



Department for
Communities and
Local Government

Mr Richard Frost
Savills
Wessex House
Priors Walk
East Borough
Winbourne, BH21 1PB

Our ref: APP/V2255/W/15/3014371

09 August 2017

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78 APPEAL MADE BY
AIRVOLUTION ENERGY LTD
LAND AT NEW RIDES FARM, LEYSDOWN ROAD, EASTCHURCH ME12 4DD
APPLICATION REF: SW/13/1571**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Paul Griffiths BSc(Hons) BArch IHBC, who held a public local Inquiry which sat on 6-8 April 2016 and 25 October 2016, with the noise evidence and closing submissions being dealt with in writing, and which closed on 24 January 2017, against the decision of Swale Borough Council (“the Council”) to refuse your client’s application for planning permission for the erection of four wind turbines with a maximum blade tip height of up to 126.5 metres together with a substation and control building, associated hardstandings, an improved junction access, connecting internal access tracks, and other related infrastructure, in accordance with application ref: SW/13/1571 dated 20 December 2013.
2. On 24 March 2016, this appeal was recovered for the Secretary of State’s determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

Inspector’s recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed and planning permission granted subject to conditions.
4. For the reasons given below, the Secretary of State agrees with the Inspector’s recommendation to allow the appeal and grant planning permission. A copy of the Inspector’s report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Environmental Statement

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental

Impact Assessment) Regulations 2011 and the supplementary environmental information submitted before the inquiry opened. Having taken account of the Inspector's comments at IR4-5, the Secretary of State is satisfied that the Environmental Statement and Addendum comply with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

Policy and Statutory considerations

6. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case the development plan consists of the adopted Swale Borough Local Plan (2008) (LP). The Secretary of State considers that the development plan policies of most relevance to this case are those described at IR10-14.
7. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'). He has also had regard to ETSU-R-97: *The Assessment and Rating of Noise from Wind Farms* (1996).
8. As this planning application had already been submitted to the Council when the Local Planning Written Ministerial Statement (WMS) of 18 June 2015 was published, the Secretary of State agrees with the Inspector at IR22 that the transitional arrangements specified therein apply.

Emerging plan

9. The Secretary of State agrees with the Inspector at IR15 that, given the advanced stage of the emerging Local Plan (ELP), its policies should be afforded significant weight.

Main Issues

10. The Secretary of State considers that the main issues in this case are those set out by the Inspector at IR160 –161.

The policy approach

11. The Secretary of State has carefully considered the Inspector's reasoning at IR162-163 with regard to the policy approach to be taken. He agrees with the Inspector and the main parties (IR164) that LP Policy U3, the lead policy, can only make sense if LP policies E1, E9 and E19 are interpreted in a subsidiary, and more pragmatic fashion, using the approach taken by LP Policy U3 to the balance between benefits and harm. He also agrees with the Inspector at IR163 that it is evident that ELP Policies DM20 and DM24 follow that path too.

Landscape and Visual Effects

12. For the reasons given at IR164 -173, the Secretary of State agrees with the Inspector that the proposal would not have any significantly harmful impacts in terms of landscape or visual effects on the Landscape Character Areas (LCA) within which the wind turbines would lie, or on others further afield that they would be visible from. He agrees with the Inspector at IR169 that the Council clearly found the existing wind turbines that have been erected adjacent to HMP Stanford Hill acceptable in landscape terms and that it is difficult to square that with the suggestion that the vertical emphasis of the wind turbines

now proposed and their alien moving features will be in complete contrast to the flat and horizontal landscape. He also agrees with the Inspector's findings at IR173 that the wind turbines would be seen as part of the already dominant prison cluster, with its associated wind turbines, rather than as a separate intervention into the landscape of the marshes; and that they would not reduce, to any appreciable degree, the sense of tranquillity and isolation one feels when using the marshland footpaths.

13. Furthermore, the Secretary of State agrees with the Inspector that, for the reasons given at IR174, the proposal would not have any significantly harmful impact in terms of landscape or visual effect on the LCAs in which they would lie or others from which they would be visible. The Secretary of State therefore also agrees with the Inspector at IR175 that it is difficult to understand the Council's position when, cognisant of the existing installation, their own ELP endorses the area within which the appeal site lies as one suitable for large scale wind energy development. Overall, therefore, the Secretary of State agrees with the Inspector that, for the reasons given at IR176, there is clear logic to grouping the proposal with the existing installation adjacent to HMP Swaleside.

Living and Working Conditions

14. The Secretary of State has carefully considered the concerns of the Sheppey Society for Environmental Wellbeing (SSEW) and local residents with regard to the visual impact of the proposal. For the reasons given at IR178-179, the Secretary of State agrees with the Inspector that none of the dwellings would become unattractive places in which to live and that, while the outlook from some dwellings would change as a result of the proposal, it would not be in a way that would have a significant adverse impact on the living conditions of the residents concerned.
15. The Secretary of State has also carefully considered the concerns of the Ministry of Justice (MOJ) about the visual impact of the proposal on prisoners in the cell blocks of HMP Swaleside and that the impact might lead to supervisory difficulties for staff and attendant detriment to working conditions (IR180). However, for the reasons given at IR182-185, the Secretary of State agrees with the Inspector at IR185 that there would be no significant adverse impact on the living conditions of the prisoners concerned as a consequence of the visual presence of the wind turbines so that the working conditions of staff at the prison would be largely unaffected.
16. For the reasons given at IR186-192 with regard to noise impact, the Secretary of State agrees with the Inspector's conclusion at IR193 that, so long as the wind turbines proposed operate within the noise limits set by the suggested condition, with curtailment as necessary, the living conditions of local residents and prisoners, and the working conditions of prison staff, will suffer no significant detriment as a result of noise from the proposal.
17. In coming to this conclusion, the Secretary of State has taken account of the fact that the MoJ is content that, subject to conditions, the proposal would not cause difficulties to prisoners or staff (IR186) or undermine any security systems (IR197). The Secretary of State has also had regard to the concerns expressed to the Inspector by other parties with regard to health effects and shadow flicker, and the Inspector's views on them at IR194-196. Overall, the Secretary of State shares the Inspector's conclusion at IR198 that the proposal would have no significant impact on the living conditions of local residents or inmates of the prisons, or on the working conditions of prison staff through visual impact, noise, or shadow flicker.

Other Matters

18. The Secretary of State agrees with the Inspector's conclusion at IR199 that, with appropriate mitigation and controls that can be secured by condition, no significant effects are anticipated in relation to bird populations overall, so that there would be compliance with LP policies E11 and E12. The Secretary of State similarly shares the Inspector's conclusion at IR200 that there is no evidence that the presence of the existing wind turbines has put anyone off visiting the area and therefore no justification for concluding that the proposed wind turbines would have a negative impact on tourism. Furthermore, for the reasons given at IR201, the Secretary of State agrees with the Inspector that there would be no harmful impacts on the setting of any designated heritage assets as a result of the proposal.

Local Planning WMS of 18 June 2015

19. The Secretary of State has carefully considered the Inspector's comments on the WMS of 18 June 2015 (IR207-209). Whilst acknowledging that the LP does not identify suitable sites for wind energy development, the Secretary of State gives significant weight to the fact that the ELP endorses the proposal insofar as the appeal site is in an area identified on the Energy Opportunities Map as having a high potential for the installation of large scale wind energy. Furthermore, having reviewed the planning appeal documentation relating to the issues identified by the local community, including the cumulative noise impact, landscape and visual amenity, ecological impact and shadow flicker, the Secretary of State is satisfied that the appellant has adequately addressed the concerns raised by the community.

Planning conditions

20. The Secretary of State has given consideration to the Inspector's analysis at IR145-158, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework and that the conditions set out at Annex A should form part of his decision.

Planning balance and overall conclusion

21. The Secretary of State agrees with the Inspector that the proposed scheme accords with LP Policy U3, with no significant departure from LP Policies E1, E9 or E19, and that it therefore accords with the development plan taken as a whole. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

22. In favour of the scheme, the Secretary of State gives significant weight to the benefits that the proposal would bring in terms of the production of renewable energy and by assisting in mitigating the effects of climate change. It would also contribute to energy security and provide direct and indirect economic benefits. Furthermore, he considers that significant weight should be attached to the fact that the adverse impacts have been minimised by grouping the turbines with the existing turbines and in an area identified on the Energy Opportunities Map as a high potential area for the installation of large scale wind energy. He is satisfied that the proposed development would have no significant adverse impact on the landscape or visual effects, the living conditions of local residents

or inmates in the prison complex, or the working conditions of prison staff. Overall, therefore, the Secretary of State agrees with the Inspector that the benefits outweigh what little harm the proposal would cause and that planning permission should be granted subject to the conditions set out at Annex A.

Formal decision

23. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission for the erection of four wind turbines with a maximum blade tip height of up to 126.5 metres together with a substation and control building, associated hardstandings, an improved junction access, connecting internal access tracks and other related infrastructure, in accordance with application ref: SW/13/1571 dated 20 December 2013, subject to the conditions set out at Annex A to this decision letter.

24. 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.

Right to challenge the decision

25. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

26. A copy of this letter has been sent to Swale Borough Council, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Jean Nowak

Authorised by Secretary of State to sign in that behalf

Annex A**Planning Conditions**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: AEL006-Rev 5: Site Location Plan; AEL007-Rev 5: Proposed Layout Plan; PLTUB126.5-93: Typical Wind Turbine Details; PL002: Typical New and Upgraded Track Details; PL003-R1: Typical Turbine and Transformer Foundation Details; PL005: Typical Substation and Control Building Details; and PL007RA: Typical Arched Culvert.
- 3) The permission shall expire, and the development hereby permitted shall be removed in accordance with Condition 4 below, after a period of 25 years from the date when electricity is first exported from the wind turbines (excluding electricity exported during initial testing and commissioning) (the 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 expiry of this permission, a decommissioning and site restoration scheme shall be submitted for the written approval of the local planning authority. The scheme shall make provision for the removal of the wind turbines and associated above ground works approved under this permission and for the removal of the wind turbine foundation to a depth of at least 1 metre below the finished ground level. The scheme shall also include the management and timing of any works and a traffic management plan to address likely traffic impact issues during the decommissioning period, location of material laydown areas, an environmental management plan to include details of measures to be taken during the decommissioning period to protect wildlife and habitats and details of site restoration measures. The approved scheme shall be fully implemented within 24 months of the expiry of this permission.
- 5) If any wind turbine generator hereby permitted ceases to export electricity for a continuous period of 12 months, except where such cessation is as a result of the wind turbine or ancillary equipment being under repair or replacement or as a result of events outside the reasonable control of the operator such as a sustained network outage, or under instruction from the Distribution Network Operator or the wind farm's Licenced Supplier, then a scheme shall be submitted to the local planning authority for its written approval within 3 months of the end of that 12 month period for the repair or removal of the wind turbine(s). The scheme shall include either a programme of remedial works where repairs to the wind turbine are required, or a programme for removal of the wind turbine and associated above ground works approved under this permission and the removal of the wind turbine foundation to a depth of at least 1 metre below finished ground level and for site restoration measures following the removal of the relevant wind turbine(s). The scheme shall thereafter be implemented in accordance with the approved details and timetable.
- 6) No development shall take place until a Construction Method Statement (CMS) 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 CMS. The CMS shall include (a) the control of noise and vibration emissions from construction activities including groundwork and the formation of infrastructure; (b) the control of dust including arrangements to monitor dust emissions from the development site during the construction phase; (c) measures for controlling pollution/sedimentation and responding to any spillages/incidents during the construction phase; (d) measures to control mud deposition offsite from vehicles leaving the site; (e) the control of surface water drainage from parking and hardstanding areas including the design and construction

of oil interceptors (including during the operational phase); (f) the use of impervious bases and bund walls for the storage of oils, fuels and/or chemicals on-site; (g) the means by which users of public rights-of-way would be protected during the construction period; (h) details of the temporary site compound including temporary structures/buildings, fencing, parking, and storage provision to be used in connection with the construction of the development; (i) details of the proposed storage of materials and the disposal of waste and surplus materials; (j) temporary site illumination during the construction period including proposed lighting levels together with a specification of any lighting; (k) details of the phasing of construction works; (l) a site environmental management plan to include details of measures to be implemented during the construction period to protect wildlife and habitats; (m) areas on site designated for the storage, loading, off-loading, parking and manoeuvring of heavy duty plant, equipment and vehicles; (n) details of mitigation measures to be implemented in the event of severe weather conditions (more than 7 days of consecutive frozen ground) to limit construction activities within 500 metres of favoured foraging/roosting areas of waterfowl, waders and target duck species; (o) details of Reasonable Avoidance Measures (RAMs) to be implemented throughout the construction period in order to prevent individual amphibians or reptiles from being inadvertently killed or injured. RAMs shall include the timing of construction works to avoid sensitive periods when amphibians and reptiles are more likely to be present within different habitats, watching briefs, and staged vegetation removal prior to ground works; and (p) details and a timetable for post construction restoration/reinstatement of the temporary working areas and the construction compound.

- 7) No development shall take place until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the local planning authority. The CTMP shall include proposals for the routing of construction traffic, scheduling and timing of movements, details of escorts for abnormal loads, temporary warning signs, temporary removal and replacement of highway infrastructure/street furniture, and the reinstatement of any signs, verges, or other items, displaced by construction traffic.
- 8) Construction work shall only take place between the hours of 0700-1900 Monday to Friday inclusive and 0700-1300 on Saturdays, with no construction work on Sundays or public holidays. Works outside these hours shall only be carried out (a) with the prior written approval of the local planning authority; (b) in an emergency in which case the local planning authority shall be notified by telephone and in writing as soon as reasonably practicable (and in any event within 48 hours) after the emergency is first identified. Such notification shall include details of the emergency and any works carried out and/or proposed to be carried out; (c) if the works are dust suppression; or (d) if the works are for the testing of plant and/or equipment.
- 9) The delivery of any construction materials or equipment for the construction of the development, other than wind turbine blades, nacelles and towers, and concrete for the wind turbine foundations, shall be restricted to between the hours of 0700 and 1900 on Monday to Friday inclusive and 0800 to 1300 on Saturdays. Deliveries outside these hours may only take place with the prior written approval of the local planning authority.
- 10) The blades of all wind turbine generators shall rotate in the same direction. The overall height of each wind turbine shall not exceed 126.5 metres to the tip of the blades when the wind turbine is in the vertical position as measured from ground levels immediately adjacent to the wind turbine base.
- 11) No wind turbine shall be erected until details of the colour(s) and finish(es) of the towers, nacelles and blades and any external transformer units have been submitted to and approved in writing by the local planning authority. No name, sign or logo shall be displayed on the external surfaces of the wind turbines or any external transformer units

- other than those necessary to meet health and safety requirements. The development shall be carried out in accordance with the approved details and retained as such thereafter.
- 12) Construction of the electricity substation shall not commence until details of the design, external appearance, dimensions, materials, and foul and surface water drainage of the building and any associated compound and/or parking area, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and retained as such thereafter.
 - 13) All electrical cabling between the individual wind turbines, and between the wind turbines and the electricity substation, shall be installed underground.
 - 14) No development shall commence until a scheme for post construction bird monitoring (of bird strike bird disturbance and bird numbers during summer and winter), to verify the predicted environmental effects of the construction and operation of the turbines on land at Great Bells Farm has been submitted to and approved in writing by the local planning authority. The scheme shall include provisions for management actions should there be a demonstrable detrimental effect on the bird populations at the Great Bells Farm site from the operation of development hereby approved. The scheme shall also include a timetable for the implementation of any monitoring or management requirements. The scheme shall be implemented as approved.
 - 15) No development shall commence until a Habitat Management Plan (HMP) has been submitted to and approved in writing by the local planning authority. The HMP shall include details of habitat enhancement for the 24 hectare area of land referred to as field 14 on Figure 8.3 of the Environmental Statement addendum, biodiversity enhancement measures defined in Table 7.22 and illustrated on Figure 7.6 of the Environmental Statement and Table 8.51 of the Environmental Statement Addendum, and a timetable. The scheme shall be implemented as approved.
 - 16) No development shall commence until a management plan to maintain the habitat potential of Great Bells Farm has been submitted to and approved in writing by the local planning authority. The management plan shall include suitable habitat mitigation or compensation measures. Monitoring and any mitigation required shall be carried out for the duration of the development and operation of the wind turbines in full accordance with the approved scheme.
 - 17) Vegetation clearance shall be undertaken outside of the breeding bird season (1st March to 31st August inclusive). Where this cannot be avoided an independent ornithologist will be appointed to undertake a pre-vegetation clearance survey to identify the presence of any nests being built or in use, details of which shall be submitted to and approved in writing by the local planning authority prior to any clearance works taking place during bird breeding season. To avoid any potential disturbance to Schedule 1 species, notably marsh harrier, in advance of any construction works to be undertaken during the breeding season, all areas within 500m of construction works will also be subject to a pre-construction survey undertaken by a competent ornithologist, to identify any nesting locations for any Schedule 1 protected species. If identified work exclusion zones will be established around nest sites, in line with best practice guidance for the species, in consultation with the appointed competent ecologist. A Breeding Bird Protection Plan (BBPP) would be implemented with the aim of protecting breeding birds from disturbance and ensuring compliance with nature conservation law during the construction phase (for example during vegetation removal).
 - 18) No development shall commence until, a site walk-over has been made by an independent ecologist to check for any changes to baseline conditions; this will include a specific check for badger setts, otter holts and water vole burrows in the vicinity of construction areas,

using standard survey methods and recording all evidence or potential evidence of the presence of these species. A survey radius of 100m from all construction works locations is proposed. If any such features are identified, the survey results will be reviewed to determine whether any additional mitigation measures will be necessary to ensure legal compliance.

- 19) No development shall commence until a scheme detailing the protection and/or mitigation of damage to populations of water vole, a protected species under The Wildlife and Countryside Act 1981 as amended and its associated habitat during construction works and decommissioning including details of the methodology and timing has been submitted to and approved in writing by the local planning authority. The development shall take place in full accordance with the approved scheme.
- 20) Prior to the erection of the first wind turbine written confirmation shall be provided to the local planning authority of the proposed date of commencement of and completion of the development, and the height above ground level, and the position of each wind turbine in latitude and longitude.
- 21) No development shall commence until a scheme for either low intensity 32.5 candela red lights visible from ground level and medium intensity 200 candela red lights visible above hub height, or infra-red warning lighting, has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in full thereafter.
- 22) Prior to the operation of the wind turbines, details of a scheme to notify Eastchurch Airfield of wind turbine operation, prevailing wind speeds and direction determined periodically using data gathered by the development hereby permitted, shall be submitted to and approved in writing by the local planning authority. The scheme shall also include details of procedures where it may be prudent to reduce or shut down the operation of the wind turbines in an emergency situation should aircraft encroach closer than 16 rotor diameters from turbines. The approved scheme shall be implemented as approved.
- 23) No wind turbine shall be erected until an agreement has been reached between the wind farm operator and London Southend Airport with respect to a Radar Mitigation Solution, and the existence of such an agreement has been confirmed in writing to the local planning authority by both the wind farm operator and London Southend Airport. The wind turbines will not be brought into use until the requirements of the Radar Mitigation Solution have been implemented in full as confirmed in writing by the wind farm operator together with London Southend Airport to the local planning authority. For the purposes of this condition, Radar Mitigation Solution means a technical or commercial solution put in place to mitigate the impact on the air traffic control radar at London Southend Airport.
- 24) No development shall commence until a written scheme of investigation and programme of archaeological works has been submitted to and approved in writing by the local planning authority. The written scheme of investigation and programme of archaeological work shall be implemented as approved.
- 25) Prior to the First Export Date a scheme providing for the investigation and alleviation of any electro-magnetic interference to any television signal caused by the operation of the wind turbines shall be submitted to and agreed in writing by the local planning authority. The scheme shall provide for the investigation by a qualified television engineer, within a set timetable, 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 existed or had planning permission at the time permission was granted, 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 to be attributable to the wind turbines hereby approved, mitigation works shall

be carried out in accordance with a scheme, which shall include a timetable, which has first been agreed in writing by the local planning authority.

- 26) No development shall commence until: (1) a written scheme has been submitted to and approved in writing by the local planning authority setting out a protocol for the assessment of shadow flicker in the event of any complaint to the local planning authority from the owner or occupier of any building which lawfully exists or had planning permission at the date of this permission. The written scheme shall include remedial measures to alleviate any shadow flicker attributable to the development. Operation of the wind turbines shall take place in accordance with the approved protocol; and (2) a shadow flicker shut down protocol to control shadow flicker/throw effects at Swaleside and Elmley prisons shall be submitted to and approved in writing by the local planning authority. The protocol shall include the following: (a) identification and detailed modelling of all potential shadow flicker/throw receptors within the shadow flicker zone of ten rotor diameters, including prison cells and CCTV equipment at Swaleside and Elmley prisons. This model is to be used to produce detailed wind turbine shut down logs to prevent shadow flicker/throw effects occurring at shadow flicker receptors within Swaleside and Elmley prisons; and (b) where unforeseen shadow flicker/throw effects occur within the prison buildings identified as requiring mitigation by the Prison Authority the following procedures will be implemented: (i) the Developer shall use all reasonable endeavours to relieve the loss of amenity caused by the shadow flicker attributable to the Development; (ii) within fourteen days of receiving a complaint from the Prison Authority, the Developer shall notify the local planning authority and Prison Authority in writing as to the course of action it shall take to investigate any problems associated with shadow flicker arising from the development; (iii) within twenty eight days of receiving a complaint from the Prison Authority, the developer shall notify the local planning authority and Prison Authority in writing as to the course of action it shall take to mitigate problems associated with shadow flicker arising from the development; (iv) industry standard mitigation options to be considered by the developer will include: increasing/providing shielding between the identified receptor and the development (by way of vegetation, other obstacles or window blinds or screens within buildings) in order to control or prevent shadow flicker occurring within occupied buildings requiring mitigation for shadow flicker; and/or upgrading or replacing CCTV or other security apparatus; and/or further operational controls where a selected wind turbine or turbines are programmed to be shut-down at times when shadow flicker effects have been demonstrated to occur and the sun is bright enough to cause a shadow flicker effect (light intensity will be monitored with external solar sensors).
- 27) The wind turbines and their associated infrastructure shall be situated within 30m of the positions shown in drawing AEL007- Rev 5 Proposed Layout Plan. Any proposed wind turbine movements between 31 – 50m will be subject to the prior written approval of the local planning authority. No turbine shall be micro-sited to a position within the North Kent Marshes Special Landscape Area.
- 28) Finished floor levels of the permanent substation building and transformers shall be raised a minimum of 150mm above ground levels.
- 29) No development shall commence until the area between the nearside carriageway edge, and lines drawn between a point 4.5m back from the carriageway edge along the centre line of the access, and points on the carriageway edge 90m from and on both sides of the centre line of the access, have been cleared of obstruction to visibility at and above a height of 1.05m above the nearside carriageway level. This area shall be thereafter maintained free of obstruction at all times.
- 30) The rating level of noise immissions from the combined effects of the wind turbines hereby permitted (including the application of any tonal penalty), when determined in accordance

with the attached Guidance Notes, shall not exceed the values for the relevant integer wind speed set out in or derived from Tables 1 and 2 attached to these conditions and:

- (A) Prior to the First Export Date, the 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 local planning authority 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 at least the date, time and location that the complaint relates to, 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. Within 14 days of receipt of the written request of the local planning authority made under this paragraph (B), the wind farm operator shall provide the information relevant to the complaint logged in accordance with paragraph (H) to the local planning authority in the format set out in Guidance Note 1(e).
- (C) Where there is more than one property at a location specified in Tables 1 and 2 attached to this condition, the noise limits set for that location shall apply to all dwellings at that location. Where a dwelling to which a complaint is related is not identified by name or location in the Tables attached to these conditions, the 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 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) Prior to the submission of the independent consultant's assessment of the rating level of noise immissions pursuant to paragraph (F) of this condition, the wind farm operator shall submit to the Local Planning Authority for written approval a proposed assessment protocol setting out the following: (i) the range of

meteorological and operational conditions (the range of wind speeds, wind directions, power generation and times of day) to determine the assessment of rating level of noise immissions; and (ii) a reasoned assessment as to whether the noise giving rise to the complaint contains or is likely to contain a tonal component. The proposed range of conditions shall be those which prevailed during times when the complainant alleges there was disturbance due to noise, having regard to the information provided in the written request of the local planning authority under paragraph (B), and such others as the independent consultant considers necessary to fully assess the noise at the complainant’s property. The assessment of the rating level of noise immissions shall be undertaken in accordance with the assessment protocol approved in writing by the local planning authority and the attached Guidance Notes.

- (F) 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) of this condition unless the time limit is extended in writing by the local planning authority. The assessment shall include all data collected for the purposes of undertaking the compliance measurements, such data to be provided in the format set out in Guidance Note 1(e) of the Guidance Notes. The instrumentation used to undertake the measurements shall be calibrated in accordance with Guidance Note 1(a) and certificates of calibration shall be submitted to the local planning authority with the independent consultant’s assessment of the rating level of noise immissions. Where a further assessment of the rating level of noise immissions from the wind farm is required pursuant to Guidance Note 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 (F) above unless the time limit for the submission of the further assessment has been extended in writing by the Local Planning Authority.
- (G) The wind farm operator shall continuously log power production, wind speed and wind direction, all in accordance with Guidance Note 1(d). These data shall be retained for a period of not less than 24 months. The wind farm operator shall provide this information in the format set out in Guidance Note 1(e) to the local planning authority on its request, within 14 days of receipt in writing of such a request.

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

Table 1 - Between 07:00 and 23:00 – Free-field Noise Limit, dB LA90, 10-minute

Location	Standardised wind speed at 10 meter height (m/s) within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
Nearest prison cell at Swaleside 598713, 169779	40	40	40	40.	41.	42.	43	43	43	43	43	43
Nearest prison cell at Elmley Prison 598566, 169288	40	40	40	40.	41.	42.	43	43	43	43	43	43
Nearest prison cell at Standford Prison 598289, 169691	40	40	40	40.	41.	42.	43	43	43	43	43	43
New Rides Bungalow 599382, 170450	35	35	35	35	36	38	40	43	45	45	45	45
New Rides Farm 599280, 170156	45	45	45	45	45	45	45	45	45	45	45	45
Residential properties on Range Road, Orchard Road, Brabazon Way, Church Road, Kent View Drive 598676,	35	35	35	37	38	39	42	45	45	45	45	45

Table 2 - Between 23:00 and 07:00 – Free-field Noise Limit dB LA90, 10-minute

Location	Standardised wind speed at 10 meter height (m/s) within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
Nearest prison cell at Swaleside	40	40	40	40	40	40	40	41	42.6	43	43	43
Nearest prison cell at Elmley Prison 598566, 169288	40	40	40	40	40	40	40	41	42.6	43	43	43
Nearest prison cell at Standford Prison, 598289,	40	40	40	40	40	40	40	41	42.6	43	43	43
New Rides Bungalow 599382, 170450	43	43	43	43	43	43	43	43	45	45	45	45
New Rides Farm 599280, 170156	45	45	45	45	45	45	45	45	45	45	45	45
Residential properties on Range Road, Orchard Road, Brabazon Way, Church Road, Kent	43	43	43	43	43	43	43	44	45	45	45	45

Note to Tables 1 & 2: The geographical co-ordinate references set out in these tables are provided for the purpose of identifying the general location of dwellings to which a given set of noise limits applies. The wind speed at 10 metres height within the site refers to wind speed measured directly at 10 metres height.

Guidance Notes for Noise Condition

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

Note 1

(a) Values of the LA90,10-minute noise statistic should be measured at the complainant’s property (or an approved alternative representative location as detailed in Note 1(b)), using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using

the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This should be calibrated before and after each set of measurements, using a calibrator meeting BS EN 60945:2003 “Electroacoustics – sound calibrators” Class 1 with PTB Type Approval (or the equivalent UK adopted standard in force at the time of the measurements) and the results shall be recorded. Measurements shall be undertaken in such a manner to enable a tonal penalty to be calculated and applied in accordance with Guidance Note 3.

(b) The microphone shall be mounted at 1.2 - 1.5 metres above ground level, fitted with a two-layer windshield or suitable equivalent approved in writing by the local planning authority, and placed outside the complainant’s dwelling. Measurements should be made in “free field” conditions. To achieve this, the microphone shall be placed at least 3.5 metres away from the building facade or any reflecting surface except the ground at the approved measurement location. In the event that the consent of the complainant for access to his or her property to undertake compliance measurements is withheld, the wind farm operator shall submit for the written approval of the local planning authority details of the proposed alternative representative measurement location prior to the commencement of measurements and the measurements shall be undertaken at the approved alternative representative measurement location.

(c) The LA90,10-minute measurements should be synchronised with measurements of the 10-minute arithmetic mean wind speed and wind direction data and with operational data logged in accordance with Guidance Note 1(d) and rain data logged in accordance with Note 1(f).

(d) To enable compliance with the conditions to be evaluated, the wind farm operator shall continuously log arithmetic mean wind speed in metres per second and wind direction in degrees from north at hub height for each turbine and arithmetic mean power generated by each turbine, all in successive 10-minute periods. Unless an alternative procedure is previously agreed in writing with the local planning authority, this hub height wind speed, averaged across all operating wind turbines, shall be used as the basis for the analysis. All 10 minute arithmetic average mean wind speed data 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 Guidance Note 2, such correlation to be undertaken in the manner described in Guidance Note 2. All 10-minute periods shall commence on the hour and in 10- minute increments thereafter.

(e) Data provided to the local planning authority in accordance with paragraphs (E) (F) (G) and (H) of the noise condition shall be provided in comma separated values in electronic format.

(f) A data logging rain gauge shall be installed in the course of the independent consultant undertaking an assessment of the level of noise immissions. The gauge shall record over successive 10-minute periods synchronised with the periods of data recorded in accordance with Note 1(d). The wind farm operator shall submit details of the proposed location of the data logging rain gauge to the local planning authority prior to the commencement of measurements.

Note 2

(a) The noise measurements should be made so as to provide not less than 20 valid data points as defined in Note 2 paragraph (b).

(b) Valid data points are those measured during the conditions set out in the assessment protocol approved by the local planning authority under paragraph (E) of the noise condition but excluding any periods of rainfall measured in accordance with Note 1(f).

(c) Values of the LA90,10-minute noise measurements and corresponding values of the 10-minute standardised ten metre height wind speed for those data points considered valid in accordance with Note 2(b) shall be plotted on an XY chart with noise level on the Y-axis and wind speed on the X-axis. A least squares, “best fit” curve of an order deemed appropriate by the independent consultant (but which may not be higher than a fourth order) shall be fitted to the data points to define the wind farm noise level at each integer speed.

Note 3

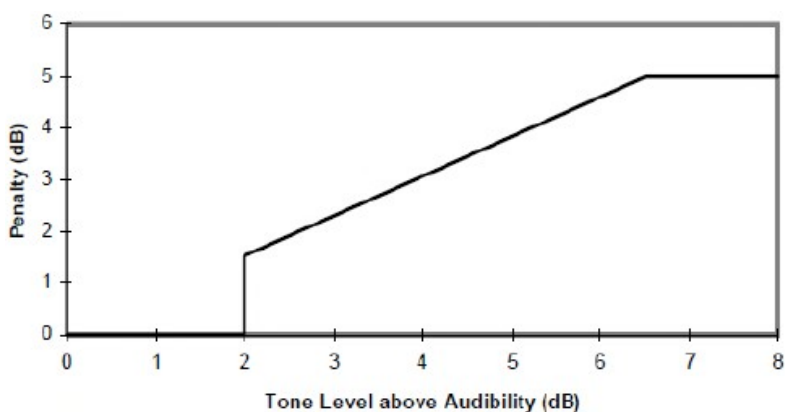
(a) Where, in accordance with the approved assessment protocol under paragraph (E) of the noise condition, noise immissions at the location or locations where compliance measurements are being undertaken contain or are likely to contain a tonal component, a tonal penalty shall be calculated and applied using the following rating procedure.

(b) For each 10-minute interval for which LA90, 10-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 average tone level above audibility shall be calculated for each integer wind speed bin. Samples for which the tones were below the audibility criterion or no tone was identified, a value of zero audibility shall be substituted.

(e) The tonal penalty is derived from the margin above audibility of the tone according to the figure below derived from the average tone level above audibility for each integer wind speed.



Note 4

(a) If a tonal penalty is to be applied in accordance with Note 3 the rating level of the turbine noise at each wind speed is the arithmetic sum of the measured noise level as determined from the best fit curve described in Note 2 and the penalty for tonal noise as derived in accordance with Note 3 at each integer wind speed within the range set out in the approved assessment protocol under paragraph (E) of the noise condition.

(b) If no tonal penalty is to be applied then the rating level of the turbine noise at each wind speed is equal to the measured noise level as determined from the best fit curve described in Note 2.

(c) If the rating level at any integer wind speed lies at or below the values set out in the Tables attached to the conditions or at or below the noise limits approved by the local planning authority for a complainant’s dwelling in accordance with paragraph (C) of the noise condition then no further action is necessary. In the event that the rating level is above the limit(s) set out in the Tables attached to the noise conditions or the noise limits for a complainant’s dwelling approved in accordance with paragraph (C) of the noise condition, the independent consultant shall undertake a further assessment of the rating level to correct for background noise so that the rating level relates to wind turbine noise immission only.

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

- i. Repeating the steps in Note 2, with the wind farm switched off, and determining the background noise (L3) at each integer wind speed within the range set out in the approved noise assessment protocol under paragraph (E) of this condition.
- ii. The wind farm noise (L1) at this speed shall then be calculated as follows where L2 is the measured level with turbines running but without the addition of any tonal penalty:

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

- iii. The rating level shall be re-calculated by adding the tonal penalty (if any is applied in accordance with Note 3) to the derived wind farm noise L1 at that integer wind speed.
- iv. If the rating level after adjustment for background noise contribution and adjustment for tonal penalty (if required in accordance with note (iii) above) at any integer wind speed lies at or below the values set out in the Tables attached to the conditions or at or below the noise limits approved by the local planning authority for a complainant’s dwelling in accordance with paragraph (C) of the noise condition then no further action is necessary. If the rating level at any integer wind speed exceeds the values set out in the Tables attached to the conditions or the noise limits approved by the local planning authority for a complainant’s dwelling in accordance with paragraph (C) of the noise condition then the development fails to comply with the conditions.

Report to the Secretary of State for Communities and Local Government

by Paul Griffiths BSc(Hons) BArch IHBC

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

Date: 5 May 2017

Town and Country Planning Act 1990

Appeal by

Airvolution Energy Ltd

Against the Decision of

Swale Borough Council

Inquiry opened on 6 April 2016

Land at New Rides Farm, Leysdown Road, Eastchurch ME12 4DD

File Ref: APP/V2255/W/15/3014371

File Ref: APP/V2255/W/15/3014371

Land at New Rides Farm, Leysdown Road, Eastchurch ME12 4DD

- 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 Airvolution Energy Ltd against the decision of Swale Borough Council.
- The application Ref. SW/13/1571, dated 20 December 2013, was refused by notice dated 3 February 2015.
- The development proposed is the erection of four wind turbines with a maximum blade tip height of up to 126.5 metres together with a substation and control building, associated hardstandings, an improved junction access, connecting internal access tracks, and other related infrastructure.

Summary of Recommendation: The appeal be allowed, and planning permission granted subject to the conditions in Annex C.

Procedural Matters

1. The Inquiry opened on 6 April 2016 and sat on that day, as well as 7 and 8 April 2016. There then followed a significant adjournment. The Inquiry was programmed to continue on 25 and 26 October 2016 but the submission of documents relating to ongoing negotiations between the appellant and the Ministry of Justice¹, and the Wind Turbine AM Review Phase 1 Report² rendered that impossible. To avoid a further adjournment, I agreed to conduct the public session of the Inquiry on the evening of 25 October 2016, as planned, but then to deal with the noise evidence and closing submissions in writing, in accordance with an agreed timetable. To that end, I adjourned the Inquiry on the evening of 25 October 2016 and it was subsequently closed in writing on 24 January 2017.
2. I carried out an unaccompanied site visit to the appeal site and its surroundings, taking in many of the footpaths referred to in evidence³ on the afternoon of 7 April 2016. I carried out an accompanied site visit to HMP Standford Hill and HMP Swaleside, hosted by the MoJ on the afternoon of 26 October 2016.
3. On 24 March 2016, in exercise of powers under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990, the Secretary of State⁴ directed that he would determine the appeal instead of an Inspector. The reason given for the direction was that the appeal involves proposals against which another Government department⁵ has raised major objections or has a major interest.
4. As set out in the Statement of Common Ground⁶, the proposal constitutes EIA development⁷. Accordingly, the originating planning application was accompanied by an Environmental Statement⁸.

¹ Referred to hereafter as MoJ ID34

² ID35

³ ID18

⁴ Referred to hereafter as SoS

⁵ That is the MoJ

⁶ ID11 referred to hereafter as SoCG

⁷ For the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011 (SI 2011/1824)

⁸ Referred to hereafter as ES CD 12.1

5. This was supplemented with further information in ES Addenda⁹. There is no suggestion from any party to the Inquiry that the ES, along with the ES Addenda, fail to meet the requirements of the relevant Regulations. I agree and have taken it all into account in arriving at my recommendation.

The Site and Surroundings

6. The development would be located approximately 1.2km south of the village of Eastchurch and the B2231, and between 0.45 and 0.9 km south south-east of New Rides Farm, on the Isle of Sheppey. The appeal site is currently in agricultural use and is surrounded by land associated with the farm.
7. To the west of the appeal site lies the Sheppey Prison Cluster, made up of HMP Swaleside, HMP Elmley, and HMP Standford Hill. To the north of the prison cluster are dwellings fronting and leading off the main access road. There are two existing 121m high wind turbines to the south-west of HMP Standford Hill.

The Proposals

8. In short, the proposal consists of four wind turbines each with a maximum height to blade tip of 126.5 metres; a reinforced concrete base for each wind turbine; minor improvements to the existing site access and junction with the B2231; upgrades to the existing farm track running through the site and new internal tracks to the wind turbines leading off it; underground cabling to connect the wind turbines to a new electricity substation; hard-standings both temporary and permanent near the base of each wind turbine to facilitate the use of a crane for installation; and a temporary construction compound near the site entrance¹⁰.
9. The construction period would be around 12 months and the anticipated operation life of the wind farm would be 25 years.

Planning Policy

10. The development plan for the area includes the Swale Borough Local Plan¹¹, adopted in February 2008. LP Policy E1 sets out general development criteria and expects all development to, of relevance here, respond positively by reflecting the positive characteristics and features of the site and locality; protect and enhance the natural and built environments; be well sited and of a scale, design and appearance that is appropriate to the location with a high standard of landscaping; and cause no demonstrable harm to residential amenity and other sensitive uses or areas.
11. LP Policy E9 says that the quality, character and amenity value of the wider landscape of the Borough will be protected and where possible enhanced. In the countryside where the appeal site lies, development proposals are expected to be informed by and sympathetic to local landscape character and quality; consider the guidelines contained in the Council's Landscape Character Assessment and Guidelines Supplementary Planning Document so as to contribute to the restoration, creation, reinforcement and conservation, as appropriate, of the landscape likely to be affected; safeguard or enhance landscape elements that

⁹ CD12.2 and CD12.10

¹⁰ A detailed description of the development can be found in Chapter 3 of the ES CD12.1

¹¹ Referred to hereafter as LP; a complete copy is attached as ID47

- contribute to the distinctiveness of the locality or the Borough; remove features which detract from the character of the landscape; and minimise the adverse impacts of development upon landscape character.
12. LP Policy E19 expects development to be of high-quality design. Development proposals should, of application here, create safe, accessible, comfortable, varied and attractive places; enrich the qualities of the existing environment by promoting and reinforcing local distinctiveness and strengthening the sense of place; make efficient and prudent use of natural resources; and provide development that is appropriate to its context in respect of scale, height and massing, both in relation to its surroundings, and its individual details.
 13. LP Policy U3 deals specifically with renewable energy and is permissive where schemes demonstrate environmental, economic and social benefits and minimise adverse impacts. Amongst a range of matters to be considered are the likely decommissioning requirements and the ability to ensure restoration of the site; the availability of alternative, potentially more beneficial sites, especially those involving previously developed land; power transmission requirements; potential electromagnetic interference; noise generation, air emissions and odour; and the contribution made to enhancing landscape and built character and nature conservation interests.
 14. LP Policy E11 seeks to protect the Borough's biodiversity and geological interests in general terms while LP Policy E12 deals with sites designated for their importance to biodiversity or geological conservation, including European Sites, proposed European Sites, Ramsar sites, Sites of Special Scientific Interest, Local Nature Reserves, and Sites of Nature Conservation Interest, amongst others.
 15. The emerging Local Plan: Bearing Fruits 2031¹² is at an advanced stage in the process towards adoption and, bearing in mind the Inspector's interim findings¹³, it can attract significant weight. Chapter 7.6 of the ELP recognises the general drive towards renewable energy production and the Government's commitment to reducing carbon emissions. It notes that the Swale Renewable Energy and Sustainable Development Study¹⁴ and the Council's Sustainable Design and Construction Guidance¹⁵ both highlight the considerable opportunities within the Borough for renewable energy generation suggesting that it could source 30% of its electricity and 12% of its heat from renewables by 2020.
 16. The supporting text to ELP Policy DM20¹⁶ and the Swale Energy Opportunities Map contained within the Swale Renewable Energy and Sustainable Development Study¹⁷ explain the considerable emphasis which the Council places upon the need to increase energy production from renewable and low carbon sources. The policy itself supports proposals for the development of renewable and low carbon energy where analysis of all impacts and methods to avoid and mitigate harm is demonstrated; and it is shown how opportunities highlighted in the Borough's Energy Opportunities Map have been exploited, with priority given to previously-

¹² Referred to hereafter as ELP CD3.8

¹³ ID12

¹⁴ CD3.7

¹⁵ CD3.4

¹⁶ CD3.8 paragraphs 7.6.13 to 7.6.24

¹⁷ CD3.7 Figure E7

developed land, though development on agricultural land is not ruled out altogether. Landscape, visual and heritage impacts, including cumulative impacts, are expected to be minimised and mitigated to acceptable levels as are any potential impacts on residential amenity, including noise. Applications are meant to demonstrate evidence of community involvement.

17. ELP Policy DM24 aims to conserve and enhance what it terms, valued landscapes. For non-designated landscapes, like that in which the appeal site is situated, planning permission will be granted for development proposals subject to the minimisation and mitigation of adverse landscape impacts; and when significant adverse impacts remain, that the social and/or economic benefits of the proposal significantly and demonstrably outweigh the landscape character and value of the area. For all landscapes, the design of the development should be informed by landscape and visual impact assessment, taking opportunities to enhance the landscape, where possible.
18. The approach of the ELP in particular, chimes with that of the National Planning Policy Framework¹⁸. Following on from a raft of Government policy¹⁹, one of the core principles of the Framework is that planning should support the transition to a low carbon future in a changing climate, and encourage the use of renewable resources (for example, by the development of renewable energy).
19. Paragraph 93 tells us that planning plays a key role in helping shape places to secure radical reductions in greenhouse gas emissions, minimising vulnerability, and providing resilience to the impacts of climate change, and supporting the delivery of renewable energy and associated infrastructure. This, we are told, is central to the economic, social and environmental dimensions of sustainable development.
20. As an aid to decision-making, paragraph 98 says that we should not require applicants for energy development to demonstrate the overall need for renewable energy and recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions. In very simple terms, applications should be approved if impacts are (or can be made) acceptable.
21. Other core principles of the Framework include the recognition of the intrinsic character and beauty of the countryside and the need to secure high-quality design and a good standard of amenity for all existing and future occupiers of land and buildings. Paragraph 109 says that the planning system should contribute to and enhance the natural and local environment by, amongst other things, protecting and enhancing valued landscapes and minimising impacts on biodiversity and providing net gains where possible.
22. There is also the Written Ministerial Statement of 18 June 2015²⁰ to consider. For proposals like that at issue in this appeal, where the transitional provisions apply, we are told that local planning authorities²¹ can find the proposal acceptable if, following consultation, they are satisfied it has addressed the planning impacts identified by affected local communities and therefore has their backing.

¹⁸ CD1 Referred to hereafter as the Framework

¹⁹ CD2.2, CD2.3, CD2.4, CD5.4, CD5.6, and CD5.29 in particular

²⁰ Referred to hereafter as WMS of June 2015 CD2.6 and ID13

²¹ I take this to include all decision-makers

The Case for Swale Borough Council

23. The Council outlined its case in opening and closing statements to the Inquiry²² and provided evidence on landscape and planning matters²³. What follows here is a brief summary of their position.

Introduction

24. Following the reconsideration of the matter at the Council's planning committee on 13 August 2015, it was clarified that planning permission was refused on the basis that: *The proposed development by virtue of the location and nature of the development would give rise to a cumulative impact, in combination with the two existing PFR turbines (approved under reference SW/10/1567), leading to demonstrable harm to the landscape. The development is therefore contrary to.....*²⁴.
25. It is important to understand what is meant by 'cumulative impact'. The Council's position²⁵ is that the reason for refusal is concerned with the impact of the four wind turbines at issue, alongside the two existing wind turbines. However, that is not to say that the four wind turbines proposed would be acceptable if the existing wind turbines were not in place.
26. There is broad agreement between the main parties on the wider cumulative impact beyond the two existing wind turbines referred to²⁶. The Council accepts the appellant's assessment of the cumulative landscape and visual impacts of the proposals at issue with these other operational and approved wind turbines.

Landscape and Visual Impact Assessment

27. In cases like this, the most persuasive evidence on landscape and visual impact is that gleaned by the Inspector on the site visit. The Council is confident that the having visited the site and its surroundings, the Inspector will agree with the Council that landscape effects will be substantial as there will be uninterrupted views of the wind turbines from most of the marshes to the south. The vertical emphasis of the wind turbines and their alien moving features will be in complete contrast to the flat and horizontal landscape. For similar reasons there would be substantial and moderate/substantial visual impacts.
28. What is often of more use to the decision-maker is an understanding of how it is that two experienced professionals can reach such different conclusions about the impact of the same proposal. The Council²⁷ is critical of some aspects of the appellant's approach and rationale²⁸. These criticisms need to be considered in the context of the fact that the appellant's witness does not purport to have carried out a full Landscape and Visual Impact Assessment²⁹ as the Council has.

²² ID9 and ID41

²³ C1-C4

²⁴ The previous reference to human health to sufferers of tinnitus and hearing aid users having been withdrawn

²⁵ As articulated by Mr La Dell (C1 and C2)

²⁶ Appendix 4 of the SoCG (ID11) refers

²⁷ Through Mr LaDell

²⁸ In the evidence of Mr Truscott (A1)

²⁹ Referred to hereafter as LVIA (C1 and C2) and accepted by Mr Truscott in x-e

29. The main criticism the Council makes of the appellant's landscape evidence is that there has been a failure to assess the baseline. GLVIA3³⁰ advises in paragraph 3.15: *'For the landscape baseline the aim is to provide an understanding of the landscape in that area that may be affected – its constituent elements, its character, and the way that it varies spatially, its geographic extent, its history (which may require its own specialist study), its condition, the way in which the landscape is experienced, and the value attached to it'*.
30. Paragraph 5.3 adds: *'Baseline studies for assessing landscape effects require a mix of desk study and fieldwork to identify and record the character of the landscape and the elements, features, and aesthetic and perceptual factors which contribute to it. They should also deal with the value attached to the landscape. The methods used should be appropriate to the context into which the development proposal will be introduced and in line with current guidance and terminology'*.
31. The appellant accepted³¹ that the 'Baseline', 'Principal Positive Components', 'Principal Negative Components', and 'Landscape Value and Sensitivity'³² for the 4 Landscape Character Areas³³ which the Council takes such a different view on with regard to landscape effects, namely, Elmley Marshes, Leysdown and Eastchurch Marshes, South Sheppey Saltmarshes and Mudflats, and Spitend Marshes (collectively the Swale Marshes), are taken in each case more or less verbatim from the Swale Landscape Character and Biodiversity Appraisal of September 2011³⁴. The appellant has not followed the GLVIA guidance about how to establish the landscape baseline; it has been taken from another source.
32. Having taken the Jacobs Report for the purposes of establishing the baseline, the appellant then takes a very different stance in assessing the sensitivity of the landscape in the 4 LCAs specifically in respect of the four wind turbines proposed; the difference between a generic and a specific sensitivity assessment accounting for the difference in each case between a 'high' sensitivity in each case in the Jacobs Report, and finding of medium or medium/low in the specific. This largely accounts for the different judgements reached by the appellant and the Council.
33. However, nowhere does the appellant's witness explain how the specific sensitivity assessment has been arrived at, beyond professional judgement. The methodology is transparent, but the judgement is not.
34. On top of that GLVIA3 requires the landscape assessment to be specific to the development proposed in the same way that the specific sensitivity assessment must be³⁵. Clearly, the appellant's witness has not made his own assessment of the landscape baseline, relying instead on the Jacobs Report. This takes no account of the four wind turbines proposed.

³⁰ CD10.15

³¹ Mr Truscott in x-e

³² Table at Appendix 6.4 C2

³³ Referred to hereafter as LCAs

³⁴ Also known as the Jacobs Report CD3.1

³⁵ CD10.15 paragraph 5.3 refers

35. Moreover, it is worth considering the Jacobs Report in detail and how it reaches the finding of 'high' sensitivity and then whether the addition of the two existing wind turbines can really make such a difference that the addition of a further four wind turbines leads to a sharp decrease in sensitivity.
36. In the Jacobs Report, for Elmley Marshes, the high sensitivity finding is based on the fact that: '*Features within the landscape, although rare, are highly visible where they exist due to the flat and open nature of the land*'; for Leysdown and Eastchurch Marshes: '*this is a highly sensitive landscape, largely because of the extensive visibility enabled by the flat and treeless landscape.....along with the high visibility, the lack of built development provokes a remote and tranquil character*'; for South Sheppey Saltmarshes and Mudflats: '*It is a highly sensitive landscape that is unsheltered and highly visible from long distances*'; and for Spitend marshes: '*this is a unique, very distinct and tranquil landscape visible from long distances*'³⁶.
37. Given the emphasis on the high degrees of visibility within the landscape, because it is so flat and featureless, it is the Council's case that the appellant has underestimated the sensitivity of the landscape of the Swale Marshes and as a consequence, underestimated the adverse impact the proposal would have on that landscape.
38. If the true nature of the landscape, as set out in the Jacobs Report, is properly appreciated, and the high degrees of visibility across it in particular, the suggestion that effects would be localised, that is within 2-3 km south, east and west³⁷, confirms, in the Council's view, that the impact of the proposal on the landscape of the Swale Marshes has not been adequately addressed.
39. This is supported by the extraordinary failure of the appellant to include viewpoints from the Elmley Farm to New Rides Farm Public Right of Way³⁸ on the basis that it appeared to be not well used, possibly because it fails to link up with the road to the north of New Rides Farm.
40. It can be seen that the appellant has not properly appreciated the landscape and as a consequence, failed to adequately assess the impacts of the proposal upon it. This lends weight to the Council's conclusion that the introduction of further such dominant, vertical structures would cause demonstrable harm to this very flat landscape.

Planning

41. There is general agreement between the Council and the appellant that the relevant policies of the LP, and in particular, LP Policies E1, E9, E19 and U3, are broadly consistent with the Framework, but for a few exceptions. Broadly speaking, these policies seek to encourage renewable energy projects but to balance any resultant harm to the landscape against the benefits. The exceptions concern the inclusion of words or phrases such as 'minimise' in LP Policy U3, and 'protect and enhance' in LP Policy E1.

³⁶ CD3.1

³⁷ Confirmed by Truscott in x-e

³⁸ Referred to hereafter as PRoW

42. So long as these words and phrases are interpreted in line with the way in which 'minimise' is intended in ELP Policy DM20, so that adverse impacts are 'minimised and mitigated to acceptable levels'; or that 'enhancement' in the context of necessarily very tall wind turbines is applied pragmatically, tempered by the essential nature of a wind turbine, then the development can be assessed against these policies without necessarily being found to conflict with the policy.
43. There will nevertheless be a measure of inconsistency between the LP and the Framework and the Council accepts that this might limit the weight to be attached to the LP. Any diminution should be modest given that the broad thrust of the LP is to support the move towards a low carbon future by supporting renewable energy proposals, while ensuring that landscape and visual impacts are satisfactorily addressed.
44. ELP Policy DM20 is consistent with the Framework but ELP Policy DM24 needs to be interpreted pragmatically in order to ensure consistency by reading into it: the minimisation and mitigation of adverse landscape impacts *to acceptable levels* or words to that effect. Both these ELP policies are well advanced in the process towards adoption and so attract significant weight.
45. In that light, it is common ground that the first bullet point of paragraph 14 of the Framework is engaged that is *approving development proposals that accord with the development plan without delay unless material considerations indicate otherwise* or, as per the Council's case to the Inquiry, that the proposals do not accord with the development plan so it is necessary to consider whether other material considerations indicate that planning permission should be granted.
46. The Council's position is that the proposal would have a significant intrusive and harmful impact on the visual and landscape quality of the surrounding landscape and as such, it falls contrary to the LP and ELP policies referred to.
47. For similar reasons, the proposal would be at odds with paragraphs 97 and 98 of the Framework. Of course, considerable weight must be given to the important benefits that would flow from the proposals but that is not sufficient to outweigh the harmful landscape and visual impacts that would result.
48. That leaves the WMS. The Council does not suggest that the WMS or the PPG guidance that flows from it should, or indeed can, supplant Section 38(6) of the Planning and Compulsory Purchase Act 2004.
49. The appeal must be determined in accordance with the development plan unless material considerations, which would of course include the WMS, and local opinion, indicate otherwise.
50. It is open to the decision-maker to take the view that if the proposal has addressed the planning impacts identified by local communities (which include impacts on the landscape which form the central plank of the Council's case, as well as matters around noise and health and others raised by SSEW) then it could be said that the affected local community backs the proposal.
51. The interpretation turns on the word 'therefore' in the final line of the WMS: *'...local planning authorities can find the proposal acceptable if, following consultation, they are satisfied it has addressed the planning impacts identified by affected local communities and therefore has their backing'*. What is very clear in this case is that the affected local community does not back the proposals.

Conclusions

52. This case revolves around the impact the proposed wind turbine array considered together with the two already in place nearby, would have on the landscape and visual amenity of the Swale Marshes.
53. The Council's evidence demonstrates how the appellant's approach has not adequately described the landscape and as a consequence, has not adequately assessed the impact the proposed wind turbines would have on it. In that light, and notwithstanding the acknowledged benefits the scheme would bring forward, the proposal falls contrary to the development plan, emerging policy, and the Framework.
54. On that basis, the appeal should be dismissed.

The Case for SSEW

55. The case for SSEW was made in opening³⁹ and closing⁴⁰ statements to the Inquiry and through evidence on various matters of concern⁴¹. Some of this was put forward at the Inquiry, and other matters dealt with through written submissions⁴². The summary that follows is based on the closing statement. SSEW argues that the proposal should be rejected on a number of grounds.

The Concerns of the Local Community

56. The great majority of the homes that would be adversely affected by the proposal lie within the Parish of Eastchurch. The Parish Council voted unanimously against the development and the Inquiry has served to reinforce that decision.
57. Local residents are only too aware of the noise emanating from the two existing wind turbines at HMP Stanford Hill, yet these are three times as far away from dwellings as the four now proposed. Residents had been reassured by the developer and Council Officers that the two wind turbines previously approved would cause no issue in terms of noise so they made no objection to them.
58. Residents' trust in wind turbine developers and their claims about noise evaporated soon after these wind turbines started generating. Residents have experienced for themselves the impacts that just two wind turbines can have on their quality of life and can well imagine how much worse the impact of six wind turbines would be, with the additional four much closer to them than the original two. These concerns have been documented throughout the various stages the scheme has gone through.
59. The appellant has not resolved any of these concerns. Many other residents came along to the Inquiry and made plain their objections. It is plain that the proposal does not have their backing.
60. Most local residents either work or have worked in prisons or have friends and relatives that do. They are only too aware that disturbances can and do arise in the prisons and can seriously affect local residents.

³⁹ ID8

⁴⁰ ID42

⁴¹ R1-R5

⁴² ID36, ID37 and ID38

ETSU-R-97 and the IoA Good Practice Guide

61. There is serious doubt in the mind of SSEW⁴³ as to whether the appellant demonstrated that ETSU-R-97⁴⁴ and IoA Good Practice Guide⁴⁵, together with ISO 9613-2, guidance has been properly followed.
62. SSEW considers that if it has, and in the absence of excess amplitude modulation, wind farm neighbours will be provided with a reasonable degree of protection from wind farm noise, albeit with little margin. However, the appellant has 'cherry picked' from the guidance to achieve a reduced (by 4dB) predicted immission level from that SSEW believe to be correct.
63. This 4dB figure is made up of 3dB from the appellant's ignorance of the plus or minus 3dB in ISO 9613-2 and the remainder from disregarding the guidance of the IoA GPG on dealing with wind turbine noise data uncertainty; the appellant having allowed 1dB where the IoA GPG requires 2dB.
64. The appellant suggests that the existing wind turbines near HMP Standford Hill do not breach the noise limits set for them. However, there is no evidence that they comply either; there have been no measurements to demonstrate compliance. Local residents have given evidence that limits, that were themselves inadequate, have been exceeded, with consequent impacts on their well-being, and that of prison inmates and staff.
65. The concern of SSEW is not in any event the performance of the existing wind turbines, but that of those proposed. It is noteworthy that the predicted immission level from the existing wind turbines was only 0.5dB below the 43dB night-time limit. SSEW state⁴⁶ that adding the noise from the four proposed wind turbines will increase the noise level at HMP Elmley by 1.5dB, 1dB above the ETSU-R-97 derived noise limit. Moreover, the true level will be higher as the noise impact assessment for the existing wind turbines was undertaken before the publication of the IoA GPG.
66. It is clear that the appellant's noise limits, themselves calculated on a false premise, will be breached. The resulting noise levels will have a detrimental impact on the living conditions of local residents, and on the inmates and staff of the prisons.

Wind Turbine Noise, Health and Amplitude Modulation

67. This is a serious problem for the wind energy industry. The problem is misleadingly termed excess amplitude modulation but in reality the resulting harm to health derives from the very low frequency and infrasonic emissions that accompany it. SSEW is of the view that the appeal should fail on the basis that the scheme would not comply with ETSU-R-97 and IoA GPG derived noise limits but on top of that SSEW is concerned that the effect of excess amplitude modulation on prisoners could impinge very severely on prison management, particularly in the case of higher category inmates.

⁴³ Articulated through the evidence of Dr Yelland R1 and ID36

⁴⁴ CD11.1

⁴⁵ CD11.2 Referred to hereafter as IoA GPG

⁴⁶ Through Dr Yelland R1 and ID36

68. The Wind Turbine AM Review Phase 1 Report submitted by the appellant⁴⁷ on the subject is in many ways, a review of the literature on excess amplitude modulation. It concludes, wrongly in the view of SSEW that the reason wind farm neighbours can be very annoyed by it is because they have a negative attitude to wind turbines⁴⁸. SSEW claims no relevant expertise but is surprised to note that DECC entrusted two acousticians with a report requiring expertise in medicine and psychology.
69. SSEW takes the position, partly based on mounting anecdotal evidence⁴⁹ that adverse health impacts as a result of excess amplitude modulation are tangible and are likely to affect local residents and prisoners and staff in the prison cluster.

The WMS and the Emerging Local Plan

70. The appellant has sought to downplay the importance of the WMS. The scheme does not have the backing of the local community and as a consequence, fails to accord with the WMS. The intention of the WMS is clear that in such circumstances, planning permission should not be granted.
71. Much has been made of the supportive approach of the ELP towards renewable energy but it has yet to be adopted and is unlikely to be in its current form. It is but a draft and should be afforded little weight.

Visual Amenity

72. The appellant⁵⁰ accepts that a small number of properties in Range Road and Kent View Drive would experience significant visual effects as a result of the presence of the wind turbines. Much of the prison cluster would experience similar impacts.
73. The conclusion reached is that the visual impact would not be overbearing but there is no explanation of how that conclusion was reached. Logically, it is difficult to see how four wind turbines, 126m high, 600m away from homes, would not appear overbearing with a consequent unacceptable effect on residents' living conditions.
74. Aside from that, SSEW take issue with the notion portrayed by the appellant that the wind turbines proposed would fit in well with the local wind turbine landscape. There is no local wind turbine landscape – the only ones presently visible are those adjacent to HMP Stanford Hill.

Ecology

75. Birds are of central importance to the ecology of the Elmley Marsh. Locals, and particularly those who work or spend a lot of time on the marsh, have already noticed that many species avoid the existing wind turbines at HMP Stanford Hill. This 'displacement' effect has not been properly addressed.

⁴⁷ ID35

⁴⁸ ID35 paragraph 3.3.87

⁴⁹ ID37 for example

⁵⁰ Through the evidence of Mr Truscott

76. SSEW⁵¹ has given a comprehensive insight into migratory and resident bird movements over the marsh. Unlike the appellant's work, it is the work of an ornithologist who has spent many years in the study of birds on the marsh. The appellant's conclusions are not based on such an accurate picture and should be discounted. There would be a harmful impact on birds as a result of the proposal.

Conclusion

77. It is obvious to people living in the vicinity of the proposed development that it has not been well designed. The wind turbines would be too close to dwellings and dangerously close to prisons. Noise would be produced over permitted limits at some residents' homes, and grossly over those limits within the prison cluster. There would be a significantly harmful landscape and visual impact on the local area, and beyond. There is no support for the scheme from the local community. For all those reasons, the appeal should be dismissed.

The Case for the MoJ

78. The MoJ did not participate in the Inquiry as a Rule 6 party and their presence was limited to a non-technical submission by the Governing Governor of HMP Swaleside⁵² that I summarise below.
79. **Paul Newton**, Governing Governor of HMP Swaleside outlined concern about the environment that would result for staff and their charges in the Sheppey Prison Cluster. Effectively, they would be working, and living, within the confines of a wind farm; a unique situation.
80. First, there is a concern that coupled with the two existing, operational wind turbines near to HMP Standford Hill, the wind turbines proposed will exceed noise limits. Higher category prisoners at HMP Swaleside and Elmley are in their cells for long periods, and have limited opportunities to spend time outside. They may regard the noise from the wind turbines as a nuisance. If the prison management cannot offer a remedy, this may lead to agitation and disruptive behaviour by individuals, or groups of prisoners. Prison staff may also find the noise intrusive which may result in difficulties in them discharging their duties.
81. There is no reason why prisoners should not be afforded the protection afforded to other residential occupiers. Moreover, staff should be protected in the workplace. Similar issues around noise impacts led to a proposed Energy from Waste installation being dismissed at appeal in Scotland⁵³.
82. There are concerns too that prisoners and staff might be affected by shadow flicker, with similar results. Shadow flicker might also create difficulties for the prison security systems.
83. The final point relates to the visual impact of the wind turbines. Some prisoners would have views of wind turbines just 400m away. The consequent visual impact would be overbearing and because the prisoner only has one view available from their cell, this would have a significant detrimental impact on their living conditions.

⁵¹ Through the evidence of Mr Haynes R5

⁵² ID17

⁵³ ID15

84. As a result of all that, the appeal should be dismissed.
85. In view of the central importance of the MoJ position to determination of the appeal, and the ongoing discussions that took place between them and the appellant during the adjournment, on technical matters, I sought a closing statement from the MoJ so that their position at the end of the Inquiry could be properly ascertained⁵⁴. This was produced on their behalf by Atkins Ltd.
86. The resulting submission makes a number of points about noise, including amplitude modulation, and shadow flicker/casting, largely in the form of a commentary. On my reading, there appears to be an acceptance that noise, and shadow flicker can be dealt with by suitably worded conditions. A number of amendments are suggested to the conditions put forward by the appellant⁵⁵. I deal with these in considering conditions below.
87. The main objection to the proposal, put forward by Atkins Ltd, relates to visual impact, largely reiterating the points made by Mr Newton. The point is made that much is made by the appellant of the MoJ's acceptance of the wind turbines near HMP Stanford Hill in similar proximity but it must be stressed that this is an open prison. The sensitive prisoners that would be affected at HMP Swaleside and HMP Elmley are in a different category and spend much more time in their single-aspect cells. The visual impact of the wind turbines, in such close proximity, would have a significantly detrimental effect on the living conditions of those prisoners, which may well lead to supervisory difficulties.
88. In brief, the MoJ objection derives from the basic premise that the prison cluster needs to be operated in a manner which provides for safe and well-ordered establishments in which prisoners are treated humanely, decently and lawfully, and is a safe place for inmates, staff, and others. The proposed wind turbine cluster would undermine that.

The Case for Airvolution Energy Ltd

89. The appellant's case to the Inquiry was delivered through evidence on landscape, panning and noise⁵⁶ and set out in opening⁵⁷ and closing statements⁵⁸ to the Inquiry. What follows is a summary of the closing statement.

Introduction

90. The scheme represents a near perfect example of the type of commercial wind farm that should be granted permission in late 2016.

Benefits

91. Notwithstanding any curtailment necessary for shadow flicker and noise mitigation, the proposal would deliver a nationally significant amount of renewable energy and contribute to the achievement of the national target for 15% of all energy to come from renewables by 2020. The scheme would make a recognisable contribution towards mitigating the impact of climate change.

⁵⁴ ID40 and ID45

⁵⁵ ID40 Appendix 2 and ID33

⁵⁶ A1-A5 inclusive and ID39

⁵⁷ ID7

⁵⁸ ID44 and ID45

92. On top of that, it would assist with energy security through its contribution to the mix of decentralised renewable resources in Kent and the South-East. Direct economic benefits would flow in terms of some new local employment, and there would be indirect economic benefits too.

The WMS and Local Opinion

93. SSEW and local residents set great store by the WMS of 18 June 2015. Clearly this is an important material consideration. However, alongside the attendant changes to PPG, it is clearly subservient to the development plan, and the unchanged approach of the Framework.
94. It is well established that local opinion is a material consideration. However, to place greater weight on it following the WMS of 18 June 2015 would risk undermining the objectivity of the planning system. Objectors' views are relevant to the extent that they bear on land-use planning issues. The amount of weight to be attached is a matter for the decision-maker, bearing in mind the approach of Section 38(6) of the 2004 Act. The approach taken by the Courts to the WMS is instructive⁵⁹.

The MoJ Position

95. It is regrettable that the MoJ now seeks to object to this proposal when they were very actively involved in the project that delivered the now-installed Stanford Hill wind turbines. It is somewhat rich that the MoJ raise unwarranted technical issues against the scheme at issue, when three years ago, they adopted a stance that was the direct opposite. The sole point of objection raised by the MoJ seems to be the visual impact of the wind turbines on the outlook from certain prison cells. It is the appellant's case that any visual impact would be within acceptable bounds.
96. Great play is made of the differences between HMP Swaleside and HMP Stanford Hill but this approach is flawed. First, there is a suggestion that varying degrees of sensitivity should be applied to inmates depending on what type of accommodation they are housed in. There is no planning basis for that. The appellant's Residential Amenity Study⁶⁰ treats all inmates as highly sensitive. It is interesting to contrast the approach of the MoJ now with their approach to the Stanford Hill wind turbines where inmates were judged to be of negligible sensitivity⁶¹. Secondly, the MoJ appears to have ignored HMP Elmley which is closer to the existing wind turbines than HMP Stanford Hill.
97. In relation to other technical issues, notwithstanding their closing submissions, the MoJ appears to be satisfied that noise, shadow flicker and drones detection can all be addressed by condition. The appellant does not accept any of the eleventh hour changes suggested to the conditions by the MoJ.
98. In short, any problems with prisoner discipline at the Sheppey cluster are pre-existing. There is no evidence that prison conditions were made worse by the installation of the Stanford Hill wind turbines, and no evidence that conditions will be made worse still by the wind turbines at issue.

⁵⁹ *Holder v Gedling BC* [2016] EWHC 3095 ID44 Appendix 1

⁶⁰ Contained within CD12.10

⁶¹ ID3, ID5, ID19, ID20 and ID21

Planning Policy and Other Material Considerations

99. The most relevant policies of the LP⁶² are LP Policies E1, E9, E19 and U3. In terms of the ELP⁶³, Policies DM20 and DM24 apply.
100. There is no dispute between the appellant and the Council about the correct approach to the LP and the ELP in the light of advice in the Framework. In simple terms, 'minimised' in LP Policy U3 means no more than a need to demonstrate that impacts have been reduced to a point where they are acceptable in the context of paragraph 98 of the Framework. That approach should be taken to LP Policies E1, E3 and E19 and ELP Policies DM20 and DM24 too.
101. In terms of other material considerations, there is a raft of Government policy and guidance that stresses the importance of renewable energy⁶⁴. The national pipeline to 2020 may be reasonably healthy but that depends to a large extent on proposals like that at issue, that are already in the planning system, coming to fruition, in time. It is important to reflect too on the fact that Government ambitions go well beyond 2020.

Landscape and Visual Impact

102. The Council's evidence to the Inquiry on this matter was weak and focused almost entirely on effects upon the landscape character of the marshes. Producing five additional viewpoints from the footpath across the marshes⁶⁵ was of little assistance because they are not representative of how the development would sit in the wider landscape context. The evidence of the appellant on this matter should obviously be preferred.
103. The appeal site is largely within the Central Sheppey Farmlands LCA⁶⁶ with a very small part in the Leysdown and Eastchurch Marshes LCA⁶⁷. The former is described as an area of 'poor' landscape condition, of 'moderate' sensitivity. The guidance concludes that wind farms in exposed locations are often prominent features but visual impacts are likely to be reduced when located in landscapes where there is a diverse mix of land uses, like the prison cluster, against which wind turbines can be viewed.
104. It is fair to say that all modern commercial wind farms will result in significant landscape effects and this is acknowledged in national policy. If wind turbines are to be accepted as part of the overall energy mix, then such effects are inevitable. The question is whether those effects can be considered acceptable.
105. Significant landscape character effects would be most widespread to the west, south and east of the site by reason of the landscape being open and flat. The effects would decrease with distance. There would be less of an effect on the character of the landscape to the north owing to the ridge which would curtail visibility of the development, combined with a greater degree of settlement, tree groups, and hedgerows.

⁶² ID47

⁶³ CD3.8

⁶⁴ CD2.2, CD2.3, CD2.4 CD5.4, CD5.6, CD5.29 and CD5.36 amongst others

⁶⁵ C2 Appendix TL2

⁶⁶ ID16 refers

⁶⁷ As identified in the Swale BC Landscape Character and Biodiversity Appraisal CD3.1

106. The Central Sheppey Farmlands LCA would receive locally significant adverse effects on landscape character while the Leysdown and Eastchurch Marshes LCA would receive localised direct and indirect moderate to substantial adverse effects. All would these effects decrease with distance. Others LCAs and SLAs would receive significant indirect effects on landscape character but again, these would reduce with separation.
107. Cumulatively, the two affected LCAs would sustain significant landscape character effects as a result of a combination of the wind turbines at issue, and those already installed adjacent to HMP Stanford Hill. The effect would be confined to a relatively small part of the overall study area.
108. Over the 30km study area, a number of viewpoints, and routes would receive significant visual effects. Similarly, some built receptors and outdoor sites would sustain similar effect. These are residential receptors occupying elevated positions on the southern edge of Eastchurch; residential receptors near to the prison cluster; and receptors in the prison buildings.
109. In terms of visual amenity, because of the separation distance, relative orientation, and the expanse of the view, at no dwelling, or part of the prison accommodation, would the wind turbines proposed appear visually overbearing, overwhelming, dominant or oppressive such that the dwelling (or cell) would become an unattractive place to live. The Council accepts that.
110. Put simply, in terms of landscape and visual effects, the impact of the proposed development considered in isolation, or cumulatively, is, in the parlance of paragraph 98 of the Framework, acceptable.
111. What is more, in accordance with paragraph 97 of the Framework, the Council instructed AECOM to identify areas suitable for renewable energy development. The resulting Swale Council Renewable Energy and Sustainability Study⁶⁸ is incorporated into and informs the approach of the ELP. The appeal site lies within one of the few areas on the Energy Opportunities Map that forms part of the study, where there is said to be high potential for the installation of large scale wind energy schemes. Within an area of high potential for the installation of large scale wind energy schemes, the manifestly sensible thing to do is to locate additional wind turbines in a clustered arrangement, close to the existing wind turbines adjacent to HMP Stanford Hill.
112. In essence, the Council is getting exactly what it asked for. Having identified the area as suitable, and having already granted permission for the existing wind turbines at HMP Stanford Hill, it cannot sensibly now argue that wind turbines are unacceptable in landscape terms because of their impact on views across the marshes.
113. While the presence of the existing wind turbines adjacent to HMP Stanford Hill does not automatically justify a grant of planning permission for the scheme at issue, the Council cannot sensibly argue that the proposal at issue would introduce incongruous, tall, vertical structures into a landscape that is unsuitable for such features. Commercial scale wind turbines have already been approved by the Council in that landscape, and satisfactorily accommodated within it.

⁶⁸ CD3.7

Noise

114. The Council raises no substantive issue in this regard and neither does the MoJ. The issues raised by SSEW⁶⁹ are nothing new and have been addressed⁷⁰.
115. Government guidance⁷¹ has consistently incorporated ETSU-R-97⁷² as the approved methodology for assessing wind turbine noise. In this case, predicted wind turbine immissions levels, using a candidate turbine, will meet the ETSU-R-97 derived noise limits under all conditions, and at all locations, for both quiet daytime and night-time periods. Vague assertions have been made about health impacts⁷³ but there is no substantive evidence to demonstrate that such harm would be caused.
116. SSEW highlight examples of wind turbine applications where a flaw has been found in the noise monitoring data. Aside from some micro-criticism of the monitoring location on Range Road, raised at a late stage, that is not the situation here.
117. In terms of the prediction methodology, considerable work has been done over the years to validate operational wind farm noise levels with those predicted. The results have led to a consensus amongst leading acousticians in the sector about the correct parameters. The March 2009 IoA Bulletin was followed by the IoA GPG⁷⁴. The use of warranted sound power levels in combination with a ground effect factor of 0.5 provides a realistic worst case basis for assessment.
118. None of the arguments put forward by SSEW are new. The IoA GPG approach does not require the decision-maker to add in a 3db(A) margin, a margin for hard ground, or indeed any other margin. Protection for the residential occupier is provided by the noise limit in the relevant planning condition; any wind turbine, whatever the predictive methodology, will have to meet that limit.
119. The fact that the MoJ objection on noise grounds has been withdrawn should be the end of the matter. The argument about whether ETSU-R-97 applies to prisons is academic. The limits in the relevant condition agreed with the MoJ would involve some limited curtailment, depending on the eventual wind turbine model chosen. The MoJ is content that the agreed limits can be met.
120. In terms of cumulative noise, a contour plot was provided in the ES Addendum⁷⁵. The assumed downwind propagation for all wind turbines and cumulative noise levels can meet the 43 dB LA90 limit without relying on propagation losses of different wind directions referred to by SSEW⁷⁶. This point has been accepted by the MoJ. The agreed noise limits for the prisons will involve some limited curtailment but the development is not reliant on propagation losses to achieve the limits.

⁶⁹ R1, ID36, ID37 and ID38

⁷⁰ A5 and ID39

⁷¹ EN-1 and EN-3 CD2.2 and CD2.3 respectively

⁷² CD11.1

⁷³ ID37 and ID38 for example

⁷⁴ CD11.2

⁷⁵ CD12.10 Figure 9.1

⁷⁶ R1 and ID36

121. The prison blocks will provide some acoustic shielding. The prison cells are single aspect and no cell window can be exposed to the noise of all the existing and proposed wind turbines.
122. Other or excess amplitude modulation has been raised by SSEWs but there is no consensus amongst the acoustic community about the definition, causes, mechanics, frequency, duration, or seriousness of it. Government policy has not changed. As recorded in the IoA GPG⁷⁷, current best practice is not to attempt to impose a condition to deal with amplitude modulation.
123. The Wind Turbine AM Review Phase 1 Report⁷⁸ sought to address this matter and makes a recommendation as to how a planning condition might be framed. If, the decision-maker decides that such a condition would be appropriate in this case, a suggestion has been put forward⁷⁹.

Tourism

124. The Council does not suggest that the proposal would have any harmful impact on tourism. While some concerns were raised⁸⁰, there is no objective evidence that the addition of the four wind turbines proposed, over and above the two already present, will result in any adverse impact.

Conclusion

125. This is a refined scheme - the wind turbines proposed would result in localised changes to landscape character and to some views but, in the parlance of paragraph 98 of the Framework, these impacts would be acceptable.
126. The proposal complies with the development plan. A development plan led exercise, giving due weight to other material considerations, including the WMS, leads to the inexorable conclusion that planning permission should be granted for this sustainable, temporary, and wholly reversible development in the form in which it is sought.

Interested Parties

127. I conducted an evening session on 25 October 2016 to allow proper opportunity for local residents to make their views known. Others made submissions at other points in proceedings. Many kindly provided written transcripts of their statements which I have appended as Inquiry documents. I have briefly summarised what was said below.
128. **Trish Codrington**, the Parish Clerk of Minster on Sea PC set out that there is general support for renewable energy but shares the concern of many residents and PCs about the harmful impact of prominent wind turbines on such a flat landscape. The photomontages in the ES Addendum⁸¹ make plain the scale of that impact. Given the scale of local opposition, the WMS is of particular relevance.

⁷⁷ CD11.2

⁷⁸ ID35

⁷⁹ ID33 Suggested Condition 32

⁸⁰ ID24 in particular

⁸¹ CD12.10

129. **Mr Tatton** claimed to represent Leysdown PC⁸² and explained that the scheme should not have been rejected.
130. **Mike Brown**, representing Eastchurch PC offered strong support for SSEW and the Council's stance. The proposed wind turbines would be too close to dwellings. The WMS should be taken at face value and Eastchurch residents, who would be those most directly affected, should have the final say⁸³.
131. **John Stanford**, a local resident, and someone who grew up in the area, offered support for the scheme and explained that in the context of the threat of climate change, the benefits of the proposal would outweigh any harm. The landscape and visual impact of the wind farm would be within reasonable bounds.
132. **Gareth Fulton**, a local resident and manager of Elmley National Nature Reserve felt that the additional four wind turbines proposed would create an incongruous cluster that would have a significantly detrimental impact on a unique marshland landscape and its open skies. It would bring the viability of the nature reserve into question by depressing visitor numbers and making the overnight accommodation and events offered less attractive⁸⁴.
133. **Tina Booth**, a resident of Eastchurch, and a Parish and Borough Councillor, objected to the proposal, largely on the basis of noise and shadow flicker. The local community does not support the scheme and bearing in mind the approach of the WMS, it should therefore be rejected⁸⁵.
134. **Duncan Aldred**, a local resident, felt that the wind turbines proposed would dominate views and create an industrial landscape. There would be harm caused to wildlife too⁸⁶.
135. **Sara O'Bray**, a resident of Eastchurch, explained her belief that the wind turbines proposed would pose a threat to the health of local residents. The local community should not be ignored⁸⁷.
136. **Richard Halls**, a resident of Eastchurch, and former Prison Officer, outlined his view that the noise from the wind turbines, in particular, would have a significant detrimental impact on the health of those working at, visiting, and incarcerated in, the three prisons⁸⁸.
137. **Mark Gibson**, a resident of Minster, and the treasurer of the Standford Hill Angling Group, who fish at a lake adjacent to HMP Standford Hill, suggested that noise from the wind turbines proposed would affect users and those with hearing aids in particular. It has the potential to cost the group membership⁸⁹.

⁸² SSEW confirmed, correctly in my view, that he had no authority to make that claim

⁸³ ID23

⁸⁴ ID24

⁸⁵ ID25

⁸⁶ ID26

⁸⁷ ID27

⁸⁸ ID28

⁸⁹ ID29

138. **Sandra Peck**, a resident of Eastchurch, set out her concerns that the wind turbines proposed would exacerbate the detrimental impact on sufferers of tinnitus that the wind turbines approved at Standford Hill have already had⁹⁰.
139. **Andy Booth**, a Local Councillor and Vice Chairman of the Planning Committee, vehemently opposed the scheme and explained that it would heighten the unfortunate impact on the landscape that the previously approved wind turbines have already caused. Moreover, they would compound problems for local residents through noise. The area is home to an internationally recognised population of predatory hawks, and marsh harriers. The wind turbines would harm those birds.
140. **Michelle Gudgeon**, a local resident and tinnitus sufferer, outlined the discomfort caused by noise from the existing wind turbines. The wind turbines proposed would heighten the problems already experienced⁹¹.
141. **Susan Higgs**, a resident of Eastchurch has made a series of complaints about noise from the existing wind turbines and the disruption they cause. The four additional wind turbines proposed will only make the already intolerable situation worse⁹².
142. **Lorraine St John**, a local resident, expressed concern about impacts on the wildlife the Isle of Sheppey is renowned for.
143. **Denise Russell**, a resident of Eastchurch, complained about noise and the need for lighting at night, which would disturb local wildlife and bats in particular.
144. **Tony Read**, a resident of Eastchurch, raised issues around the impact of the wind turbines proposed on wildlife, the prison population, and tourism.

Conditions

145. A list of draft conditions⁹³ was discussed at the Inquiry in the light of advice in paragraph 206 of the Framework. The standard commencement condition is an obvious necessity as is a condition setting out the approved plans.
146. Given the temporary and reversible nature of the development proposed, conditions are required to specify the 25 year period for which the permission endures, and to secure decommissioning and site restoration, which are requirements of LP Policy U3. Another condition is required to cater for any situation in which one or more of the wind turbines cease to export electricity, save for certain exceptions.
147. Given the scale of the undertaking involved in the construction of the development, and the attendant potential for disruption, it is reasonable to apply conditions to secure a Construction Method Statement and a Construction Traffic Management Plan, and to control working hours, and delivery times.
148. To exert proper control over appearance and design, conditions are necessary to ensure the wind turbine blades rotate in a common direction and that the height

⁹⁰ ID30

⁹¹ ID31

⁹² ID32

⁹³ ID33

to tip is limited to 126.5 metres. Furthermore, there is a need for colours and finishes of the wind turbines to be approved by the Council and for signage to be limited. Similarly, details of the substation need to be subject to approval before construction and on-site electrical cabling needs to be installed underground.

149. A number of conditions have been suggested to deal with ecology. Given the proximity of the nature reserve at Great Bells Farm, it seems to me that a condition to require the monitoring of bird numbers post-construction is a reasonable imposition so that any unforeseen impact can be addressed.
150. A condition is required to secure the compensatory 24 hectare area of land and biodiversity enhancement measures referred to in the ES and ES Addenda⁹⁴, as is another similar condition designed to maintain the habitat potential of Great Bells Farm. Further conditions are required to address the clearance of vegetation, to ensure that a pre-commencement walkover to check the baseline takes place and to allow for a scheme designed to address potential impact on water voles.
151. In terms of aviation, it would be necessary to apply conditions to ensure the location and height of the wind turbines, and a start/finish date for their erection, is notified to the Council, to secure aviation warning lighting, to address the requirements of the nearby Eastchurch Airfield, and to secure a Radar Mitigation Solution with London Southend Airport.
152. Given the potential of the site, it would be reasonable to apply a condition requiring an archaeological investigation. Conditions are also necessary to deal with micro-siting, the finished floor levels of the substation, and to ensure reasonable visibility is maintained at the site access.
153. In order to safeguard against interference with televisions, a condition should be applied to secure a means of dealing with any that might arise. More complex is the condition required to address shadow flicker. This needs to deal with the phenomenon in the usual manner at dwellings and but also to address the operational requirements, and CCTV in particular, at the nearby HMP Swaleside and HMP Elmley. Finally, a condition, along with attendant guidance notes, is necessary to cover operational noise and the steps to be taken in the event of any difficulties that might arise.
154. As set out above, the MoJ provided detailed comments on the conditions designed to deal with noise, and shadow flicker and made a number of suggested additions to the conditions⁹⁵. In my view, these are all unnecessary and add nothing useful to conditions that are already complex. The suggested conditions, as drafted, are perfectly clear in their intentions.
155. There are a two suggested conditions that are disputed by the appellant. The first relates to drones and the difficulties they cause for prison management. The suggested condition requires the appellant to submit a scheme for the detection of drones approaching within 100m of the eastern perimeter walls of HMP Swaleside and HMP Elmley for approval and to subsequently implement it.
156. The difficulty with that, in my view, is that, as the Inquiry heard from the Governing Governor of HMP Swaleside, the prisons already experience difficulties

⁹⁴ CD12.1, CD12.2 and CD12.10

⁹⁵ ID40 Appendix 2 refers

with the use of drones to make nefarious deliveries to inmates. It is a pre-existing problem therefore. I have significant doubts as to whether any noise from the wind turbines proposed will make detection more difficult; detection seems to me to depend largely on visual contact. In that context, if planning permission was granted for the scheme, the suggested condition would be an unreasonable imposition on the appellant because it is not the development proposed that gives rise to the MoJ's difficulties in this regard.

157. The second disputed condition relates to amplitude modulation and, in simple terms, requires the submission for approval, and implementation, of a scheme for the assessment and regulation of the phenomenon. The difficulty is that as the appellant points out, there is no consensus amongst the acoustic community about the definition, causes, mechanics, frequency, duration, or seriousness of it. There is no evidence to suggest that amplitude modulation will occur here.
158. In that light, it is very difficult to see how the suggested condition can meet the tests of precision and necessity. Best practice as set out in the IoA GPG reflects that. Notwithstanding the more permissive approach set out in the Wind Turbine AM Review Phase 1 Report⁹⁶, I consider that the suggested condition would be an unreasonable, and in my view, unworkable imposition.

Conclusions

159. In this part of the report, I have used references thus [---] to cross-refer to previous paragraphs in the report.

Main Issue

160. Notwithstanding the reason for the call-in, the main issue to be considered is whether any harmful impacts the development might have in terms of landscape character and visual effects, the living conditions of residents and prisoners and working conditions of staff at the prisons, and other matters like ecology and tourism, are outweighed by any benefits it would bring forward. **[3]**
161. That analysis must take place in the context of the development plan, and other material considerations, notably the Framework, and the WMS.

The Policy Approach

162. Before addressing those specific matters, it is important to set out the approach to be taken to the relevant LP policies. In that it specifically addresses renewable energy, LP Policy U3 is the lead development plan policy. The approach it takes to the balance between benefits and adverse impacts and the need to minimise, but not eliminate, the latter, presages in many ways that of paragraph 98 of the Framework which tells us that applications should be approved if impacts are (or can be made) acceptable.
163. LP Policies E1, E9 and E19 take a much more prescriptive approach to adverse impacts, seeking to avoid them completely. I agree with the main parties that LP Policy U3, the lead policy, can only make sense if LP Policies E1, E9 and E19 are interpreted in a subsidiary, and more pragmatic, fashion, using the approach LP

⁹⁶ ID35

Policy U3 takes to the balance between benefits and harm. It is evident that ELP Policies DM20 and DM24 follow that path too. **[10-20, 41-44, 71, 99-100]**

Landscape and Visual Effects

164. First of all, it is important to note that commercial wind turbines of the scale proposed here will almost always be prominent and have significant landscape effects. If, as the Framework tells us, we are to recognise the intrinsic character and beauty of the countryside then these effects must be seen as adverse. That said, different landscapes have different capacities to absorb those effects.
165. The proposal is largely located in the Central Sheppey Farmlands LCA as set out in the Swale Landscape Character and Biodiversity Appraisal (or Jacobs Report)⁹⁷, with a small part in the Leysdown and Eastchurch Marshes LCA. The Central Sheppey Marshlands LCA is described as poor in condition with moderate sensitivity. It is described as a large-scale, open, predominantly arable landscape. The prison complex is highlighted as a dominant feature.
166. The guidelines for the LCA suggest that proposals that are unduly prominent in highly visible locations such as undeveloped south, east, and west facing slopes should be avoided as should proposals that would have a similar impact on the undeveloped coast or obstruct or erode views of the Swale or Thames Estuary. The Leysdown and Eastchurch Marshes LCA is described as highly sensitive largely because of the extensive visibility enabled by the flat and treeless landscape.
167. I note the concerns expressed by the Council about the appellants' methodology and how that might have affected the conclusions reached but in very simple terms, the Council and others are concerned that the introduction of four further large-scale vertical structures would cause unacceptable harm to the very flat marshland landscape because the vertical emphasis of the wind turbines and their alien moving features will be in complete contrast to the flat and horizontal landscape.
168. By marshland landscape, the Council means the Elmley Marshes, Leysdown and Eastchurch Marshes, South Sheppey Saltmarshes and Mudflats, and Spitend Marshes LCAs (collectively the Swale Marshes). All are defined in the Swale Landscape Character and Biodiversity Appraisal as highly sensitive largely because of their flat and open nature, the extensive visibility across them, and their tranquil nature.
169. Nevertheless, I have a number of difficulties with the Council and others' analysis. First of all, the Council clearly found the existing wind turbines that have been erected adjacent to HMP Standford Hill acceptable in landscape terms. That is difficult to square with the suggestion that the vertical emphasis of the wind turbines now proposed and their alien moving features will be in complete contrast to the flat and horizontal landscape.
170. Leaving that point aside, the visual representations in the ES Addendum⁹⁸ and in the Council's evidence⁹⁹, which were borne out by my unaccompanied site visit

⁹⁷ CD3.1 and ID16

⁹⁸ CD12.10

⁹⁹ C2 Views 1-20

which took in the important PRoWs highlighted in the Council's evidence, show that these existing wind turbines sit comfortably in their context. Far from appearing incongruous, the wind turbines are read alongside the dominant bulk of the prison complex and do not appear unduly prominent or as part of the marshland landscape in long distance views across the different LCAs. Moreover, the flat, open, and windswept landscape lends the existing wind turbines a functional logic that further aids assimilation.

171. On top of that, because the existing wind turbines do not appear as part of the marshes, but as an adjunct to the prison complex, they have little impact on the sense of tranquillity and isolation one garners when using the footpaths across the marshes. They do not devalue the experience of these footpaths to any significant degree. All that significantly limits the adverse impact the existing wind turbines have on the LCA they sit within and the marshland LCAs.
172. Given that they would be on the other side of the prison complex, the wind turbines at issue would be seen as a separate cluster in some views, but as an extension of the existing cluster in others. They would be widely visible, as you would expect of such tall structures.
173. In both scenarios, however, they would also be seen as part of the already dominant prison cluster, with its associated wind turbines, rather than as a separate intervention into the landscape of the marshes. They would not appear unduly prominent but would share a similar functional logic, being located in a flat, open and windswept landscape. They would not reduce to any appreciable degree, the sense of tranquillity and isolation one feels when using the marshland footpaths.
174. That is not to say that the wind turbine cluster proposed would cause no harm because, as set out, if we are to recognise the intrinsic character and beauty of the countryside then such a large-scale, man-made intervention would have something of an adverse impact. However, for the reasons set out, notwithstanding the sensitivity of the various LCAs affected, seen in concert with the prison cluster and the existing wind turbines, I do not consider that the proposal would have any significantly harmful impact in terms of landscape or visual effects on the LCAs the wind turbines would lie within, or others further afield, that they would be visible from.
175. It is relevant to note too that the appeal site lies within an area identified on the Energy Opportunities Map which forms part of the Swale Renewable Energy and Sustainable Development Study as a high potential area for the installation of large scale wind energy. It is clear then that AECOM, the authors of the study, which forms part of the evidence base for the ELP, underpinning ELP Policy DM20, took a similar view. It is also clear that large scale wind turbines in areas like that proposed here are an expectation of the ELP. The Council's position is difficult to understand when, cognisant of the existing installation, their own ELP endorses the area the appeal site lies within as one suitable for large scale wind energy development.
176. On top of that, there is a clear logic to grouping a proposal like that at issue with the existing installation adjacent to HMP Swaleside. That way, landscape impact and indeed other impacts are minimised. It seems to me better to have a larger group of wind turbines within the area identified on the Energy Opportunities Map

than a series of single wind turbines, or small groups of wind turbines spread throughout that area. [27-40, 74, 102-113, 128, 131, 132, 134, 139]

Living and Working Conditions

177. There are several facets to this issue but it is important to note at the outset that the Council makes no suggestion that living or working conditions would be adversely affected by any aspect of the proposal, to any significant degree. SSEW and the MoJ take a different view.
178. The first aspect is visual impact. SSEW and a number of local residents raised concerns in this regard. From what I saw at my site visits, the wind turbines would be most visible from dwellings to the north of the prison cluster and their gardens; those on Range Road and Kent View Drive in particular, and dwellings on the south side of Eastchurch. However, from what I saw having visited the area, because of the degree of separation between the dwellings and the wind turbine cluster, and the relative orientations involved, the wind turbines would not appear dominant, overwhelming, or oppressive. None of the dwellings would become unattractive places to live as a result of the proposal.
179. I recognise that some residents might find the visual presence of wind turbines in the outlook from their properties unwelcome, and comments I heard about the existing wind turbines adjacent to HMP Standford Hill bear that out, but it is important to note that there is no inviolable right to a view. Of course the outlook from some dwellings would change as a result of the proposal but not, to my mind, in a way that would have a significant adverse impact on the living conditions of the residents concerned.
180. The MoJ and others have raised concern about the visual impact of the proposal on prisoners in the cell blocks of HMP Swaleside that would face the wind turbine array. It is suggested that this impact might lead to supervisory difficulties for staff and attendant detriment to working conditions.
181. First, it is not in my view helpful to speculate whether the 'unattractive place to live' (or Lavender) test is relevant to prisoners (given that prison is not intended to be attractive) and it seems to me best to treat prison inmates in much the same way as one would approach residents¹⁰⁰.
182. Second, and more importantly, I observe that there is no evidence that the existing wind turbines adjacent to HMP Standford Hill have caused any difficulties in this regard for prisoners or staff at HMP Standford Hill or, importantly, HMP Elmley. It is fair to note that HMP Standford Hill, as an open prison is very different in character to HMP Swaleside and I noted as much at my site visit. That might account for some difference there but HMP Elmley is a similar category of prison to HMP Swaleside and has a similar relationship to the existing wind turbines as HMP Swaleside would to the proposed wind turbines. Broadly, the separation distance would be similar too. If the suggestion that the proposed wind turbines would have a detrimental impact on prisoners and staff, and supervisory difficulties, at HMP Swaleside, is to be accepted, then one would expect similar difficulties to have been experienced at HMP Elmley.

¹⁰⁰ And this is the way the appellant has approached the matter in the RAS (CD12.10)

183. That aside, the site visit demonstrated that there would be a clear view of the upper parts of the wind turbines above the perimeter wall of the prison from several cells, on the upper levels of the closest wing, in particular. However, the view from those cells is already dominated by the visual presence of the very high perimeter wall, and the security fence that sits between the cell block and the wall. Along with the bars in the windows, the wall and the fence must be a constant reminder to prisoners of their incarceration and that probably explains why, as I observed at the site visit, most prisoners in the outward facing cells, use curtains or similar devices to screen the view.
184. That is not to suggest that the outlook from these cells is unimportant to the prisoners concerned. However, it seems to me that the visual impact of the wind turbines, even at the separation distances involved (around 400m), would make little difference to the outlook from the cells concerned, given that the outlook is already dominated by bars, the perimeter wall, and the security fence.
185. On that overall basis, it is my conclusion that there would be no significant adverse impact on the living conditions of the prisoners concerned as a consequence of the visual presence of the wind turbines. It must follow that the wind turbines would not lead to any supervisory difficulties for staff at the prison, so working conditions would be largely unaffected.
186. In terms of noise, the MoJ is content that subject to suitable conditions, to which I have addressed myself above, the proposal will cause no difficulties for prisoners or staff. SSEW take a different view in relation to the prisons, but also raise issues about noise and its impact on local residents.
187. Put simply, SSEW suggest that, alongside the existing wind turbines adjacent to HMP Standford Hill, the wind turbines proposed will operate in excess of the noise limits set by the suggested noise condition. I agree that if they did then there would clearly be a detrimental impact on the living conditions of local residents and prisoners, and the working conditions of staff at the prisons.
188. However, whatever local residents might say, there is no evidence that the existing wind turbines adjacent to HMP Standford Hill operate in excess of their set limits. Indeed, there appears to have been no cause for their noise outputs to have been investigated through the condition imposed on the planning permission for them.
189. Cognisant of that, the appellant has agreed through a condition noise limits for the proposed wind turbines that comply with guidance in ETSU-R-97. If the wind turbines operate in accordance with the requirements of that condition, and with occasional curtailment, depending on the eventual model of wind turbine selected, then it seems to me that there would be no significant detrimental impact on the living conditions of local residents, prisoners, or the working conditions of staff at the prisons, as a result of noise. That is the way ETSU-R-97, which the preferred Government guidance on wind turbine noise is intended to work.
190. The appellant is sure that the wind turbines proposed will operate within the set limits. I attach significant weight to that because I fail to see why a developer would go to the trouble and expense of proposing the erection of a wind farm where there would be doubt. Secondly, if the wind turbines are erected, and fail to operate within the noise limits, then the condition provides a vehicle for them

to be investigated, and if necessary, shut down. I agree with the appellant that this offers sufficient protection for local residents, prisoners, and prison staff. Again, that is the way ETSU-R-97 is expected to function.

191. Concerns have been raised about other or excess amplitude modulation with reference in particular to the wind turbines at Cotton Farm¹⁰¹. However, as I have said out in the discussion about conditions above, the nature of the phenomenon is not fully understood but it is clear that not all wind turbines, whether erected singly or in groups, generate other or excess amplitude modulation.
192. The presence of a problem attributed to it at Cotton Farm is no indication that the proposal at issue will lead to similar difficulties. There is no evidence that it will.
193. Bringing those points together, I am content that so long as the wind turbines proposed operate within the noise limits set by the suggested condition, which I consider a reasonable assumption for the reasons set out, with curtailment as necessary, then the living conditions of local residents and prisoners, and the working conditions of prison staff, will suffer no significant detriment as a result of noise from the proposal.
194. Several people raised issues around tinnitus and suggested that the operation of the existing wind turbines at Standford Hill has worsened such problems and that the wind turbines proposed will make them even more severe. I sympathise but there are all sorts of reasons why a medical condition like tinnitus could worsen.
195. No-one has demonstrated a causal link between any worsening and the operation of the existing wind turbines. In that context, it is not possible to conclude that the wind turbines proposed would make the situation even worse.
196. There have been some concerns raised about the health effects of wind turbine noise¹⁰². The appellant has responded to these in some detail¹⁰³. It may be that there is a link between forms of wind turbine noise and annoyance and sleep deprivation but there is no evidence to justify a conclusion that there is for certain. What these concerns are driving at is the inadequacy of ETSU-R-97 in protecting people from the effects of wind turbine noise. However, Government guidance is clear that ETSU-R-97 should continue to be used for those purposes.
197. Shadow flicker has the potential to undermine living and working conditions for local residents, prisoners, and prison staff but the phenomenon is predictable and a protocol to deal with it, which might include curtailment, if necessary, can be enforced through a condition. The MoJ accepts that and is content that subject to the suggested condition, shadow flicker will not undermine any security systems serving the prisons affected.
198. Drawing those threads together, I am content that the proposal would have no significant impact on the living conditions of local residents or inmates of the prisons, or working conditions of prison staff through visual impact, noise, or shadow flicker. **[61-69, 72-73, 79-88, 95-98, 109, 114-123, 130, 133, 135-141, 143-144, 157-158]**

¹⁰¹ ID37

¹⁰² ID38

¹⁰³ ID39

Other Matters

199. A number of participants raised issues around ecology and the potential impact on birds in particular. Given the proximity of the site to the Swale Ramsar/SSSI, and the RSPB nature reserve at Great Bells Farm, those concerns are understandable. However, based on various ornithological surveys the ES¹⁰⁴ concludes that, with appropriate mitigation, and controls, that can be secured by condition, no significant effects are anticipated in relation to bird populations overall. I have no good reason to doubt the veracity of that conclusion and am satisfied that there would be compliance with LP Policies E11 and E12. **[14, 75-76, 134, 139, 142-144]**
200. Concerns were also raised about tourism and suggestions made that the proposal might depress visitor numbers. I can well understand why the area is attractive to visitors but it seems to me that if there was going to be such an effect as a result of wind turbines, then it would already have been felt as a result of the erection of those adjacent to HMP Standford Hill. There is no evidence that the presence of these wind turbines has put anyone off visiting the area and in that context, there can be no justification for a conclusion that the proposed wind turbines would have a negative impact on tourism. **[124, 132, 144]**
201. The ES¹⁰⁵ identifies a number of designated heritage assets in the vicinity (that is within 5km) of the proposal, including listed buildings and Scheduled Ancient Monuments. No party to the Inquiry raised any issue in this regard and having observed the relationships involved in the course of my site visits, I am content that there would be no harmful impact on the setting of any designated heritage asset as a result of the proposal.

Final Conclusion

202. It is my conclusion that the proposal would have no significant impact on the character and appearance of the receiving landscape, the living conditions of local residents or inmates in the prison complex, or the working conditions of prison staff. On the other hand, even with some minor curtailment, it would bring forward significant benefits in terms of the production of renewable energy and thereby assist in mitigating the effects of climate change. It would also increase energy security and lead to direct and indirect economic benefits. On my analysis, these benefits far outweigh what little harm the proposal would cause.
203. Moreover, grouped with the existing installation adjacent to HMP Standford Hill, and within an area identified on the Energy Opportunities Map which forms part of the Swale Renewable Energy and Sustainable Development Study as a high potential area for the installation of large scale wind energy, it is clear to me that adverse impacts have been minimised.
204. On that overall basis, I am content that the proposal complies with LP Policy U3 and, bearing in mind the pragmatic approach that must be taken, that there would be no significant departure from LP Policies E1, E9 or E19. On that basis, the proposal complies with the development plan, read as a whole.

¹⁰⁴ CD12.1 Chapter 8, CD12.2 and CD12.10

¹⁰⁵ CD12.1 Chapter 13, CD12.2 and CD12.10

205. In terms of other material considerations, the first to consider is the ELP. For the reasons set out above, I find that the proposal would provide clear compliance with ELP Policies DM20 and DM24. Given the weight that can be attached to the ELP, that is an important matter.
206. Secondly, it follows from what I set out above that the impacts of the proposal are (or can be made) acceptable. The proposal is in compliance with the Framework which we are told sets out the Government's planning policies for England and how these are expected to be applied¹⁰⁶. Paragraph 14 of the Framework tells us that proposals that accord with the development plan should be approved without delay in order to give effect to the presumption in favour of sustainable development. **[52-54, 77, 88, 125-126]**
207. That brings me to the WMS of June 2015. Contrary to what some people who addressed the Inquiry believe, it does not serve to give the local community a veto over wind farm development. Nevertheless, it is an important material consideration. Despite some who spoke in favour, the submissions of SSEW, and others, to the Inquiry, left me in no doubt that the proposal is not one that is welcomed by the local community.
208. Nevertheless, notwithstanding what the WMS says in the transitional provisions, national policy as expressed in the Framework has not changed and it seems to me reasonable to assume that the WMS of June 2015 is to be read alongside, rather than as a replacement for, it. In that context, a conclusion that the impacts of the scheme are, or can be made, acceptable (as required by the Framework), must logically equate with a finding that the planning impacts identified by local communities have been addressed.
209. On that basis, despite the presence of unresolved objections to the proposal, the use of the word 'therefore' in the WMS can in my view reasonably be said to mean that in the circumstances I have set out, the proposal can, as a consequence, be deemed to have the backing of the affected local community. On that basis, the WMS of June 2015 does not serve to justify a decision that would run contrary to the development plan, and the Framework. **[48-51, 56-60, 70, 77, 93-94, 126, 128-130, 135]**

Recommendation

210. I recommend that the appeal be allowed and planning permission be granted subject to the conditions set out in Annex C.

Paul Griffiths

INSPECTOR

¹⁰⁶ CD2.1 Paragraph 1

Annex A: APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Giles Atkinson of Counsel
He called

Tom La Dell CMLI MCIEEM	LaDellWood
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Michael Goddard BA DipTP DMS MRTPI	Goddard Planning Consultancy
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FOR THE APPELLANT:

David Hardy LL.B(Hons) 1 st Class, B.C.L.(Hons) (Oxon) He called	Partner, Squire Patton Boggs (UK) LLP
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James Truscott DipLA (Glos) CMLI	Director, ASH
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George Machin MTCP MRTPI	Partner, Grace Machin Planning
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FOR SHEPPEY SOCIETY FOR ENVIRONMENTAL WELLBEING (SSEW):

Robin Peck
Gave evidence and
called

Mr Barry Day	Retired Engineer and Local Resident
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Mr Andy Fisher	Local Resident
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Phil Haynes ¹⁰⁷	Volunteer Warden for RSPB at Great Bells Farm Nature Reserve
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INTERESTED PERSONS:

Paul Newton Trish Codrington Mr Tatton	Governing Governor, HMP Swaleside (MoJ) Parish Clerk, Minster on Sea PC Local Resident (claimed to represent Leysdown on Sea PC)
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¹⁰⁷ Mr Haynes was not available to give evidence in person, or to be cross-examined, and his proof of evidence was read out at the Inquiry by Sara O'Bray

Mike Brown	Eastchurch PC
John Stanford	Local Resident
Gareth Fulton	Local Resident and Manager of Elmley National Nature Reserve
Tina Booth	Local Resident
Duncan Aldred	Local Resident
Sara O'Bray	Local Resident
Richard Halls	Local Resident (and ex. Prison Officer)
Mark Gibson	Local Resident
Sandra Peck	Local Resident
Andy Booth	Local Councillor (Vice-Chair of Planning Committee)
Michelle Gudgeon	Local Resident
Susan Higgs	Local Resident
Lorraine St John	Local Resident
Denise Russell	Local Resident
Tony Read	Local Resident

Annex B: DOCUMENTS

Core Documents (CD)

CD2.1	The National Planning Policy Framework
CD2.2	Overarching National Policy Statement for Energy (EN-1)
CD2.3	National Policy Statement for Renewable Energy Infrastructure (EN-3)
CD2.4	Written Ministerial Statement on Onshore Wind delivered by Ed Davey on 6 June 2013
CD2.5	Extract from Planning Practice Guidance (Renewable and Low Carbon Energy)
CD2.6	Written Ministerial Statement on Local Planning delivered by Greg Clark on 18 June 2015
CD3.1	Swale Landscape Character and Biodiversity Appraisal SPD September 2011 (The Jacobs Report)
CD3.2	Renewable Energy for Kent: An Action Plan for Delivering Opportunities (August 2013)
CD3.3	Review of Renewable and Decentralised Energy Potential in South East England (prepared for South East Planning Partnership Board by Land Use Consultants and TV Energy) (June 2010)
CD3.4	Swale BC Climate Change Strategy: Sustainable Design and Construction Guidance Document (March 2010)
CD3.6	Renewable Energy for Kent Part 1: Overview and Action Plan (AECOM) (April 2012)
CD3.7	Swale Renewable Energy & Sustainable Development Study (AECOM) (November 2011)
CD3.8	Bearing Fruits 2031: The Swale Borough Local Plan Part 1 – Publication Version
CD5.4	The UK Renewable Energy Strategy
CD5.6	The UK Low Carbon Transition Plan
CD5.29	UK Renewable Energy Roadmap Update 2013
CD5.31	Amber Rudd’s speech on a new direction for UK energy policy (18 November 2015)
CD5.33	The Fifth Carbon Budget November 2015
CD5.34	Statement to Parliament on ending subsidies for onshore wind by Amber Rudd (22 June 2015)
CD5.36	Renewable Energy Progress Report by the EC (15 June 2015)
CD9.2	SoS Decision on APP/D0515/A/10/2123739 (Burnthouse Farm)

- CD9.13 SoS Decision on APP/J0540/V/14/2220136 (French Farm) CD9.14
SoS Decision on APP/H0900/A/14/2224323 (Lillyhall Landfill Site)
- CD9.15 SoS Decision on APP/E3715/A/144/2227479 (Cestersover Farm)
- CD9.16 Inspector's Decision on APP/D0515/A/14/2228134 (Long Nighslayer's Drove)
- CD9.17 Inspector's Decision on APP/W4705/W/14/3000729 (Jaytail Farm)
- CD9.18 Inspector's Decision on APP/E2530/A/14/2215578 (Honey Pot Lane) CD9.19
Inspector's Decision on APP/Y0435/A/14/2227711 (Astwood Grange)
- CD10.3 Landscape Character Assessment: Guidance for England and Scotland
- CD10.4 Landscape Character Assessment: Guidance for England and Scotland Topic Paper 9: Climate change and natural forces – the consequences for landscape character
- CD10.5 Visual Representation of Wind Farms (SNH) (Version 2.1 December 2014)
- CD10.15 GLVIA Third Edition
- CD11.1 ETSU-R-97: The Assessment and Rating of Noise from Wind Farms
- CD11.2 A Good Practice Guide to the Application of ETSU-R-97 for the Assessment and Rating of Wind Turbine Noise (IoA May 2013)
- CD11.3 New Rides Farm: Appraisal of Noise Impact Assessment (John Yelland) (24 November 2014)
- CD11.4 Response to CD11.3 from Ion Acoustics (16 December 2014)
- CD11.5 Further Response from Ion Acoustics (27 January 2015)
- CD12.1 Planning Application and Supporting Documents including Environmental Statement
- CD12.2 Addendum Environmental Statement (July 2014)
- CD12.3 Appropriate Assessment for Proposed Wind Farm at HMP Standford Hill, Eastchurch, IoS
- CD12.4 Officers' Report to Committee on New Rides Farm Application
- CD12.5 Further Report to Committee on New Rides Farm Application
- CD12.6 Council's Decision Notice on New Rides Farm Application
- CD12.7 Statement of Case on behalf of the appellant
- CD12.8 Statement of Case by the Council
- CD12.9 Statement of Case by SSEW

Main Parties' Documents

Appellant

- A1 Proof of Evidence of Mr Truscott
- A2 Summary Proof of Evidence of Mr Machin
- A3 Proof of Evidence and Appendix of Mr Machin
- A4 Proof of Evidence of Mr Irvine

Council

- C1 Summary Proof of Evidence of Mr La Dell
- C2 Proof of Evidence and Appendices of Mr La Dell
- C3 Summary Proof of Evidence of Mr Goddard
- C4 Proof of Evidence and Appendices of Mr Goddard

SSEW (Rule 6 Party)

- R1 Proof of Evidence of John Yelland
- R2 Proof of Evidence of Robin Peck
- R3 Proof of Evidence of Barry Day
- R4 Proof of Evidence of Andy Fisher
- R5 Proof of Evidence of Phil Haynes

Inquiry Documents (ID)

ID1	Council's Letter of Notification
ID2	Swale BC Officers' Report on HMP Standford Hill Wind Energy Development
ID3	Comments of MoJ on HMP Standford Hill Wind Energy Development application
ID4	Summary of Residents' comments on planning application
ID5	Various plans relating to HMP Standford Hill Wind Energy Development (Turbine Placement Constraints, Potential Residential Visual Receptors within 3.6km, and Shadow Flicker Assessment Locations)
ID6	Copy of Appeal Decision APP/W1145/W/15/3002153 (Culsworthy Farm)
ID7	Appellant's Opening Statement
ID8	SSEW Opening Statement
ID9	Council's Opening Statement
ID10	Copy of planning permission for HMP Standford Hill Wind Energy Development (Ref. SW/10/1567)
ID11	Statement of Common Ground agreed between the appellant and Swale BC
ID12	Inspector's Interim Findings on Bearing Fruits 2031
ID13	Copy of WMS of 18 June 2015 on Local Planning
ID14	Copy of Energy Opportunities Map (from Swale Renewable Energy and Sustainable Development Study CD3.7)
ID15	Decision of the Scottish Ministers on PPA-340-2068 (the relocation of an existing waste recycling centre and the formation of a waste to energy facility)
ID16	Extract from Swale Landscape Character and Biodiversity Appraisal (CD3.1): Central Sheppey Farmlands
ID17	Statement of Paul Newton Governing Governor of HMP Swaleside
ID18	Extract from Definitive Map showing PRoWs in vicinity of appeal site
ID19	HMP Standford Hill Wind Energy Development Planning Statement (December 2010)
ID20	HMP Standford Hill Wind Energy Development Design & Access Statement (December 2010)
ID21	HMP Standford Hill Wind Energy Development ES (Volume 1 – Written Statement) (December 2010)
ID22	HMP Standford Hill Wind Energy Development Shadow Flicker Mitigation (to address condition 15 of planning permission ref.SW/10/1567 (ID10))
ID23	Submission of Mike Brown

ID24	Submission of Gareth Fulton
ID25	Submission of Tina Booth
ID26	Submission of Duncan Aldred
ID27	Submission of Sara O'Bray
ID28	Submission of Richard Halls
ID29	Submission of Mark Gibson
ID30	Submission of Sandra Peck
ID31	Submission of Michelle Gudgeon
ID32	Submission of Susan Higgs
ID33	List of Suggested Conditions
ID34	Correspondence between appellant and MoJ following appearance of Mr Paul Newton, Governing Governor of HMP Swaleside
ID35	Wind Turbine AM Review Phase 1 Report (WSP and Parsons Brinckerhoff) (October 2015 [sic])
ID36	Written Submission on Noise from Dr Yelland (SSEW) (10 November 2016)
ID37	Written Submission on Cotton Farm Wind Farm by Bev Gray (SSEW) (October 2016)
ID38	Written Submission on health risks by Barry Day (SSEW) (dated May 2016 but received October 2016)
ID39	Response to ID36, ID37 and ID38 from Gavin Irvine of Ion Acoustics
ID40	Final Comments from MoJ (30 November 2016)
ID41	Closing Submissions of Swale BC
ID42	Closing Submissions of SSEW
ID43	Comments on ID42 from MoJ
ID44	Closing Submissions on behalf of the Appellant
ID45	Comments on ID44 from MoJ
ID46	Final Comments on ID45 from Appellant
ID47	Copy of Swale Borough Local Plan adopted February 2008

Annex C: Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: AEL006-Rev 5: Site Location Plan; AEL007-Rev 5: Proposed Layout Plan; PLTUB126.5-93: Typical Wind Turbine Details; PL002: Typical New and Upgraded Track Details; PL003-R1: Typical Turbine and Transformer Foundation Details; PL005: Typical Substation and Control Building Details; and PL007RA: Typical Arched Culvert.
- 3) The permission shall expire, and the development hereby permitted shall be removed in accordance with Condition 4 below, after a period of 25 years from the date when electricity is first exported from the wind turbines (excluding electricity exported during initial testing and commissioning) (the 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 expiry of this permission, a decommissioning and site restoration scheme shall be submitted for the written approval of the local planning authority. The scheme shall make provision for the removal of the wind turbines and associated above ground works approved under this permission and for the removal of the wind turbine foundation to a depth of at least 1 metre below the finished ground level. The scheme shall also include the management and timing of any works and a traffic management plan to address likely traffic impact issues during the decommissioning period, location of material laydown areas, an environmental management plan to include details of measures to be taken during the decommissioning period to protect wildlife and habitats and details of site restoration measures. The approved scheme shall be fully implemented within 24 months of the expiry of this permission.
- 5) If any wind turbine generator hereby permitted ceases to export electricity for a continuous period of 12 months, except where such cessation is as a result of the wind turbine or ancillary equipment being under repair or replacement or as a result of events outside the reasonable control of the operator such as a sustained network outage, or under instruction from the Distribution Network Operator or the wind farm's Licenced Supplier, then a scheme shall be submitted to the local planning authority for its written approval within 3 months of the end of that 12 month period for the repair or removal of the wind turbine(s). The scheme shall include either a programme of remedial works where repairs to the wind turbine are required, or a programme for removal of the wind turbine and associated above ground works approved under this permission and the removal of the wind turbine foundation to a depth of at least 1 metre below finished ground level and for site restoration measures following the removal of the relevant wind turbine(s). The scheme shall thereafter be implemented in accordance with the approved details and timetable.
- 6) No development shall take place until a Construction Method Statement (CMS) 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 CMS. The CMS shall include (a) the control of noise and vibration emissions from construction activities

including groundwork and the formation of infrastructure; (b) the control of dust including arrangements to monitor dust emissions from the development site during the construction phase; (c) measures for controlling pollution/sedimentation and responding to any spillages/incidents during the construction phase; (d) measures to control mud deposition offsite from vehicles leaving the site; (e) the control of surface water drainage from parking and hardstanding areas including the design and construction of oil interceptors (including during the operational phase); (f) the use of impervious bases and bund walls for the storage of oils, fuels and/or chemicals on-site; (g) the means by which users of public rights-of-way would be protected during the construction period; (h) details of the temporary site compound including temporary structures/buildings, fencing, parking, and storage provision to be used in connection with the construction of the development; (i) details of the proposed storage of materials and the disposal of waste and surplus materials; (j) temporary site illumination during the construction period including proposed lighting levels together with a specification of any lighting; (k) details of the phasing of construction works; (l) a site environmental management plan to include details of measures to be implemented during the construction period to protect wildlife and habitats; (m) areas on site designated for the storage, loading, off-loading, parking and manoeuvring of heavy duty plant, equipment and vehicles; (n) details of mitigation measures to be implemented in the event of severe weather conditions (more than 7 days of consecutive frozen ground) to limit construction activities within 500 metres of favoured foraging/roosting areas of waterfowl, waders and target duck species; (o) details of Reasonable Avoidance Measures (RAMs) to be implemented throughout the construction period in order to prevent individual amphibians or reptiles from being inadvertently killed or injured. RAMs shall include the timing of construction works to avoid sensitive periods when amphibians and reptiles are more likely to be present within different habitats, watching briefs, and staged vegetation removal prior to ground works; and (p) details and a timetable for post construction restoration/reinstatement of the temporary working areas and the construction compound.

- 7) No development shall take place until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the local planning authority. The CTMP shall include proposals for the routing of construction traffic, scheduling and timing of movements, details of escorts for abnormal loads, temporary warning signs, temporary removal and replacement of highway infrastructure/street furniture, and the reinstatement of any signs, verges, or other items, displaced by construction traffic.
- 8) Construction work shall only take place between the hours of 0700-1900 Monday to Friday inclusive and 0700-1300 on Saturdays, with no construction work on Sundays or public holidays. Works outside these hours shall only be carried out (a) with the prior written approval of the local planning authority; (b) in an emergency in which case the local planning authority shall be notified by telephone and in writing as soon as reasonably practicable (and in any event within 48 hours) after the emergency is first identified. Such notification shall include details of the emergency and any works carried out and/or proposed to be carried out;

- (c) if the works are dust suppression; or (d) if the works are for the testing of plant and/or equipment.
- 9) The delivery of any construction materials or equipment for the construction of the development, other than wind turbine blades, nacelles and towers, and concrete for the wind turbine foundations, shall be restricted to between the hours of 0700 and 1900 on Monday to Friday inclusive and 0800 to 1300 on Saturdays. Deliveries outside these hours may only take place with the prior written approval of the local planning authority.
 - 10) The blades of all wind turbine generators shall rotate in the same direction. The overall height of each wind turbine shall not exceed 126.5 metres to the tip of the blades when the wind turbine is in the vertical position as measured from ground levels immediately adjacent to the wind turbine base.
 - 11) No wind turbine shall be erected until details of the colour(s) and finish(es) of the towers, nacelles and blades and any external transformer units have been submitted to and approved in writing by the local planning authority. No name, sign or logo shall be displayed on the external surfaces of the wind turbines or any external transformer units other than those necessary to meet health and safety requirements. The development shall be carried out in accordance with the approved details and retained as such thereafter.
 - 12) Construction of the electricity substation shall not commence until details of the design, external appearance, dimensions, materials, and foul and surface water drainage of the building and any associated compound and/or parking area, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and retained as such thereafter.
 - 13) All electrical cabling between the individual wind turbines, and between the wind turbines and the electricity substation, shall be installed underground.
 - 14) No development shall commence until a scheme for post construction bird monitoring (of bird strike bird disturbance and bird numbers during summer and winter), to verify the predicted environmental effects of the construction and operation of the turbines on land at Great Bells Farm has been submitted to and approved in writing by the local planning authority. The scheme shall include provisions for management actions should there be a demonstrable detrimental effect on the bird populations at the Great Bells Farm site from the operation of development hereby approved. The scheme shall also include a timetable for the implementation of any monitoring or management requirements. The scheme shall be implemented as approved.
 - 15) No development shall commence until a Habitat Management Plan (HMP) has been submitted to and approved in writing by the local planning authority. The HMP shall include details of habitat enhancement for the 24 hectare area of land referred to as field 14 on Figure 8.3 of the Environmental Statement addendum, biodiversity enhancement measures defined in Table 7.22 and illustrated on Figure 7.6 of the Environmental Statement and Table 8.51 of the Environmental Statement Addendum, and a timetable. The scheme shall be implemented as approved.

- 16) No development shall commence until a management plan to maintain the habitat potential of Great Bells Farm has been submitted to and approved in writing by the local planning authority. The management plan shall include suitable habitat mitigation or compensation measures. Monitoring and any mitigation required shall be carried out for the duration of the development and operation of the wind turbines in full accordance with the approved scheme.
- 17) Vegetation clearance shall be undertaken outside of the breeding bird season (1st March to 31st August inclusive). Where this cannot be avoided an independent ornithologist will be appointed to undertake a pre-vegetation clearance survey to identify the presence of any nests being built or in use, details of which shall be submitted to and approved in writing by the local planning authority prior to any clearance works taking place during bird breeding season. To avoid any potential disturbance to Schedule 1 species, notably marsh harrier, in advance of any construction works to be undertaken during the breeding season, all areas within 500m of construction works will also be subject to a pre-construction survey undertaken by a competent ornithologist, to identify any nesting locations for any Schedule 1 protected species. If identified work exclusion zones will be established around nest sites, in line with best practice guidance for the species, in consultation with the appointed competent ecologist. A Breeding Bird Protection Plan (BBPP) would be implemented with the aim of protecting breeding birds from disturbance and ensuring compliance with nature conservation law during the construction phase (for example during vegetation removal).
- 18) No development shall commence until, a site walk-over has been made by an independent ecologist to check for any changes to baseline conditions; this will include a specific check for badger setts, otter holts and water vole burrows in the vicinity of construction areas, using standard survey methods and recording all evidence or potential evidence of the presence of these species. A survey radius of 100m from all construction works locations is proposed. If any such features are identified, the survey results will be reviewed to determine whether any additional mitigation measures will be necessary to ensure legal compliance.
- 19) No development shall commence until a scheme detailing the protection and/or mitigation of damage to populations of water vole, a protected species under The Wildlife and Countryside Act 1981 as amended and its associated habitat during construction works and decommissioning including details of the methodology and timing has been submitted to and approved in writing by the local planning authority. The development shall take place in full accordance with the approved scheme.
- 20) Prior to the erection of the first wind turbine written confirmation shall be provided to the local planning authority of the proposed date of commencement of and completion of the development, and the height above ground level, and the position of each wind turbine in latitude and longitude.
- 21) No development shall commence until a scheme for either low intensity 32.5 candela red lights visible from ground level and medium intensity 200 candela right lights visible above hub height, or infra-red warning lighting,

- has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in full thereafter.
- 22) Prior to the operation of the wind turbines, details of a scheme to notify Eastchurch Airfield of wind turbine operation, prevailing wind speeds and direction determined periodically using data gathered by the development hereby permitted, shall be submitted to and approved in writing by the local planning authority. The scheme shall also include details of procedures where it may be prudent to reduce or shut down the operation of the wind turbines in an emergency situation should aircraft encroach closer than 16 rotor diameters from turbines. The approved scheme shall be implemented as approved.
 - 23) No wind turbine shall be erected until an agreement has been reached between the wind farm operator and London Southend Airport with respect to a Radar Mitigation Solution, and the existence of such an agreement has been confirmed in writing to the local planning authority by both the wind farm operator and London Southend Airport. The wind turbines will not be brought into use until the requirements of the Radar Mitigation Solution have been implemented in full as confirmed in writing by the wind farm operator together with London Southend Airport to the local planning authority. For the purposes of this condition, Radar Mitigation Solution means a technical or commercial solution put in place to mitigate the impact on the air traffic control radar at London Southend Airport.
 - 24) No development shall commence until a written scheme of investigation and programme of archaeological works has been submitted to and approved in writing by the local planning authority. The written scheme of investigation and programme of archaeological work shall be implemented as approved.
 - 25) Prior to the First Export Date a scheme providing for the investigation and alleviation of any electro-magnetic interference to any television signal caused by the operation of the wind turbines shall be submitted to and agreed in writing by the local planning authority. The scheme shall provide for the investigation by a qualified television engineer, within a set timetable, 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 existed or had planning permission at the time permission was granted, 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 to be attributable to the wind turbines hereby approved, mitigation works shall be carried out in accordance with a scheme, which shall include a timetable, which has first been agreed in writing by the local planning authority.
 - 26) No development shall commence until: (1) a written scheme has been submitted to and approved in writing by the local planning authority setting out a protocol for the assessment of shadow flicker in the event of any complaint to the local planning authority from the owner or occupier of any building which lawfully exists or had planning permission at the date of this permission. The written scheme shall include remedial measures to alleviate any shadow flicker attributable to the development. Operation of the wind turbines shall take place in accordance with the approved

protocol; and (2) a shadow flicker shut down protocol to control shadow flicker/throw effects at Swaleside and Elmley prisons shall be submitted to and approved in writing by the local planning authority. The protocol shall include the following: (a) identification and detailed modelling of all potential shadow flicker/throw receptors within the shadow flicker zone of ten rotor diameters, including prison cells and CCTV equipment at Swaleside and Elmley prisons. This model is to be used to produce detailed wind turbine shut down logs to prevent shadow flicker/throw effects occurring at shadow flicker receptors within Swaleside and Elmley prisons; and (b) where unforeseen shadow flicker/throw effects occur within the prison buildings identified as requiring mitigation by the Prison Authority the following procedures will be implemented: (i) the Developer shall use all reasonable endeavours to relieve the loss of amenity caused by the shadow flicker attributable to the Development; (ii) within fourteen days of receiving a complaint from the Prison Authority, the Developer shall notify the local planning authority and Prison Authority in writing as to the course of action it shall take to investigate any problems associated with shadow flicker arising from the development; (iii) within twenty eight days of receiving a complaint from the Prison Authority, the developer shall notify the local planning authority and Prison Authority in writing as to the course of action it shall take to mitigate problems associated with shadow flicker arising from the development; (iv) industry standard mitigation options to be considered by the developer will include: increasing/providing shielding between the identified receptor and the development (by way of vegetation, other obstacles or window blinds or screens within buildings) in order to control or prevent shadow flicker occurring within occupied buildings requiring mitigation for shadow flicker; and/or upgrading or replacing CCTV or other security apparatus; and/or further operational controls where a selected wind turbine or turbines are programmed to be shut-down at times when shadow flicker effects have been demonstrated to occur and the sun is bright enough to cause a shadow flicker effect (light intensity will be monitored with external solar sensors).

- 27) The wind turbines and their associated infrastructure shall be situated within 30m of the positions shown in drawing AEL007- Rev 5 Proposed Layout Plan. Any proposed wind turbine movements between 31 – 50m will be subject to the prior written approval of the local planning authority. No turbine shall be micro-sited to a position within the North Kent Marshes Special Landscape Area.
- 28) Finished floor levels of the permanent substation building and transformers shall be raised a minimum of 150mm above ground levels.
- 29) No development shall commence until the area between the nearside carriageway edge, and lines drawn between a point 4.5m back from the carriageway edge along the centre line of the access, and points on the carriageway edge 90m from and on both sides of the centre line of the access, have been cleared of obstruction to visibility at and above a height of 1.05m above the nearside carriageway level. This area shall be thereafter maintained free of obstruction at all times.
- 30) The rating level of noise immissions from the combined effects of the wind turbines hereby permitted (including the application of any tonal penalty), when determined in accordance with the attached Guidance Notes, shall not

exceed the values for the relevant integer wind speed set out in or derived from Tables 1 and 2 attached to these conditions and:

- (A) Prior to the First Export Date, the 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 local planning authority 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 at least the date, time and location that the complaint relates to, 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. Within 14 days of receipt of the written request of the local planning authority made under this paragraph (B), the wind farm operator shall provide the information relevant to the complaint logged in accordance with paragraph (H) to the local planning authority in the format set out in Guidance Note 1(e).
- (C) Where there is more than one property at a location specified in Tables 1 and 2 attached to this condition, the noise limits set for that location shall apply to all dwellings at that location. Where a dwelling to which a complaint is related is not identified by name or location in the Tables attached to these conditions, the 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 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) Prior to the submission of the independent consultant's assessment of the rating level of noise immissions pursuant to paragraph (F) of this condition, the wind farm operator shall submit to the Local Planning Authority for written approval a proposed assessment protocol setting out the following: (i) the range of meteorological and operational conditions (the range of wind speeds, wind directions, power generation and times of day) to determine the assessment of rating level of noise immissions; and (ii) a reasoned assessment as to whether the noise giving rise to the complaint contains or is likely to contain a tonal component. The proposed range of conditions shall be those which prevailed during times when the complainant alleges there was disturbance due to noise, having regard to the information provided in the written request of the local planning authority under paragraph (B), and such others as the independent consultant considers necessary to fully assess the noise at the complainant's property. The assessment of the rating level of noise immissions shall be undertaken in accordance with the assessment protocol approved in writing by the local planning authority and the attached Guidance Notes.
- (F) 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) of this condition unless the time limit is extended in writing by the local planning authority. The assessment shall include all data collected for the purposes of undertaking the compliance measurements, such data to be provided in the format set out in Guidance Note 1(e) of the Guidance Notes. The instrumentation used to undertake the measurements shall be calibrated in accordance with Guidance Note 1(a) and certificates of calibration shall be submitted to the local planning authority with the independent consultant's assessment of the rating level of noise immissions. Where a further assessment of the rating level of noise immissions from the wind farm is required pursuant to Guidance Note 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 (F) above unless the time limit for the submission of the further assessment has been extended in writing by the Local Planning Authority.
- (G) The wind farm operator shall continuously log power production, wind speed and wind direction, all in accordance with Guidance Note 1(d). These data shall be retained for a period of not less than 24 months. The wind farm operator shall provide this information in the

format set out in Guidance Note 1(e) to the local planning authority on its request, within 14 days of receipt in writing of such a request.

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

Table 1 - Between 07:00 and 23:00 – Free-field Noise Limit, dB LA90, 10-minute

Location	Standardised wind speed at 10 meter height (m/s) within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
Nearest prison cell at Swaleside 598713, 169779	40	40	40	40.4	41.7	42.7	43	43	43	43	43	43
Nearest prison cell at Elmley Prison 598566, 169288	40	40	40	40.4	41.7	42.7	43	43	43	43	43	43
Nearest prison cell at Standford Prison 598289, 169691	40	40	40	40.4	41.7	42.7	43	43	43	43	43	43
New Rides Bungalow 599382, 170450	35	35	35	35	36	38	40	43	45	45	45	45
New Rides Farm 599280, 170156	45	45	45	45	45	45	45	45	45	45	45	45
Residential properties on Range Road, Orchard Road, Brabazon Way, Church Road, Kent View Drive 598676, 170159	35	35	35	37	38	39	42	45	45	45	45	45

Table 2 - Between 23:00 and 07:00 – Free-field Noise Limit dB LA90, 10-minute

Location	Standardised wind speed at 10 meter height (m/s) within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
Nearest prison cell at Swaleside 598713, 169779	40	40	40	40	40	40	40	41	42.6	43	43	43
Nearest prison cell at Elmley Prison 598566, 169288	40	40	40	40	40	40	40	41	42.6	43	43	43
Nearest prison cell at Standford Prison, 598289, 169691	40	40	40	40	40	40	40	41	42.6	43	43	43
New Rides Bungalow 599382, 170450	43	43	43	43	43	43	43	43	45	45	45	45
New Rides Farm 599280, 170156	45	45	45	45	45	45	45	45	45	45	45	45
Residential properties on Range Road, Orchard Road, Brabazon Way, Church Road, Kent View Drive 598676, 170159	43	43	43	43	43	43	43	44	45	45	45	45

Note to Tables 1 & 2: The geographical co-ordinate references set out in these tables are provided for the purpose of identifying the general location of dwellings to which a given set of noise limits applies. The wind speed at 10 metres height within the site refers to wind speed measured directly at 10 metres height.

Guidance Notes for Noise Condition

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

Note 1

(a) Values of the LA90,10-minute noise statistic should be measured at the complainant's property (or an approved alternative representative location as detailed in Note 1(b)), using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This should be calibrated before and after each set of measurements, using a calibrator meeting BS EN 60945:2003 "Electroacoustics – sound calibrators" Class 1 with PTB Type Approval (or the equivalent UK adopted standard in force at the time of the measurements) and the results shall be recorded. Measurements shall be undertaken in such a manner to enable a tonal penalty to be calculated and applied in accordance with Guidance Note 3.

(b) The microphone shall be mounted at 1.2 - 1.5 metres above ground level, fitted with a two-layer windshield or suitable equivalent approved in writing by the local planning authority, and placed outside the complainant's dwelling. Measurements should be made in "free field" conditions. To achieve this, the microphone shall be placed at least 3.5 metres away from the building facade or any reflecting surface except the ground at the approved measurement location. In the event that the consent of the complainant for access to his or her property to undertake compliance measurements is withheld, the wind farm operator shall submit for the written approval of the local planning authority details of the proposed alternative representative measurement location prior to the commencement of measurements and the measurements shall be undertaken at the approved alternative representative measurement location.

(c) The LA90,10-minute measurements should be synchronised with measurements of the 10-minute arithmetic mean wind speed and wind direction data and with operational data logged in accordance with Guidance Note 1(d) and rain data logged in accordance with Note 1(f).

(d) To enable compliance with the conditions to be evaluated, the wind farm operator shall continuously log arithmetic mean wind speed in metres per

second and wind direction in degrees from north at hub height for each turbine and arithmetic mean power generated by each turbine, all in successive 10-minute periods. Unless an alternative procedure is previously agreed in writing with the local planning authority, this hub height wind speed, averaged across all operating wind turbines, shall be used as the basis for the analysis. All 10 minute arithmetic average mean wind speed data 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 Guidance Note 2, such correlation to be undertaken in the manner described in Guidance Note 2. All 10-minute periods shall commence on the hour and in 10- minute increments thereafter.

(e) Data provided to the local planning authority in accordance with paragraphs (E) (F) (G) and (H) of the noise condition shall be provided in comma separated values in electronic format.

(f) A data logging rain gauge shall be installed in the course of the independent consultant undertaking an assessment of the level of noise immissions. The gauge shall record over successive 10-minute periods synchronised with the periods of data recorded in accordance with Note 1(d). The wind farm operator shall submit details of the proposed location of the data logging rain gauge to the local planning authority prior to the commencement of measurements.

Note 2

(a) The noise measurements should be made so as to provide not less than 20 valid data points as defined in Note 2 paragraph (b).

(b) Valid data points are those measured during the conditions set out in the assessment protocol approved by the local planning authority under paragraph (E) of the noise condition but excluding any periods of rainfall measured in accordance with Note 1(f).

(c) Values of the LA90,10-minute noise measurements and corresponding values of the 10-minute standardised ten metre height wind speed for those data points considered valid in accordance with Note 2(b) shall be plotted on an XY chart with noise level on the Y-axis and wind speed on the X-axis. A least squares, "best fit" curve of an order deemed appropriate by the independent consultant (but which may not be higher than a fourth order) shall be fitted to the data points to define the wind farm noise level at each integer speed.

Note 3

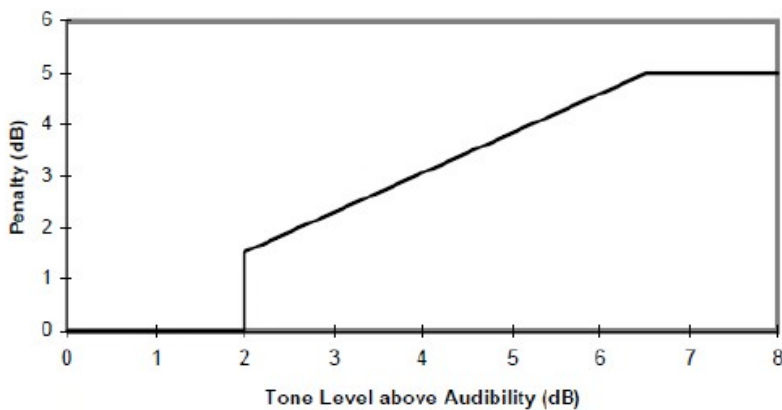
(a) Where, in accordance with the approved assessment protocol under paragraph (E) of the noise condition, noise immissions at the location or locations where compliance measurements are being undertaken contain or are likely to contain a tonal component, a tonal penalty shall be calculated and applied using the following rating procedure.

(b) For each 10-minute interval for which LA90, 10-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 average tone level above audibility shall be calculated for each integer wind speed bin. Samples for which the tones were below the audibility criterion or no tone was identified, a value of zero audibility shall be substituted.

(e) The tonal penalty is derived from the margin above audibility of the tone according to the figure below derived from the average tone level above audibility for each integer wind speed.



Note 4

(a) If a tonal penalty is to be applied in accordance with Note 3 the rating level of the turbine noise at each wind speed is the arithmetic sum of the measured noise level as determined from the best fit curve described in Note 2 and the penalty for tonal noise as derived in accordance with Note 3 at each integer wind speed within the range set out in the approved assessment protocol under paragraph (E) of the noise condition.

(b) If no tonal penalty is to be applied then the rating level of the turbine noise at each wind speed is equal to the measured noise level as determined from the best fit curve described in Note 2.

(c) If the rating level at any integer wind speed lies at or below the values set out in the Tables attached to the conditions or at or below the noise limits approved by the local planning authority for a complainant’s dwelling in accordance with paragraph (C) of the noise condition then no further action is necessary. In the event that the rating level is above the limit(s) set out in the

Tables attached to the noise conditions or the noise limits for a complainant's dwelling approved in accordance with paragraph (C) of the noise condition, the independent consultant shall undertake a further assessment of the rating level to correct for background noise so that the rating level relates to wind turbine noise immission only.

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

- i. Repeating the steps in Note 2, with the wind farm switched off, and determining the background noise (L3) at each integer wind speed within the range set out in the approved noise assessment protocol under paragraph (E) of this condition.
- ii. The wind farm noise (L1) at this speed shall then be calculated as follows where L2 is the measured level with turbines running but without the addition of any tonal penalty:

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

- iii. The rating level shall be re-calculated by adding the tonal penalty (if any is applied in accordance with Note 3) to the derived wind farm noise L1 at that integer wind speed.
- iv. If the rating level after adjustment for background noise contribution and adjustment for tonal penalty (if required in accordance with note (iii) above) at any integer wind speed lies at or below the values set out in the Tables attached to the conditions or at or below the noise limits approved by the local planning authority for a complainant's dwelling in accordance with paragraph (C) of the noise condition then no further action is necessary. If the rating level at any integer wind speed exceeds the values set out in the Tables attached to the conditions or the noise limits approved by the local planning authority for a complainant's dwelling in accordance with paragraph (C) of the noise condition then the development fails to comply with the conditions.



RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

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

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

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

SECTION 3: AWARDS OF COSTS

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

SECTION 4: INSPECTION OF DOCUMENTS

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