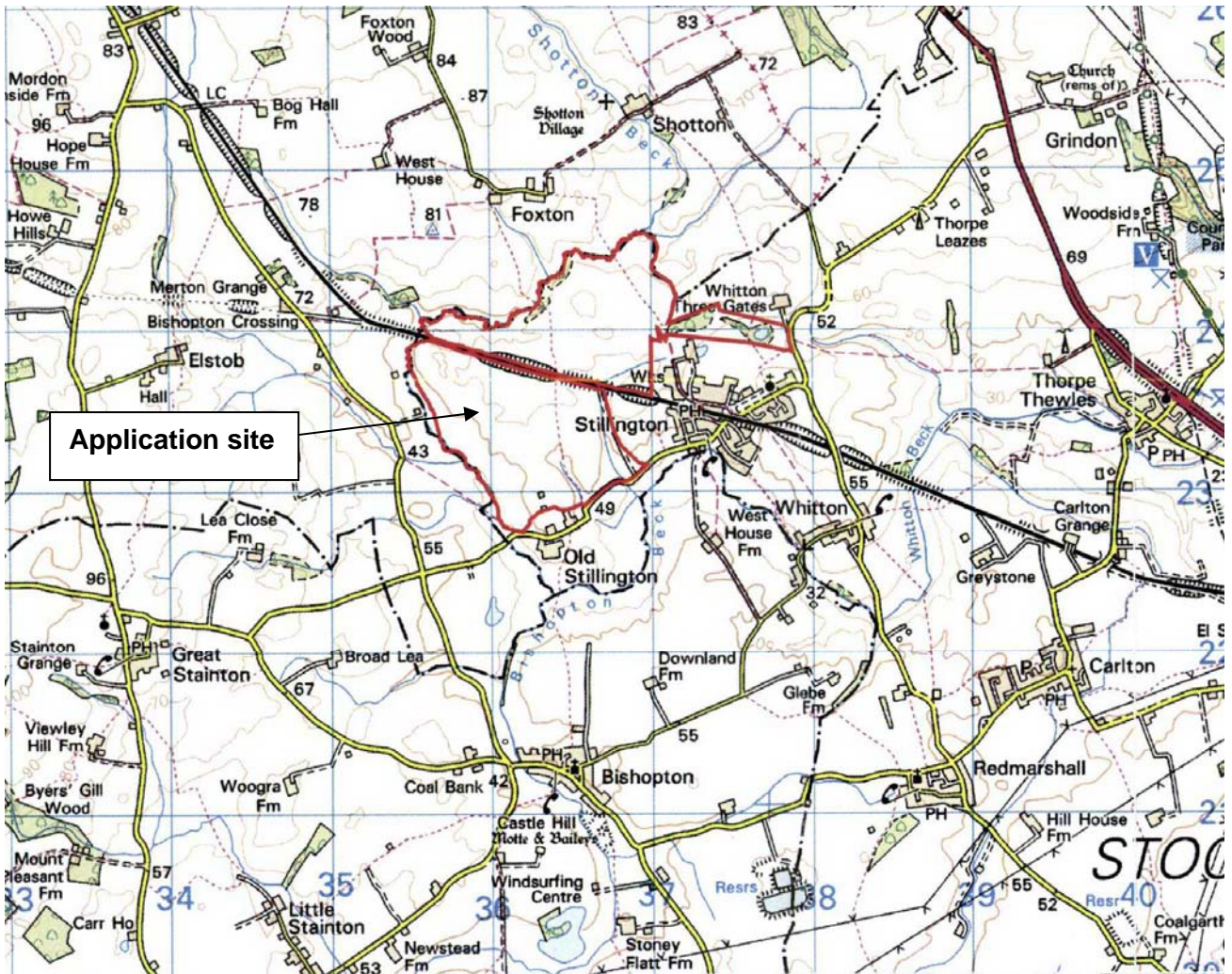
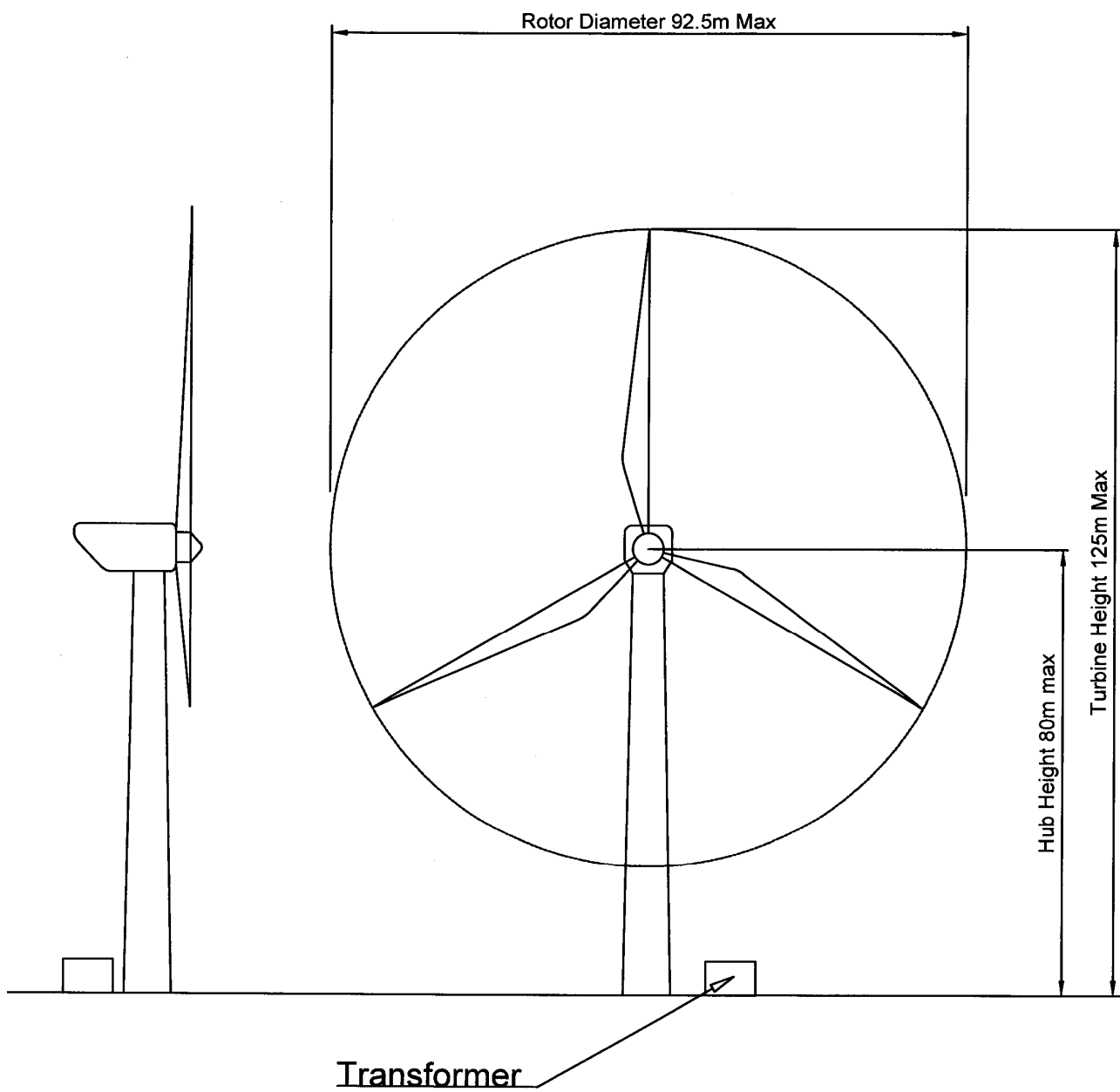


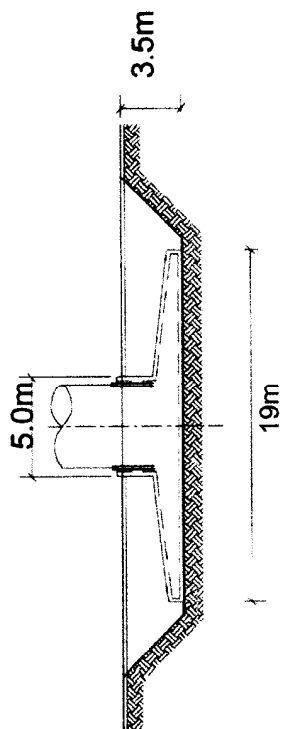
10/2549/EIS – Lambs Hill Wind Farm  
Appendix reference 1  
Site location plan



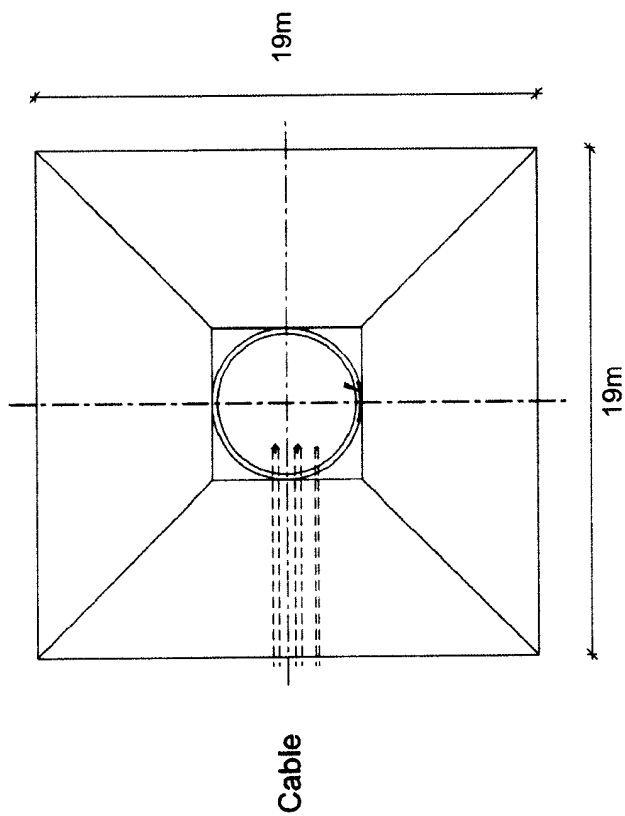


10/2549/EIS – Lambs Hill Wind Farm  
Appendix reference 3  
Typical Turbine Detail



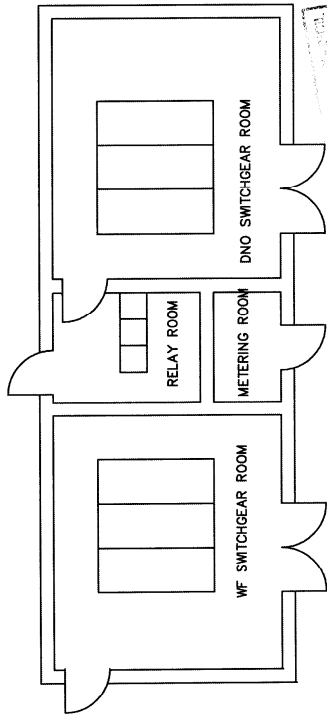


Typical gravity foundation  
Turbine Foundation  
Section View

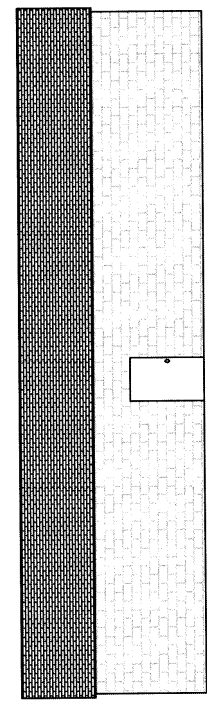
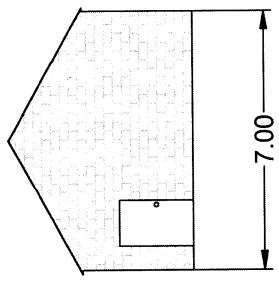
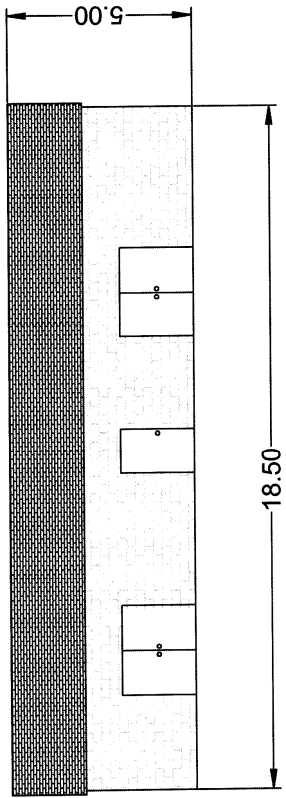


Turbine Foundation  
Plan View

10/2549/EIS – Lambs Hill Wind Farm  
 Appendix reference 5  
 Typical Control Building

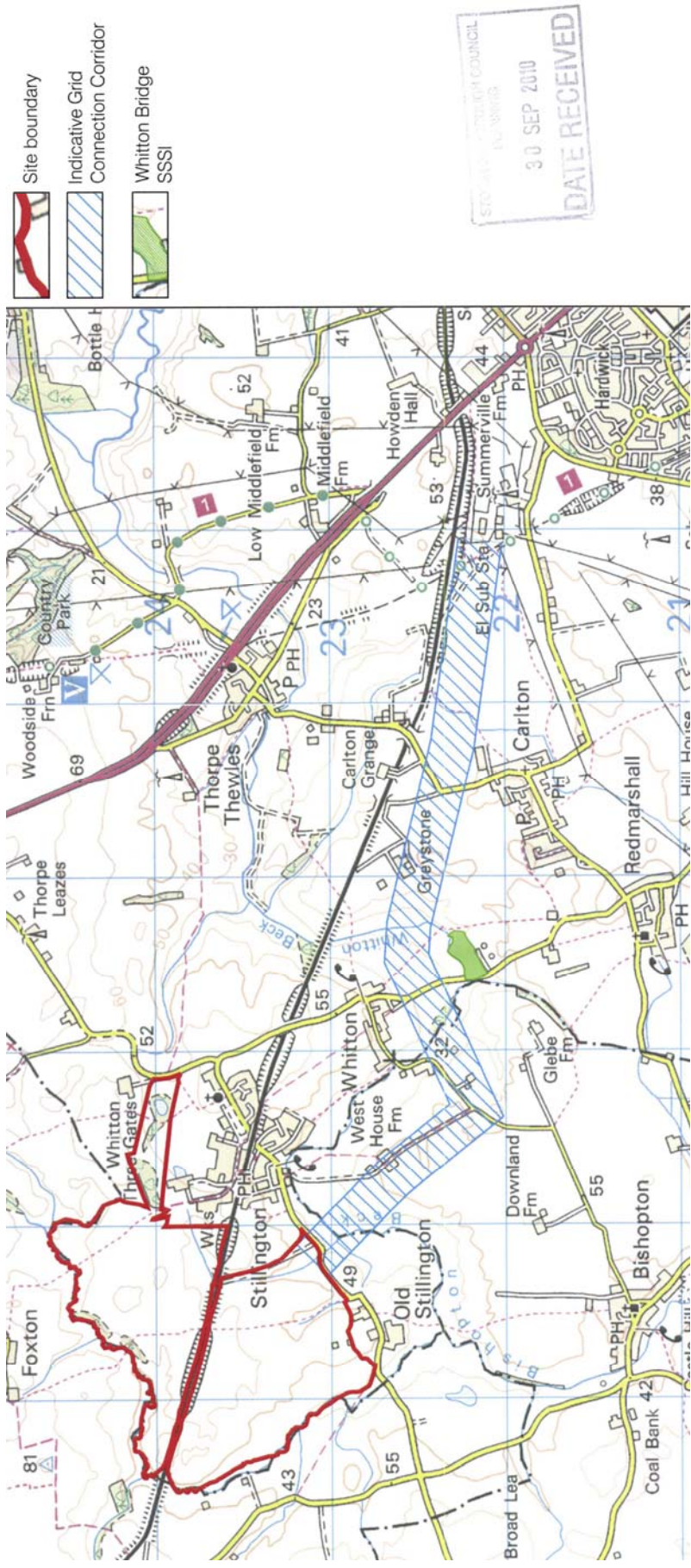


Approximately 18.5m x 7m x 5m in height  
 External material to be agreed with local  
 planning authority

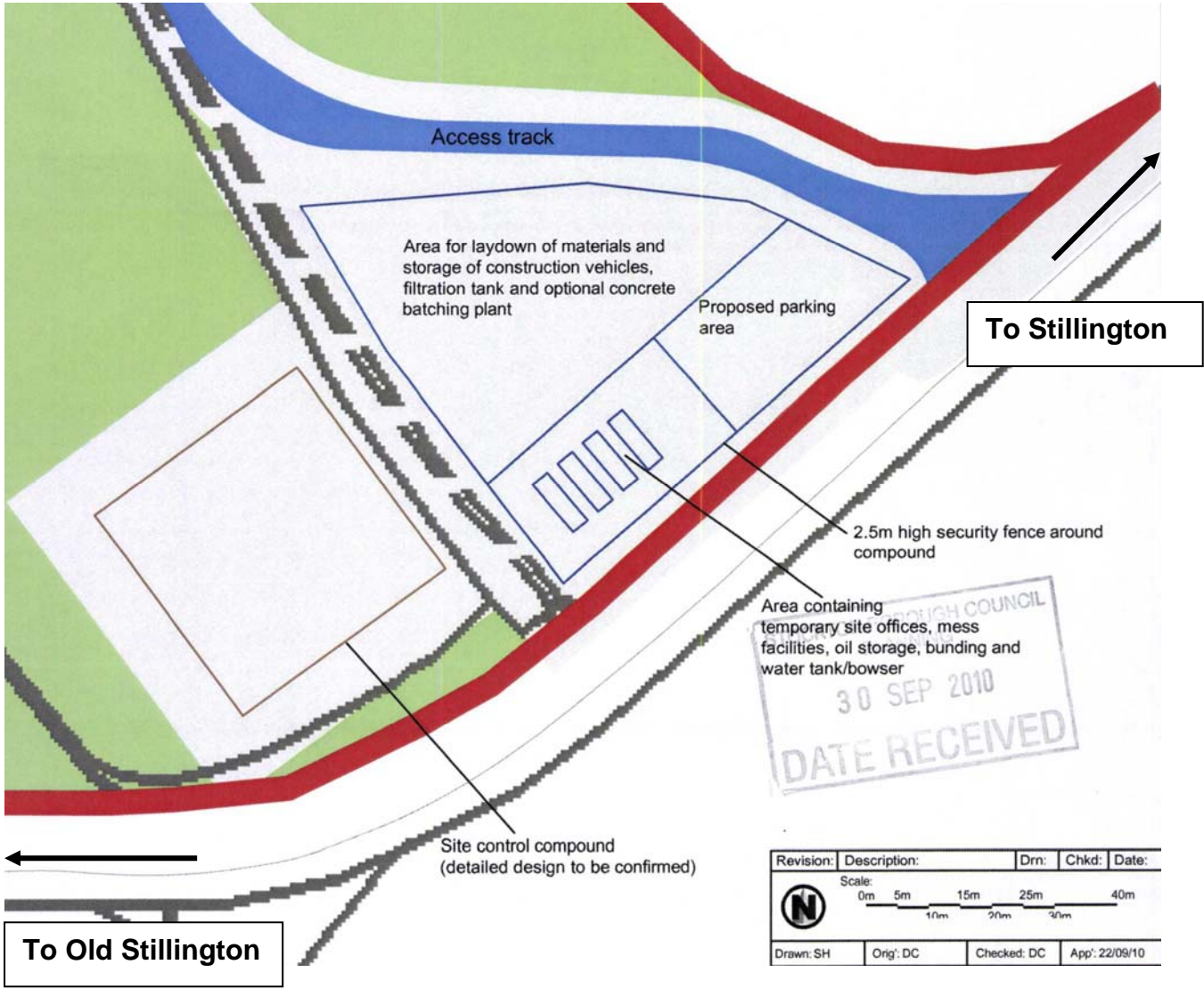


|   |                |                          |       |       |
|---|----------------|--------------------------|-------|-------|
| Revision:   | Description:   | Dwn:                     | Chkd: | Date: |
|   |                |                          |       |       |
| Drawn: SH   | Checked: EK    | App: 17/09/10            |       |       |
| Scale: 1:125  | Date: 01/07/10 | Drawing Status: APPROVED |       |       |
| Source information  |                |                          |       |       |
| <small>Mapping data reproduced from Buba: 10,000 by permission of Ordnance Survey &amp; on behalf of the controller of Her Majesty's Stationery Office, © Crown Copyright (2008). All rights reserved. N: 0007900</small> |                |                          |       |       |
| Project: Lambs Hill   |                |                          |       |       |
| Title: Typical Control Building Design  |                |                          |       |       |
| Drawing number: HJB / 749 / PA20 Rev: Issue A3  |                |                          |       |       |
| <b>BANKS</b><br><b>Banks Developments</b><br>Development With Care  |                |                          |       |       |
| <small>Inkerman Road<br/>       Town Law, Bishop Auckland<br/>       County Durham<br/>       DL3 44G<br/>       T: 01749 665600<br/>       F: 01749 738306<br/>       www.banksdevelopments.com</small>                  |                |                          |       |       |

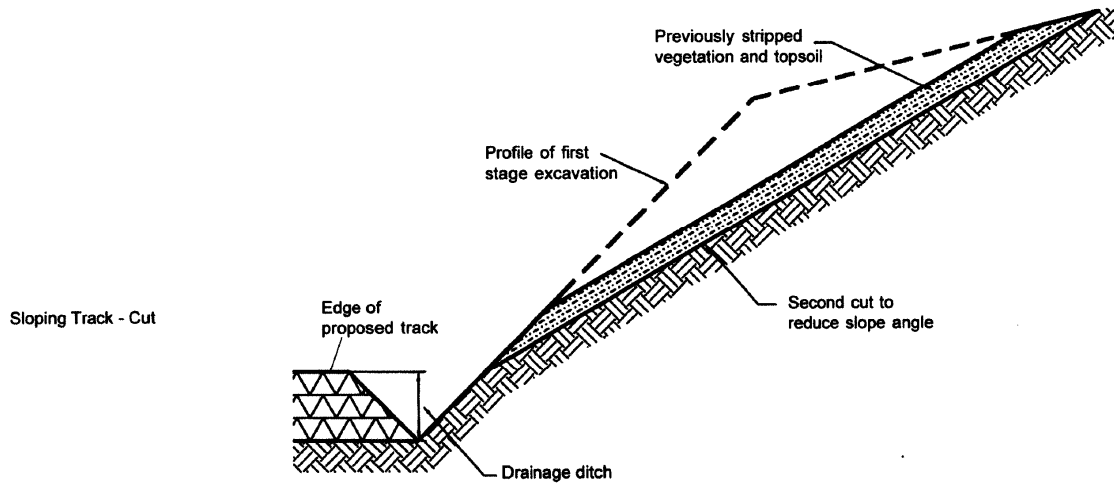
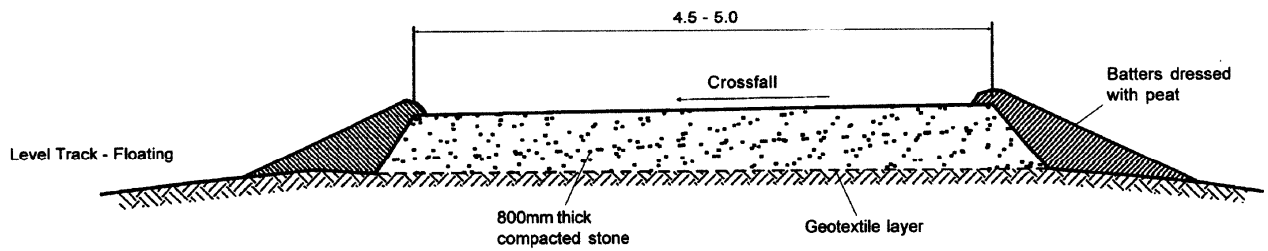
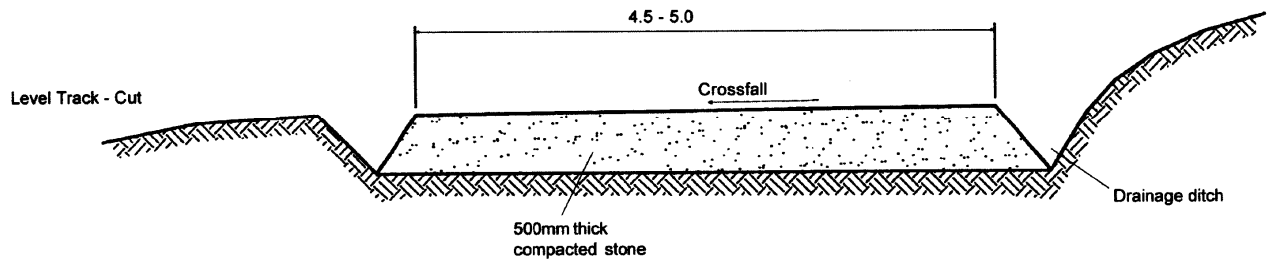
10/2549/EIS – Lambs Hill Wind Farm  
Appendix reference 6  
Possible grid connection corridor



10/2549/EIS – Lambs Hill Wind Farm  
 Appendix reference 7  
 Indicative Lay down and Construction Compound Area

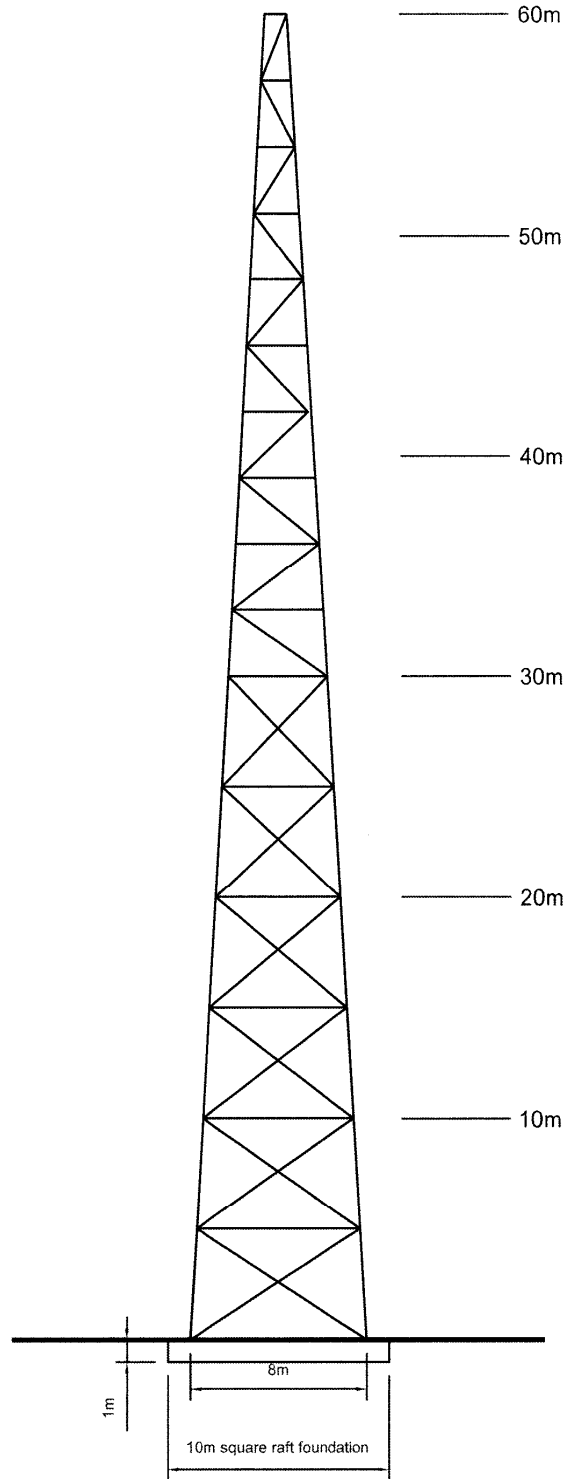


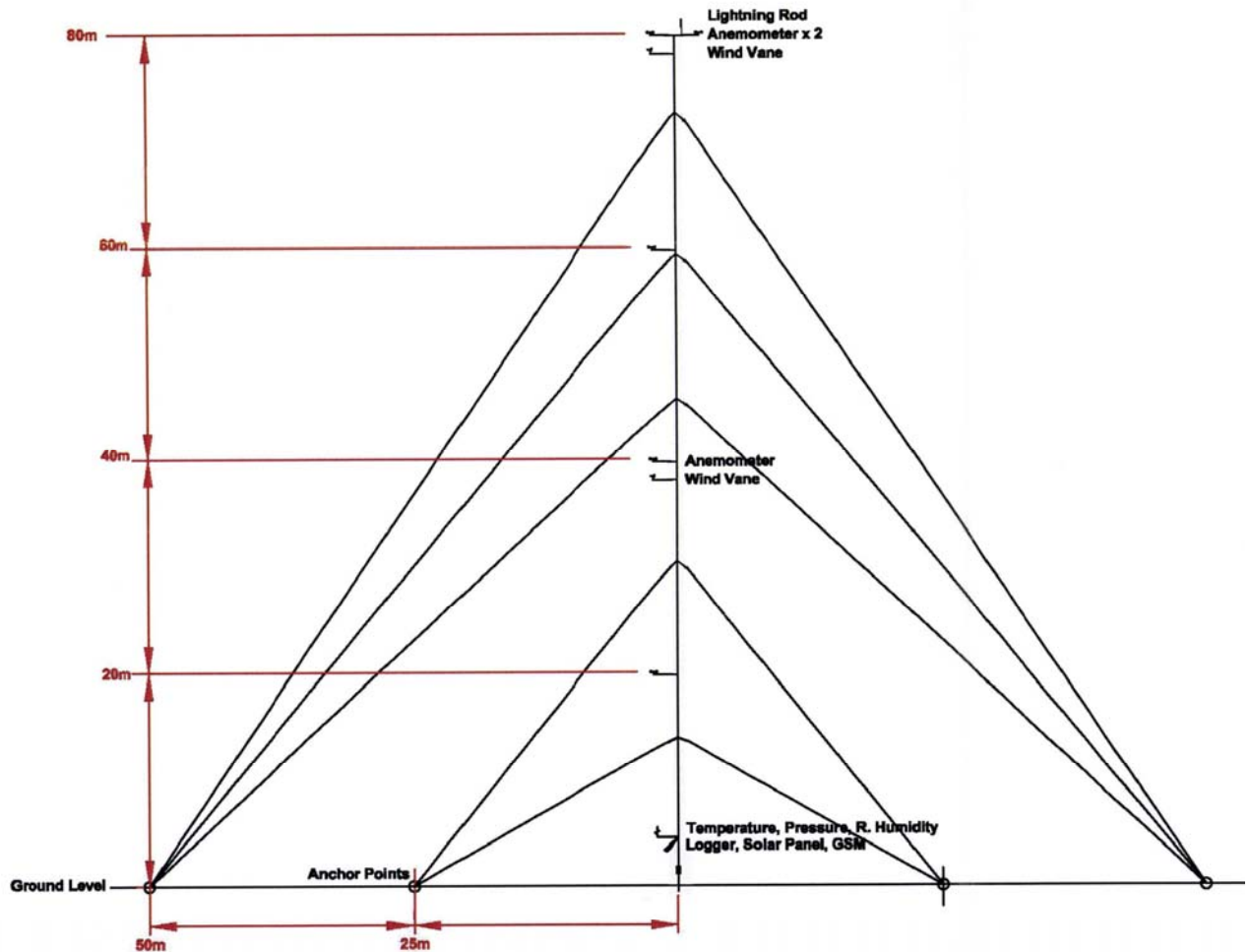
10/2549/EIS – Lambs Hill Wind Farm  
Appendix reference 8  
Cross sections of typical internal tracks



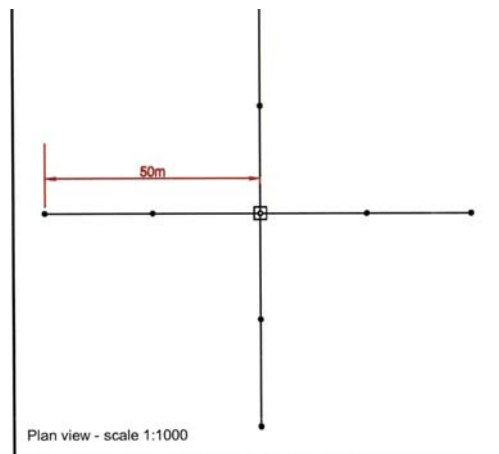


10/2549/EIS – Lambs Hill Wind Farm  
Appendix reference 9  
Typical 60m Met Mast

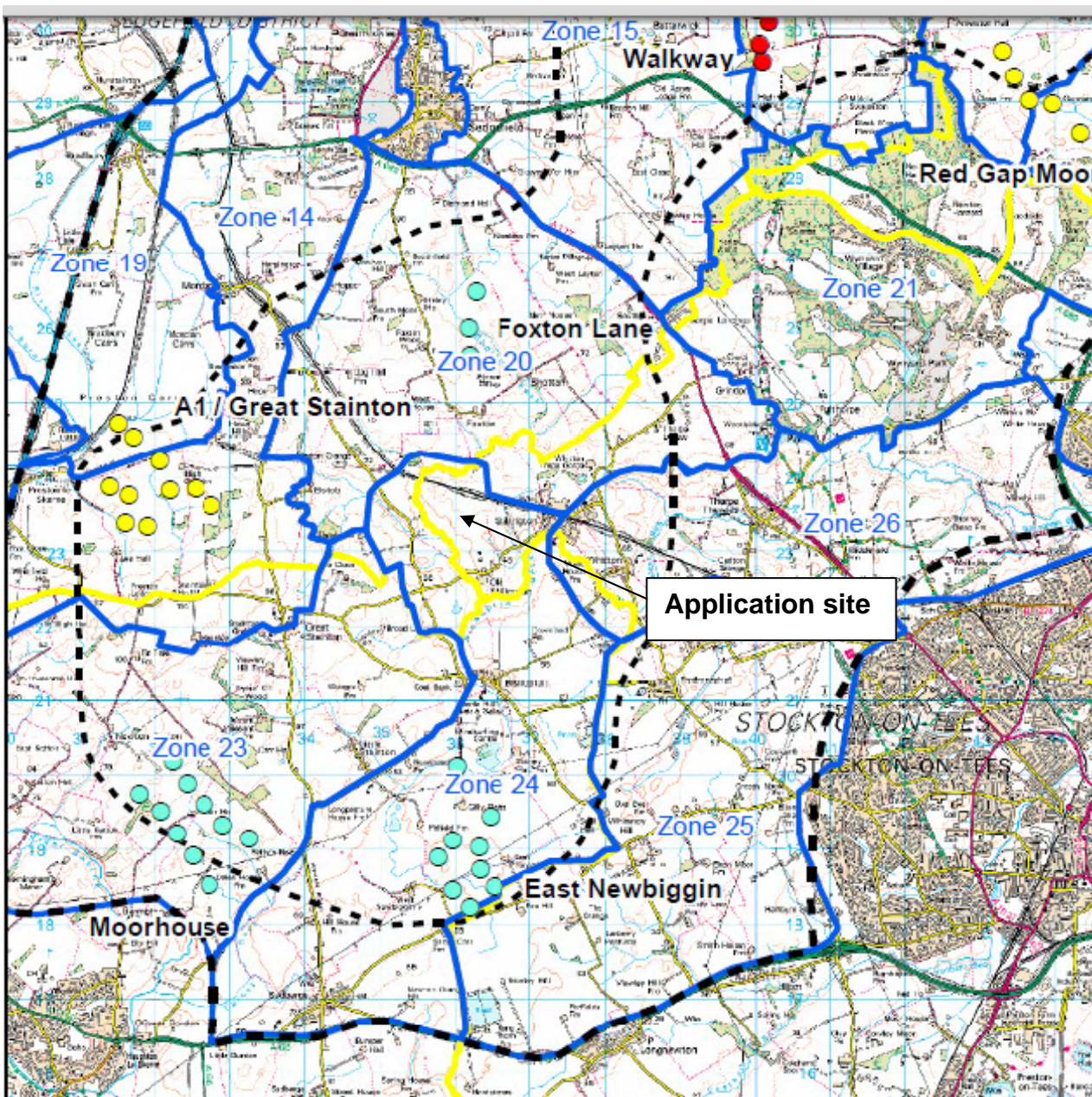




**Typical 80m Meteorological Mast Arrangement**



Wind Farm Development and Landscape Capacity studies – East Durham and Tees Plain  
Addendum. Zoning Map and associated text.



**Moorhouse wind farm (Zone 23)**

The proposed Moorhouse wind farm (referred to as wind farm or site B in the scenario assessment) comprises 10 turbines which are all located within Zone 23. The main study identified that the largest wind farm typology potentially acceptable in Zone 23 was small medium small, i.e. development of “between 7.5-18 MW or 4-6 turbines approx.” Overall the level of development proposed in this location exceeds the capacity of the landscape identified in the main study. However, the extent to which a development of the scale proposed would exceed the capacity of the local landscape, and the significance of that in the context of the policy environment at the time the application is determined, can only be fully resolved through a detailed investigation of the landscape and visual impacts of the individual scheme which is beyond the scope of this study. In terms of overall visibility within 15km Zone 23 was ranked 25<sup>th</sup> out of 27 Zones (where 1 was best and 27 worst). Zone 23 performed in the bottom 50% in terms of effects on settlements within 10km, in the top 50% in terms of effects on settlements with 2km and in the bottom 50% in terms of effects on roads up to 5km. Overall Zone 23 was ranked as 22<sup>nd</sup> out of 27. In the main study Zone 23 was identified as having some suitability for (further) wind farm development, based on a high level review of the availability of technically unconstrained land and cumulative visibility issues. All of the turbines associated with the proposed

Moorhouse development apart from two are located within the “Least impact” area identified in the main study.

*East Newbiggin wind farm (Zone 24)*

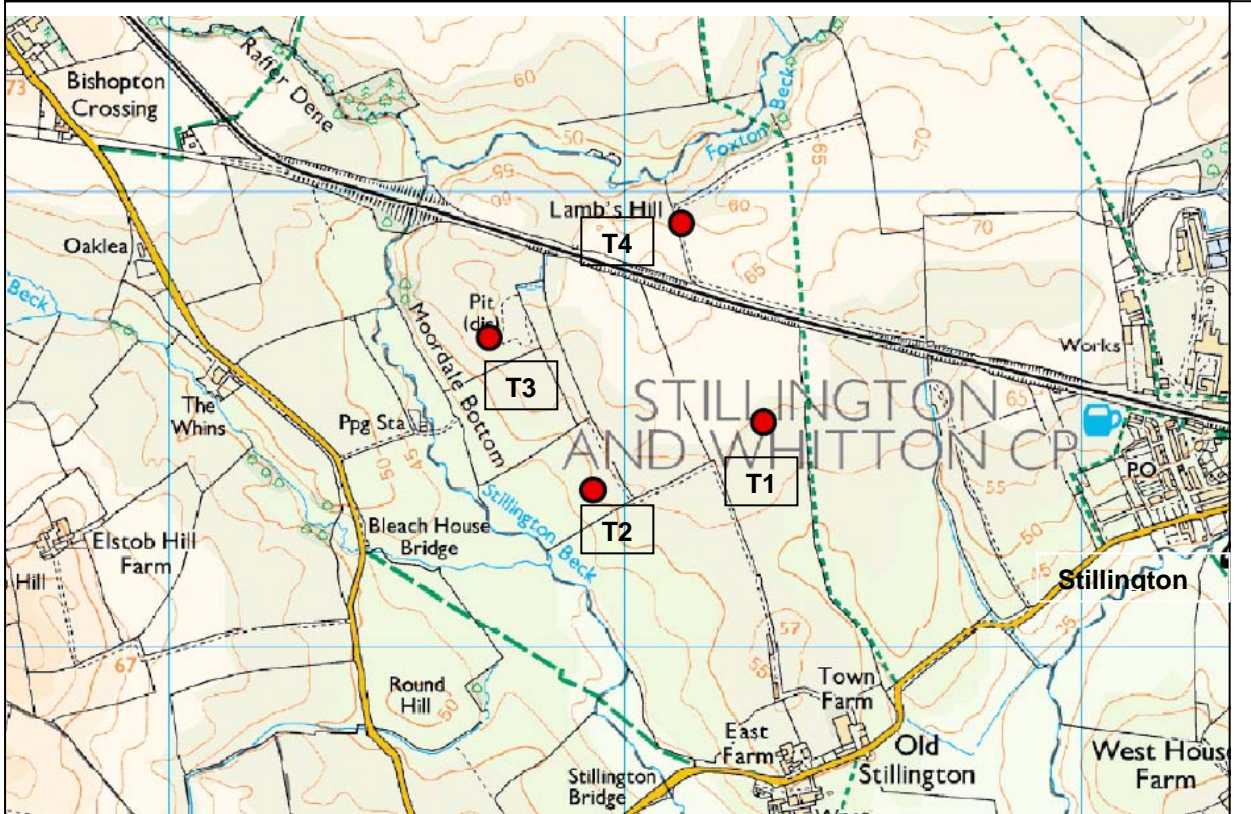
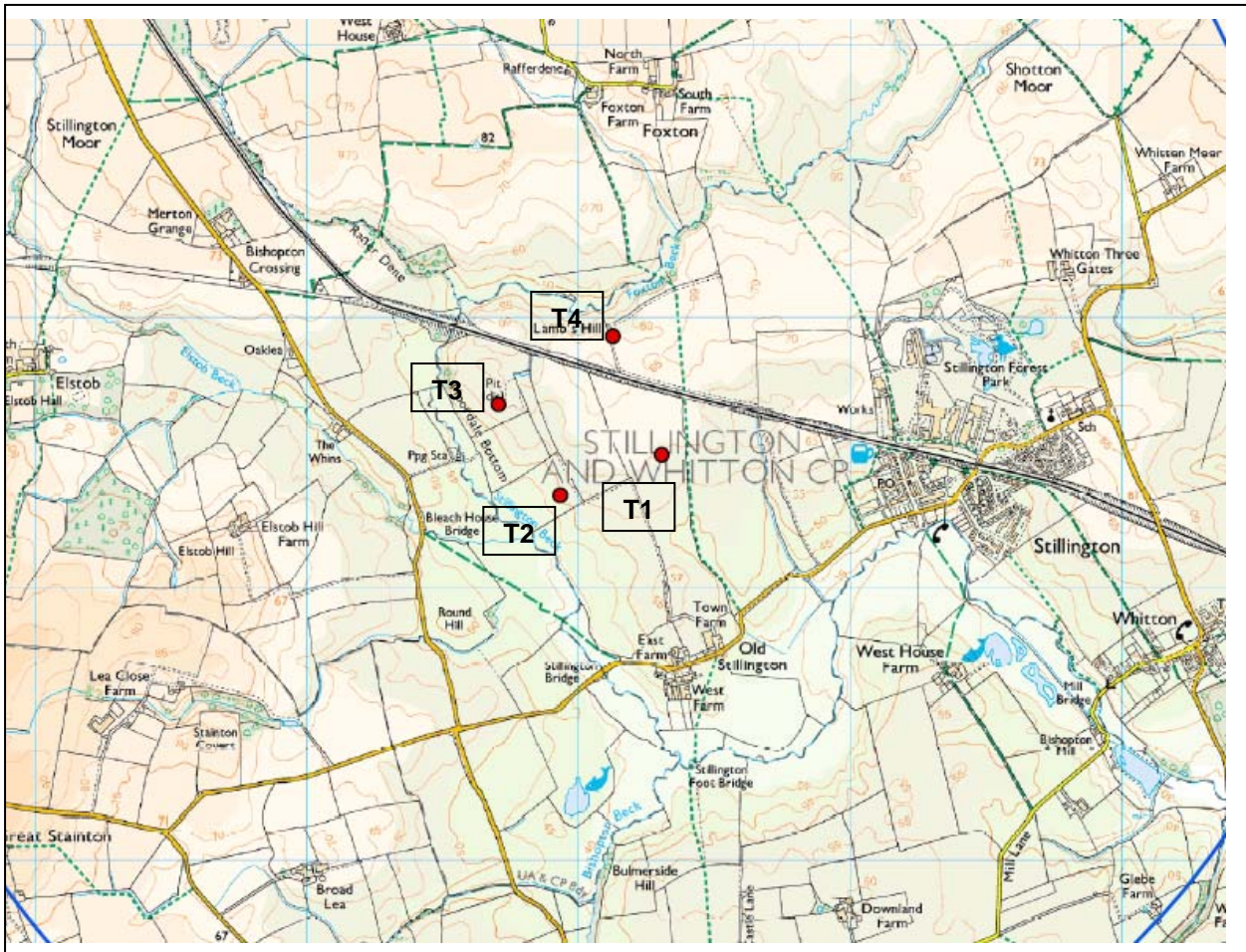
*The proposed East Newbiggin wind farm (referred to as wind farm or site C in the scenario assessment) comprises 9 turbines which are all located within Zone 24. The main study identified that the largest wind farm typology potentially acceptable in Zone 24 was small medium small, i.e. development of “between 7.5-18 MW or 4-6 turbines approx.” Overall the level of development proposed in this location exceeds the capacity of the landscape identified in the main study. However, the extent to which a development of the scale proposed would exceed the capacity of the local landscape, and the significance of that in the context of the policy environment at the time the application is determined, can only be fully resolved through a detailed investigation of the landscape and visual impacts of the individual scheme which is beyond the scope of this study.*

*Foxton Lane wind farm (Zone 20)*

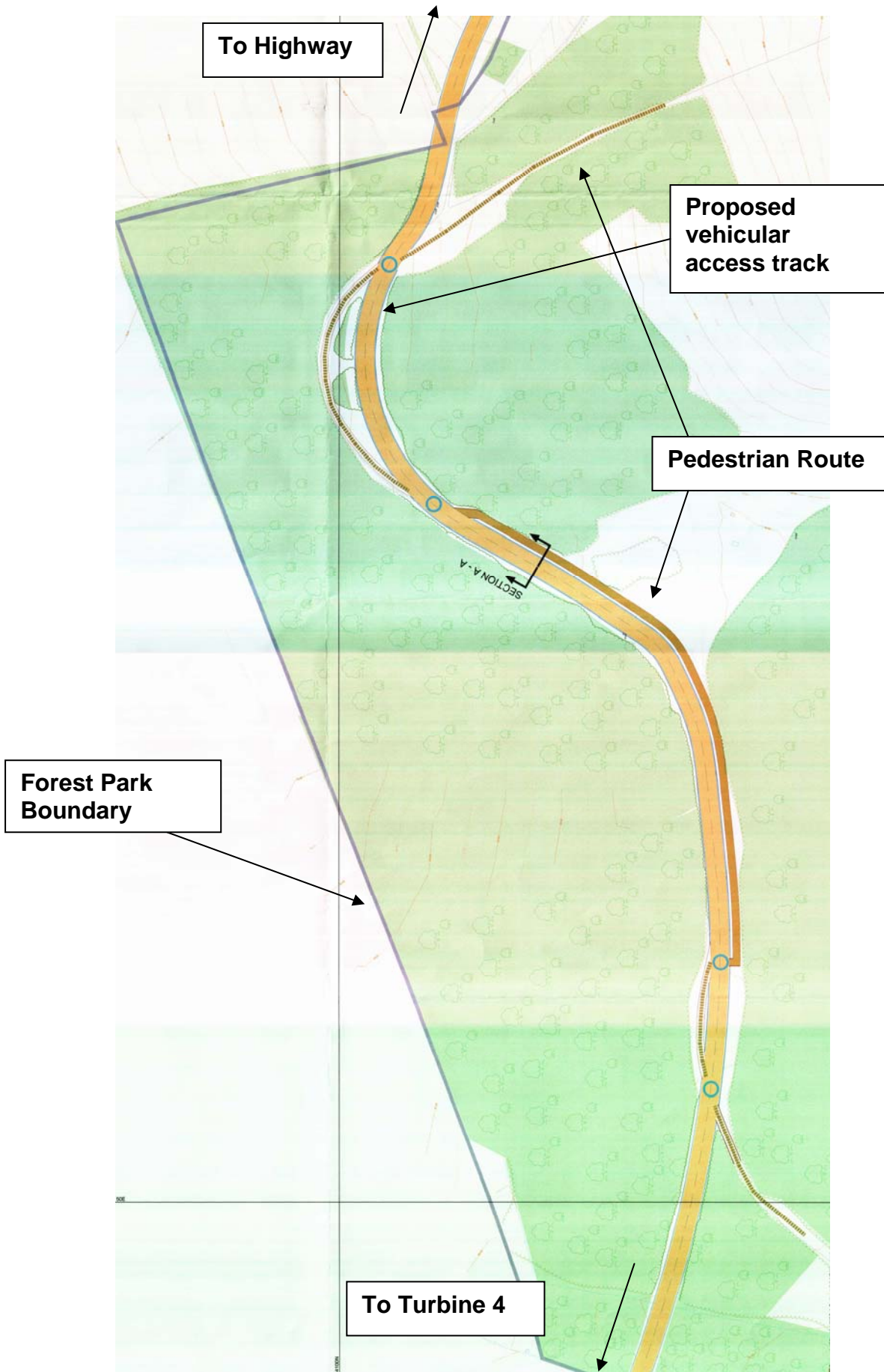
*The proposed Foxton wind farm (referred to as wind farm or site D in the scenario assessment) comprises 3 turbines which are all located within Zone 20. The main study identified that the largest wind farm typology potentially acceptable in Zone 20 was medium small, i.e. development of “between 7.5-25 MW or 4-9 turbines approx.” The level of development proposed in this location is below the capacity of the landscape identified in the main study. In terms of overall visibility within 15km Zone 20 was ranked 22<sup>nd</sup> = out of 27 Zones (where 1 was best and 27 worst). Zone 20 performed in the bottom 50% in terms of effects on settlements within 10km, but in the top 25% in terms of effects on settlements with 2km and in the top 50% in terms of effects on roads up to 5km. Overall Zone 20 was ranked as 10<sup>th</sup> out of 27. In the main study Zone 20 was identified as having some suitability for (further) wind farm development, based on a high level review of the availability of technically unconstrained land and cumulative visibility issues. The proposed Foxton Lane wind farm is located entirely within the “Least impact” area identified in the main study.*

Extracts from Page 11 of the Association of North East Councils document ‘Wind Farm Development and Landscape Capacity Studies – East Durham and Tees Plain Addendum Oct 2009.

Extract taken from ES appendix ref 6.1. Proximity to Public Rights of Way



10/2549/EIS – Lambs Hill Wind Farm  
Appendix reference 13  
Access Track Route Through Forest Park



# 10/2549/EIS – Lambs Hill Wind Farm Appendix reference 14 Map showing cumulative turbine locations

**LEGEND**

- Lambs Hill turbine locations
- Foxton Lane
- Distance from turbines (5, 10, 15, 20km) in cumulative assessment
- Butterwick
- Hare Hill
- Haswell Moor
- High Haswell
- High Volts
- Ingram Grange
- Junction House
- Newbiggin
- Red Cap Moor
- Royal Oak
- Scamer
- Teesdale
- Trimdon Grange
- Walkway
- At
- Foxton Lane
- Moor House

Note - existing wind farms shown as asterisk symbols, all others either approved or in planning.

**BANKS DEVELOPMENTS**  
Development With Care

**LD DESIGN**

PROJECT TITLE  
LAMBS HILL WIND FARM

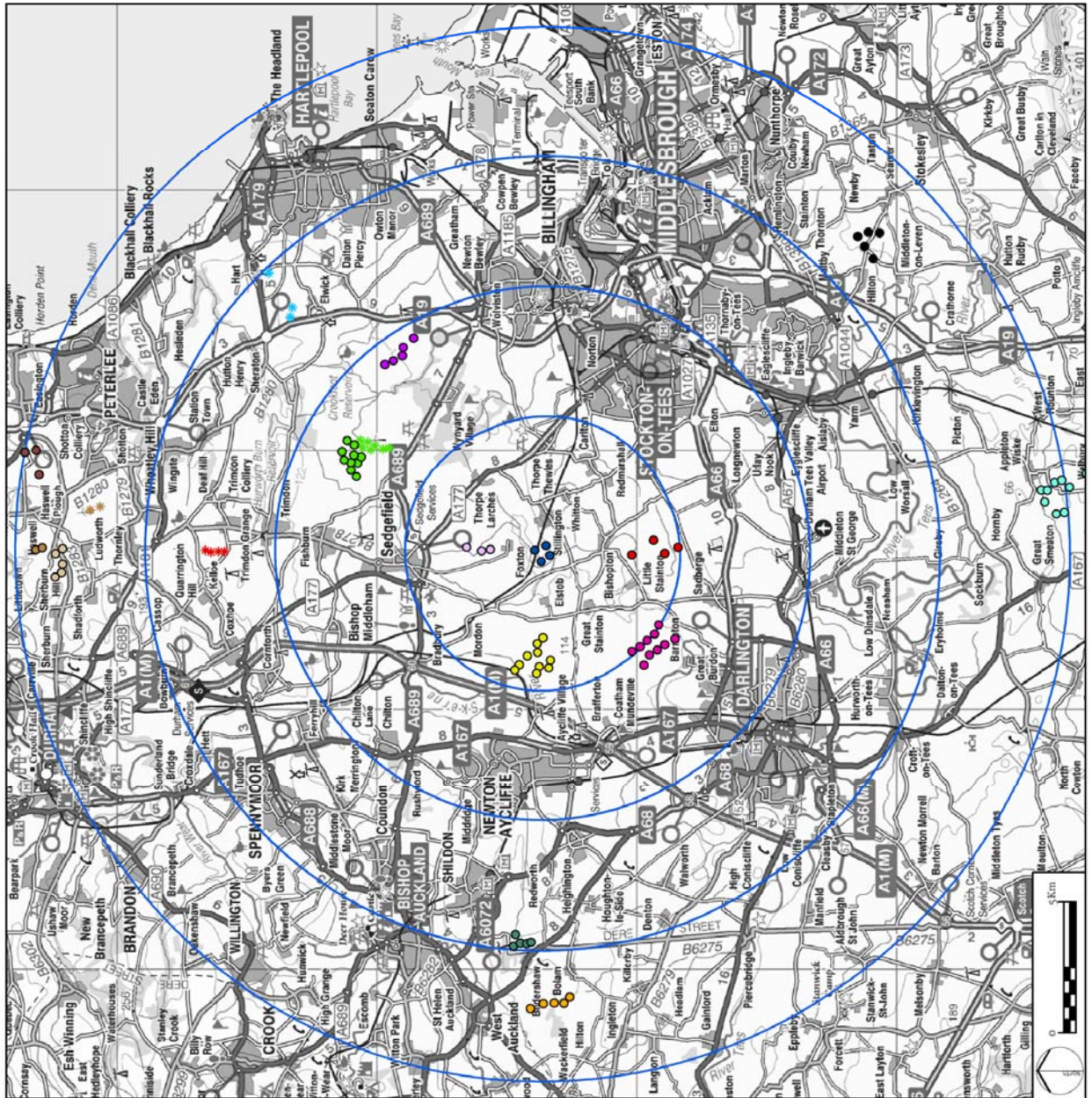
REV. DESCRIPTION APP. DATE

DRAWING TITLE  
Figure 6.10 - Cumulative Study - Sites included

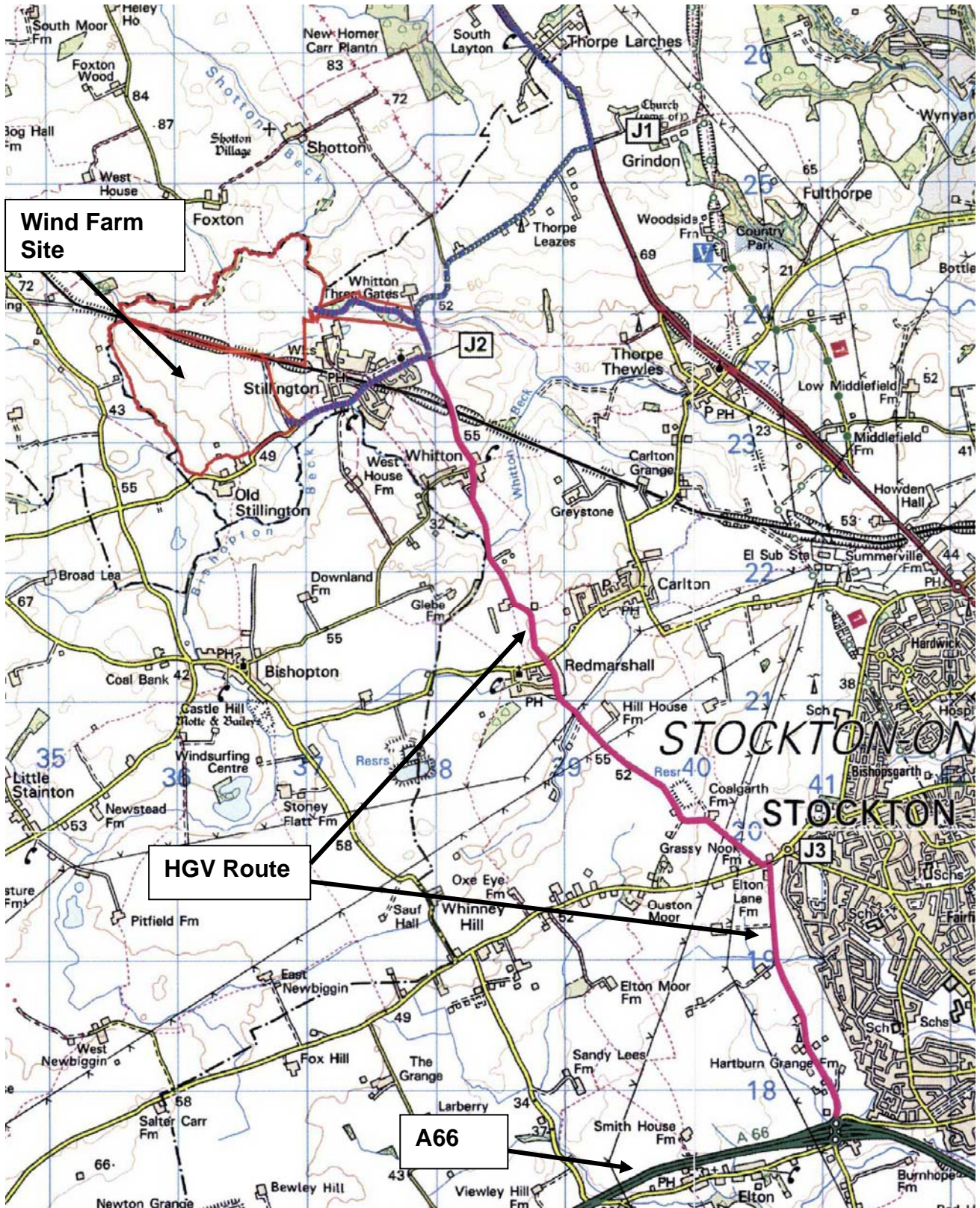
ISSUED BY Peterborough T 01733 310471  
DWG.NO z899F\_10  
DATE 16 AUGUST 2010 DRAWN CM  
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STATUS FINAL APPROVED MFI

No dimensions are to be used from this drawing. All measurements are for indicative purposes only. Contains Ordnance Survey data © Crown Copyright and database right 2010

Sources: data supplied Durham County Council  
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10/2549/EIS – Lambs Hill Wind Farm  
Appendix reference 15  
Heavy goods Vehicle Routing Plan





Letter received by Richard Buxton Environmental & Public Law on behalf of Lambs Hill  
Judicial Review group Ltd.

## RICHARD BUXTON

ENVIRONMENTAL & PUBLIC LAW

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Development Services  
Gloucester House  
72 Church Road  
Stockton-on-Tees  
TS18 1TW

By post and fax: 01642 526 048  
and email: [developmentservices@stockton.gov.uk](mailto:developmentservices@stockton.gov.uk)

Attn: Mr Andrew Glossop (Development Control)

Our ref: SR/Lambs Hill  
Email: [sring@richardbuxton.co.uk](mailto:sring@richardbuxton.co.uk)

14 November 2011

Dear Sirs

### **Planning application for the erection of four wind turbines at Lambs Hill, West of Stillington under reference 10/2549/EIS**

We write on behalf of the Lambs Hill Judicial Review Group Ltd ("LHJRG") to object to the planning application for the erection of four wind turbines at Lambs Hill, West of Stillington. We have seen the report to the Council's Planning Committee dated 21<sup>st</sup> September 2011 ("the Committee Report").

As you will be aware, on 2 March 2011 the Council's Planning Committee had resolved to approve the application, subject to the applicant entering into a planning obligation. The committee vote was tied 6-6 and the application was approved on the Chairman's second vote. A notice of planning permission was issued on 9 May 2011. LHJRG issued a claim for judicial review on 8 August 2011 and the Council agreed to a quashing of this permission by the Court. The sealed Court Order confirming the quashing has not yet been received by the parties.

#### **Consultation**

First, we note that the Council's website entry for the planning application is confused about the status of the application. It refers to the grant of planning permission on 9<sup>th</sup> May 2011 but not to its quashing. It also refers to a neighbour consultation starting on 19<sup>th</sup> September 2011 and ending on 26<sup>th</sup> September 2011. This pre-dated the putative quashing of the permission. The website then asserts that the Council is no longer accepting comments from the public on the application when comments may still be taken into account up to the decision being taken. The decision notice remains on the website without any statement that it is about to be quashed.

**A consistent and coherent re-consultation needs to take place and we look forward to receiving your confirmation that the errors identified above will be corrected and a fresh consultation will now take place.**

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*Associate:* **Adrienne Copithorne**  
BA (Cantab) MA (UC Berkeley)

### **The judicial review grounds**

The judicial review proceedings have identified a series of problems with the above planning application. A number of these legal issues have not been corrected.

Judicial review proceedings were brought on ten grounds. The Council agreed to submit to judgment on ground (v) (reasons). Grounds (vi) to (viii) relate to post-resolution matters.

### **The following grounds have not been addressed in the Committee Report:**

- (i) *The Council acted irrationally in choosing to address Amplitude Modulation effects by way of a condition requiring the submission of a scheme without any information as to what a scheme would involve and how it could deal with such effects.*
- (iii) *The committee report was inconsistent and irrational in considering that there would be a significant visual effect on public rights of way and residential properties and then concluding that the visual impact was not significant.*
- (iv) *The Council adopted an approach to the significance of impacts on heritage assets which was contrary to section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and without regard to and irrationally inconsistent with PPS5. The Council also failed to have regard to the Secretary of State's guidance on the historic environment in PPS5.*
- (x) *The planning application has been made in the name of a company which does not exist.*

**These grounds should be considered again by the Council in the light of the Statement of Facts and Grounds filed in the judicial review proceedings and the further comments in this letter.**

### **Validity of the planning application – ground (x)**

The planning application is made in the name of Lambs Hill Wind Farm Ltd and that is also the name used in the Article 6 GDPO advertisement. However there is no British-registered company of that name. There is a company called Banks Renewables (Lambs Hill Wind Farm) Limited. Consequently the applicant for planning permission does not exist.

It was not possible for any other person to act or trade as Lambs Hill Wind Farm Ltd: see regulation 13 of the Companies and Business Names (Miscellaneous Provisions) Regulations 2009 and regulations 6 and 10 of the Companies (Trading Disclosures) Regulations 2008.

Consequently there is no applicant for planning permission and so no valid planning application and so no planning permission could be granted. As the applicant does not exist it would not be able to appeal against the refusal or non-determination of the application.

Ground (ix) was the inclusion in the planning obligation of a requirement for a proportion of jobs, services and materials to be provided locally. We note from the Committee Report prepared for the 21<sup>st</sup> September meeting that no planning obligation is now proposed. Proposed informative 7 on 'new entrant trainees' is still written in inappropriate language as the informative cannot oblige the applicant to use reasonable endeavours to employ a certain proportion of local workers. The Committee Report (para 355) proposes to 'impose an informative which advises' and so confuses readers about the effect of this.

The Committee Report ought to recognise that no local labour requirement is being proposed and that this factor which was relied upon in the March 2011 report no longer supports the application.

The Council will also need to ensure that the planning obligation (which is not on the website) would not take effect again if a fresh planning permission is granted.

### **The reasons for refusing planning permission**

Planning permission should be refused because of:

- (i) The proposal will cause significant visual and landscape harm;
- (ii) Amplitude modulation has not been adequately addressed in the application;
- (iii) Significant harm will be caused to the setting of listed buildings;
- (iv) The development is too close to a public footpath in safety terms;

#### **(i) The proposal will cause significant visual and landscape harm;**

The construction of four 125 metre high turbines will have a major and adverse visual and landscape effect. The Head of Technical Services considers these impacts to be significant (see Committee Report, para 168 and 208). Other major adverse landscape impacts cannot be dismissed because they are local. The Council will have refused many developments because of a major but local visual and landscape impact.

#### **(ii) Amplitude modulation has not been adequately addressed in the application;**

The AM condition proposed by the Council is inadequate and LHJRG urge the adoption by the Council of the amplitude modulation condition known as the 'Den Brook' condition as drafted by the Inspector at Den Brook and construed by the Court of Appeal in the Den Brook appeal *Hulme –v- SS Communities and Local Government* [2011] EWCA Civ 638, as set out below:

##### *Den Brook AM condition*

At the request of the local planning authority following the receipt of a complaint the wind farm operator shall, at its expense, employ a consultant approved by the local planning authority, to assess whether noise immissions at the complainant's dwelling

are characterised by greater than expected amplitude modulation. Amplitude modulation is the modulation of the level of broadband noise emitted by a turbine at blade passing frequency. These will be deemed greater than expected if the following characteristics apply:

- a) A change in the measured L Aeq, 125 milliseconds turbine noise level of more than 3 dB (represented as a rise and fall in sound energy levels each of more than 3 dB) occurring within a 2 second period.
- b) The change identified in (a) above shall not occur less than 5 times in any one minute period provided the L Aeq, 1 minute turbine sound energy level for that minute is not below 28 dB.
- c) The changes identified in (a) and (b) above shall not occur for fewer than 6 minutes in any hour.

Noise immissions at the complainant's dwelling shall be measured not further than 35m from the relevant building, and not closer than within 3.5m of any reflective building or surface, or within 1.2m of the ground.

For the avoidance of doubt, the developer is obliged to comply with the AM levels specified in this condition and the obligation will run for the duration of the planning permission, to be enforced by the planning authority in the normal way. *[Court of Appeal's additional construction in this paragraph]*

The Court of Appeal noted that this condition was drafted by the inspector but based on the MAS condition – see attached judgment.

The Court of Appeal when considering the Den Brook condition said this at para 6 of their judgment:

*The evidence before the inquiry, accepted by the inspector, was that if this [AM] is excessive it can interfere with the amenity of local residents and in particular can disturb sleep. The principal question in this appeal is whether the conditions as drafted are capable of achieving the objective of preventing inappropriate aerodynamic noise levels which they were designed to secure.*

And at para 7:

*The inspector concluded that whilst it is difficult to predict the relevant noise levels, there was a risk of unacceptably high levels (para DL117):*

*“On the basis of the evidence I have received, I conclude that the possibility of greater than the expected impact from AM would be possible. In circumstances where the result of unforeseen consequences is sleep disturbance, I am in no doubt that in the*

event of the appeal succeeding, a condition to regulate the phenomenon is both necessary and reasonable.”

And at para 8:

*He [the inspector] returned to the issue at paragraphs DL182-184 in the following terms:*

“The appellant objects in principle to the inclusion of a condition designed to regulate AM on the grounds that excessive AM is rare; stable atmospheric conditions are rare at the appeal site; it is not recommended in ETSU-R-97; and there is insufficient knowledge to achieve the necessary balance between the preservation of amenity without causing profound damage to the UK wind industry.

In my opinion these misgivings are either overstated or misleading. I do not see that the rarity of the circumstance constitutes a valid reason to object to such a condition. If it is unlikely, then it is equally unlikely that it would be necessary to enforce the condition. On the basis of the evidence I have heard I am satisfied that the phenomenon is not fully taken into account in ETSU-R-97 and the condition imposed is of a precautionary nature. ... [I]n my opinion the imposition of conditions is both necessary and reasonable.

We would remind the Council that the relevant national guidance – the Defra Report (April 2011 Wind Farm Noise Statutory Nuisance Complaint Methodology) considers the Den Brook AM condition as a starting point in assessing noise nuisance from AM.

Without a similar condition to specifically address the “peak and trough” nature of AM, residents are not afforded reasonable protection of their amenity.

A condition of this type is not unreasonable because it requires 3dB peak to trough AM and the average level to exceed 28dB(A). This means there can be significant AM before the condition is triggered.

The Renewable Energy Foundation recently applied the Den Brook noise condition to real wind farm noise data to show that this is possible and can be conducted in a clear and objective manner – see attached. Their conclusion was that ‘The Den Brook condition appears to be a readily workable solution to this very real problem.’

AM noise is now known to be more common than was previously thought. Dr McKenzie of Hayes McKenzie accepted the Salford report analysis adds up to about 10% of sites affected (Den Brook statement and Spaldington report) however work by Prof. Frits van den Berg (presented to an International conference in Edinburgh in 2009) and Dr Lee Hoare who have both re-analysed the Salford research calculates the incidence of complaints about AM at 15-16%.

There is emerging international awareness of AM nuisance. New Zealand has recently updated guidance on wind farm noise to include controls over AM which, overall, are harsher than the Den Brook condition. Whilst the New Zealand standard specifies 5dB peaks to trough, it also adds a control over frequency bands and does not require it to be free field or even measured externally.

We look forward to receiving your confirmation that the Den Brook AM condition will be included as a condition in the officer's report.

The proposed replacement AM condition included in the Committee Report is considerably less objective than the Den Brook condition because no definition is provided of what would be deemed to be 'significant amplitude modulation' or, given the need to record 5 occurrences, what would be considered to count as an 'occurrence'. The lack of precision in the details will make it difficult to enforce.

We note that regarding the condition proposed in the Committee Report, the definition in para 1 of Note 5 appears to imply that peak to trough variation of 3 - 6dB is fully taken into account by the ETSU limits. This is an incorrect reading of ETSU. In fact ETSU (p68) says 'The noise levels recommended in this report take into account the character of the noise described in Chapter 3 as blade swish.' And then at Chapter 3, p 12 it notes that the A-weighted blade swish modulation is 'of the order of 2-3 dB(A)' close to the turbines i.e. 'less than 50 metres from the base of the supporting tower' and that this modulation depth decreases as observer distance increases from the turbine.

Therefore, the implication that AM levels of 3-6dB at a dwelling is taken into account by the ETSU-R-97 guidance is quite wrong.

**(iii) Significant harm will be caused to the setting of listed buildings;**

The Environmental Statement ("ES") considers that there will be high magnitude impacts on the setting of Grade II listed buildings on the north eastern side of Great Stainton, on the northern side of Bishopton and at Elstob, Stillington and Whitton (para 9.65). However the ES considers any high magnitude impact on a Grade II listed building to be of only 'minor' significance, that is 'trivial in the planning decision making process'. This would be less than 'moderate' significance which is defined as 'not, in itself, material to the planning decision making process' (para 9.31). The ES's approach is set out without contradiction in the Committee Report.

The ES is fundamentally flawed as it is based on criteria which provide that no impact on a Grade II (or even Grade II\*) listed building can justify the refusal of planning permission. Those criteria are contrary to section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires 'special regard to the desirability of preserving' the setting of all listed buildings in deciding whether to grant planning permission. It follows, as a matter of law, that harm to the setting of a Grade II listed building can justify the refusal of planning permission. Consequently the ES and the Committee Report make an error of law in concluding that such harm could not justify refusal.

It is not disputed by the Council that there are high magnitude and adverse impacts on the setting of listed buildings. These weigh against the grant of planning permission.

**(iv) The development is too close to a public footpath;**

It is proposed to site turbine T1 90 metres from footpath 05, which is well within the fall-over distance of the turbine. This is contrary to the distance which is often considered to be acceptable in safety terms (see the PPS22 Companion Guide).

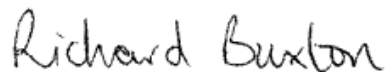
The proximity of the turbine will also harm the amenity of the footpath in terms of noise, the overbearing structure and visual and landscape impact on a sensitive receptor. The Committee Report considers that the turbine should not be closer than 90 metres to the footpath but is not prepared to propose a condition providing for such a minimum gap. The proposed condition requires micro-siting to be approved by the Council but does not prevent approval of a closer location. The 90 metre gap is in any event inadequate and planning permission should be refused for this reason.

We are also instructed that in respect of visual impact on residential properties, the Committee Report is inaccurate when it repeats that there are screens (outbuildings and hedges) to reduce the impact of the turbines. There are no such screens for Moor House at Bishopton Crossing or South Farm at Foxton.

In view of the above, we urgently request:

- (1) a coherent and consistent re-consultation take place;
- (2) a new Committee Report be prepared and consulted upon to take into account the issues raised above.

Yours faithfully



Richard Buxton