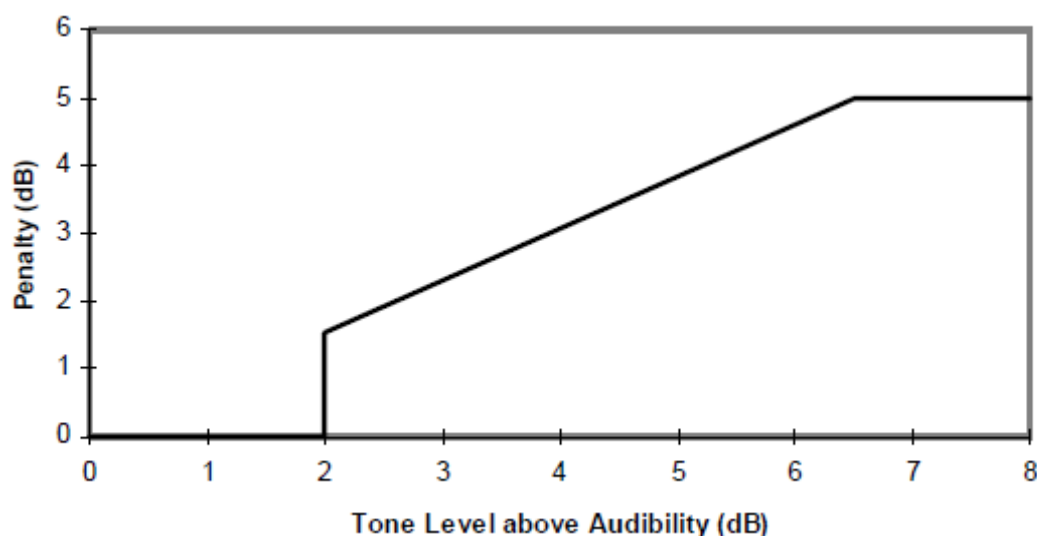
## Note 2

- (d) The noise measurements should be made so as to provide not less than 20 valid data points as defined in Note 2 paragraph (b).
- (e) Valid data points are those measured during the conditions specified by the Local Planning Authority in its written request under paragraph (B) of the noise condition but excluding any periods of rainfall measured in accordance with Note 1(f). These specified conditions shall include the range of wind speeds, wind directions, times of day and meteorological conditions and power generation. In specifying such conditions the local planning authority shall have regard to those conditions which prevailed during times when the complainant alleges there was disturbance due to noise or which are considered likely to result in a breach of the limits.
- (f) Values of the  $L_{A90,10\text{-minute}}$  noise measurements and corresponding values of the 10-minute wind speed for those data points considered valid in accordance with Note 2 paragraph (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) should be fitted to the data points and define the wind farm noise level at each integer speed.

## Note 3

- (g) Where, in the opinion of the Local Planning Authority as advised to the wind farm operator in its written request under paragraph (B) of the noise conditions, 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.
- (h) 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.
- (i) 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.

- (j) 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.
- (k) 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 within  $\pm 0.5\text{m/s}$  of each integer wind speed. If there is no apparent trend with wind speed then a simple arithmetic mean shall be used. This process shall be repeated for each integer wind speed for which there is an assessment of overall levels in Note 2.
- (l) The tonal penalty is derived from the margin above audibility of the tone according to the figure below.



#### 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 specified by the Local Planning Authority in its written request under paragraph (B) 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) 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 requested by the Local Planning Authority in its written request under paragraph (B) of the noise condition.

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- 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:

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

- 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.

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.