

**DELEGATED**

**AGENDA NO**

**PLANNING COMMITTEE**

**DATE 4<sup>th</sup> DECEMBER 2013**

**REPORT OF CORPORATE DIRECTOR,  
DEVELOPMENT AND NEIGHBOURHOOD SERVICES**

**12/1762/VARY**

**Land West Of Stillington, Stockton on Tees**

**Erection of 4 No. wind turbines (max. height 125m) and associated infrastructure to include anemometer masts, access roads, crane pads, control building, substation and temporary construction compound.**

**Expiry: 18th October 2012**

### **SUMMARY**

This application has been brought back to the Planning Committee following Members decision to a defer consideration of the application at the meeting on 13<sup>th</sup> November 2013 in order to allow residents further time to consider the scheme and the planning condition recommendation made by officers and to allow officers to further explain the scheme to members. Officers have organised for the Council's noise consultant to give a brief explanation of matters to committee and answer any specific queries members may have.

The Planning Committee granted conditional planning permission on the 7th December 2011 for the erection of a wind farm at Lambs Hill, Stillington including all ancillary development. The application was approved subject to a total of 46 conditions which dealt with various matters including noise.

The applicant has submitted this Section 73 application to undertake the development without compliance with condition 45 which is one of the noise controlling conditions. Condition 45 relates to the control of a type of noise generally termed 'Excess or Other Amplitude Modulation'. This is any noise whose amplitude (perceived loudness) modulates (goes up and down in level) over time. As part of the submission, a revised Environmental Management Plan (EMP) has been put forward which details working practices and procedures including those associated with how noise complaints would be dealt with which are out-with the ability for the remaining noise condition to deal with. The applicant also put forward a new condition which places a requirement on the wind farm operator to carry out monitoring and mitigation in accordance with the Environmental Management Plan.

The existing approved scheme (10/2549/EIS) is unaffected by this application and will remain in force regardless of its outcome and which allows for a commencement of the wind farm development up until the 7<sup>th</sup> December 2016 and for it to have a 25 year operational life. This is an application in its own right and although the applicant is requesting only the removal of Condition 45, the Local Planning Authority are required to consider the application as a whole, and any material changes to it, the impacts of those and the impacts of any changes in policies relevant to the proposal. The authority can therefore approve the application, refuse it, or add / change conditions, depending on relevant material planning considerations. As the application is a challenge to the councils previously imposed condition relating to a relatively specialist matter, officers sought the advice of Counsel and of a noise consultant (Hoare Lea Acoustics).

Following approval of 10/2549/EIS the applicant considers that the imposition of Condition 45 is unlawful and that there is no guidance or policy to suggest that the local planning authority were justified in imposing planning conditions to guard against a potential impact

which is no more than statistically highly unlikely to occur. The applicant has advised that the issue of Excess or Other Amplitude Modulation (AM) has been considered at length in wind farm inquiries throughout the UK and has cited a number of these. In the same vein as the debate within the Inquiries and the Inspectors decision making, the applicant considers that Condition 45 is based on methodology which is not robust and results would be open to contamination to extraneous noise sources, and that there is no ability at this time, based on the current level of scientific understanding, to measure turbine noise modulation levels external to a property, in the presence of other ambient noise sources with sufficient accuracy and repeatability.

In determining this application the council are required to consider whether the condition can reasonably be retained and if not, what other mechanisms are available to control relevant matters or whether the application should be refused due to lack of control over impacts, taking into account their nature.

A number of objections have been received in respect to this proposal as well as submissions from a consultant (MAS Environmental) acting on behalf of a group of objectors. Objectors essentially consider that condition 45 gives protection against a type of noise generated by the wind turbines which can generate noise intermittently, that is not possible to predict when and where it will occur, that it can affect properties over 1km from the turbines and that the particular noise 'Excess or Other Amplitude Modulation' can cause severe disturbance to residents, particularly at night. Objectors have cited examples of other wind farm sites where cases of such noises occur and where people have had to leave their properties as a result. The consultant acting on behalf of some objectors has suggested that the wind industry does not want such conditions imposing and Amplitude Modulation is far more wide spread than experts will agree to be the case that he has been successful in predicting its occurrence and has monitored it on many sites and that residents require protection from it. Objectors also consider that the revised Environmental Management Plan is worded too loosely and has too much ambiguity to be able to properly control the matter. Objectors therefore consider that either, the condition should remain, or a variation to it or the Environmental Management Plan should be re-drafted to ensure there is greater certainty and control over how complaints relating to Amplitude Modulation would be dealt with to a satisfactory degree should they occur.

The impacts of the wind farm have been re-considered against current policy and on matters excluding AM, there is nothing which would suggest a different view should be taken to the previous scheme. There are no concerns to the new scheme from consultees with responsibility for air traffic safety, ornithology, archaeology, cultural heritage, pollution, highway safety or microwave links.

Condition 45 was imposed as a precautionary measure as there was no direct evidence that excess amplitude modulation would occur at this site. The latest government endorsed guidance in respect to Excess or Other Amplitude Modulation (May 2013) indicates that the evidence in relation to this is still developing and current practice is to not impose conditions to deal with it. Having reviewed a number of recent appeal decisions which had been carried out at Inquiry, planning inspectors are avoiding the imposition of conditions relating to amplitude modulation, generally citing there being insufficient evidence to warrant such a condition being imposed. The council's independent acoustician has advised that amplitude modulation is still unpredictable and not fully understood, that condition 45 is not suitable considering that a purely objective procedure could not be so simply implemented on an automated basis that could be made adequately robust as it would require a very significant amount of user intervention. The Councils consultant acoustician considers that were this unpredictable phenomenon to occur, it should be dealt with through the provision of an Environmental Management Plan. Officers consider that there is insufficient evidence to suggest amplitude modulation would occur at the site and the impacts of this could therefore not be predicted. It is further considered that the overall method of controlling such a phenomenon (measurement, assessment and mitigation) would be too constrained by the

condition to be practically controlled or enforced and for it to ensure that all occurrences of amplitude modulation would be addressed. Its retention has the potential therefore to compromise the council's ability to take restraining action for statutory nuisance where the noise is within the limiting controls of the noise conditions. Officers consider that in this instance, condition 45 should be removed in accordance with current best practice.

Whilst it is accepted that condition 45 of the initial approval should not be retained, there remains an opportunity to secure greater control than simply relying upon statutory nuisance legislation. Achieving this intermediate control (between the existing Condition 45 and Statutory Nuisance powers) would remove any initial burden on the Local Authority for monitoring, assessing and mitigating any extraneous noise based issues of the wind farm scheme and leave this with the wind farm operator. A condition to that effect was suggested by the applicant along with an Environmental Management Plan. Officers considered, however, that these were insufficiently robust and counsel has advised the same. Officers therefore recommended a new condition 45 which requires the wind farm operator to undertake the construction, operational and decommissioning phases of the wind farm in line with the Environmental Management Plan. This will be updated on an annual basis with the agreement of the Local Planning Authority to take account of any changes in best practice or in the monitoring, assessment or mitigation of matters being controlled and subject to an agreed scheme of how and when compliance / non-compliance with the Environmental Management Plan shall be dealt with.

Were there to be noise related matters which were not able to be dealt with by condition or the Environmental Management Plan then statutory nuisance legislation would be a fall-back position as would be the case for any uncontrolled noise upon which a complaint is received.

It is considered that the proposal accords with the National Planning Policy Framework saved Local Plan Policies EN4 and EN30, Core Strategy Policies CS3 and CS10 and Emerging Policies SP1, SP3, T1, SL1, ENV5 and HE1 of the councils Regeneration and Environment Local Development Document which is at preferred options stage. It is considered that the proposal is contrary to saved Local Plan Policy EN13, however the weight attached to Saved Local Plan Policy EN13 with regards to this scheme is outweighed by the other policies.

## **RECOMMENDATION**

***That planning application 12/1762/VARY be approved subject to the following conditions and Informatives;***

### **CONDITIONS:**

#### **01. Time Period For Commencement**

The development hereby permitted shall be begun before the 7<sup>th</sup> December 2016.

*Reason: By virtue of the provision of Section 91 of the Town and Country Planning Act 1990 (as amended).*

#### **02. Approved Plans**

*The development hereby approved shall be in accordance with the approved plans relative to application 10/2549/EIS as detailed below.*

<i>HJB/749/PA10</i>	<i>received on the 30<sup>th</sup> September 2010.</i>
<i>HJB/749/PA11</i>	<i>received on the 30<sup>th</sup> September 2010.</i>
<i>HJB/749/PA17</i>	<i>received on the 30<sup>th</sup> September 2010.</i>
<i>HJB/749/PA18</i>	<i>received on the 30<sup>th</sup> September 2010.</i>
<i>HJB/749/PA19</i>	<i>received on the 30<sup>th</sup> September 2010.</i>
<i>HJB/749/PA20</i>	<i>received on the 30<sup>th</sup> September 2010.</i>
<i>HJB/749/PA21</i>	<i>received on the 30<sup>th</sup> September 2010.</i>
<i>HJB/749/PA22</i>	<i>received on the 30<sup>th</sup> September 2010.</i>

HJB/749/PA23 received on the 30<sup>th</sup> September 2010.  
HJB/749/PA24 received on the 30<sup>th</sup> September 2010.  
HJB/749/PA25 received on the 30<sup>th</sup> September 2010.  
HJB/749/74 received on the 24<sup>th</sup> December 2010.  
Environmental Management Plan Dated July 2013 and received on the 9<sup>th</sup> July 2013 (but subject to condition 45 below)

Reason: To define the consent.

## **CONDITIONS: PRE COMMENCEMENT**

### **03. Contaminated Land Survey**

No development hereby approved shall be commenced until a scheme relating to contamination has been submitted to and approved in writing by the Local Planning Authority. The scheme shall detail a preliminary risk assessment, site investigation and results, mitigation works and verification plan. The development shall be undertaken in accordance with the approved scheme unless otherwise agreed in writing by the Local Planning Authority.

Reason: This condition will ensure that the risks posed by the site to controlled waters are assessed and addressed as part of the development, in accordance with the requirements of the National Planning Policy Framework

### **04. Surface Water Drainage**

No development hereby approved shall be commenced until a scheme for the provision of a surface water drainage system, including a means of attenuation has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of how surface water run-off shall be prevented from entering the highway or affecting rail infrastructure, detailing long term management responsibilities and timing of works. Development shall be carried out in accordance with the approved scheme unless otherwise agreed in writing by the Local Planning Authority.

Reason: To prevent the increased risk of flooding and increased risk to highway and rail safety in accordance with the requirements of the National Planning Policy Framework.

### **05. Foundations**

No development hereby approved shall be commenced until a scheme to assess the risks posed and possible impacts of pouring concrete foundations directly on top of the Magnesian Limestone principal aquifer has been submitted to and approved in writing by the Local Planning Authority. The scheme shall detail mitigation of risks where appropriate and the development shall be undertaken in accordance with the approved scheme unless otherwise agreed in writing with the Local Planning Authority.

Reason: In order to prevent pollution of the water environment in accordance with the requirements of the National Planning Policy Framework

### **06. Phased Archaeological Work**

Unless otherwise agreed in writing by the Local Planning Authority, no development hereby approved shall take place within the application site boundary until a written scheme of investigation has been submitted to and approved in writing by the Local Planning Authority. The written scheme of investigation shall detail a phased programme of archaeological work including:

- An assessment of significance;
- Research questions;
- A programme and methodology of site investigation and recording;
- A programme for post investigation assessment;
- Provision for analysis of the site investigation and recording;

- *Provision to be made for publication and dissemination of the analysis and records of the site investigation;*
- *Provision to be made for archive deposition of the analysis and records of the site investigation;*
- *Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation;*
- *Post investigation assessment;*
- *Provision made for analysis, publication and dissemination of results and archive deposition has been secured; and*
- *Timing for each part of the programme*

*Where important archaeological remains exist provision should be made for their preservation in situ. The development shall be undertaken in strict accordance with the details of the approved Written Scheme of Investigation and programme of archaeological work.*

*Reason: To ensure the development adequately takes account of potential archaeological remains in accordance with the principles of saved Stockton on Tees Local Plan Policy EN30.*

**07. Turbine and transformer cabinet positioning (Micro siting)**

*Notwithstanding details hereby approved, the wind turbines and their associated transformers shall be sited within 50m of the positions indicated on plan ref: HJB/749/PA17 issue A2 entitled 'proposed site layout' in accordance with a final scheme of siting to be first submitted to and approved in writing by the Local Planning Authority. The final scheme of siting shall maintain a minimum gap of 90m between Footpath Stillington 05 and the base of Turbine T1. The scheme will be considered by the Local Planning Authority in conjunction with consultees including the MoD, Durham Tees Valley Airport, the National Grid, the Joint Radio Company Limited and Natural England.*

*Reason: To provide scope for micro siting whilst ensuring the development does not differ materially from the submitted proposal and in order to ensure safe and acceptable distances remain between the turbines and receptors including the Public Rights of Way network in accordance with Core Strategy Development Plan Policy CS3 and the National Planning Policy Framework.*

**08. Turbine and transformer cabinet type and size**

*No development shall commence until full details of the design, siting, dimensions, finish and colour of the turbines and their associated transformer cabinets have been submitted to and approved in writing by the Local Planning Authority. The turbines shall not exceed an overall height to tip of blade when installed of 125m above ground level with an overall rotor diameter of 92.5m. The development shall be carried out in accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.*

*Reason: In the interests of and landscape and visual impacts in accordance with guidance contained within Core Strategy Policy CS3.*

**09. Access track positioning**

*Notwithstanding details hereby approved, the proposed access tracks shall be sited within 10m of the positions indicated on plan ref: HJB/749/PA17 Issue A2 entitled 'Proposed site layout' in accordance with a final scheme of siting to be first submitted to and approved in writing by the Local Planning Authority.*

*Reason: To provide marginal scope for micro siting whilst ensuring the development does not differ materially from the submitted proposal. The final scheme of siting will be considered by the Local Planning Authority in conjunction with consultee responses in order to ensure safe and acceptable distances remain between the tracks and receptors.*

## **10. Access track through Forest Park**

*Notwithstanding details hereby approved, no development shall be commenced until a scheme for the construction of the access track through the Stillington Forest Park has been submitted to and approved in writing by the Local Planning Authority. The scheme shall detail the specification of the track to be constructed, its precise location and associated running width, mitigation works and removal works where required and timescales for all works to be undertaken. The access track shall be completed in accordance with the agreed scheme.*

*Reason: In order to adequately control the details of the scheme being considered and limit the impact of the proposal on the Forest Park in accordance with the principles of the National Planning Policy Framework.*

## **11. MoD and DTVA Notification**

*The Ministry of Defence and Durham Tees Valley Airport shall be notified in writing at the addresses below, of the following, a minimum of 4 weeks in advance of the commencement of development:*

- *The date construction on site is to commence, including timing for the erection of each turbine;*
- *The maximum height of construction equipment; and*
- *The latitude and longitude of each turbine.*

*The Ministry of Defence and Durham Tees Valley Airport shall also be notified in writing at the addresses below, of the following, within 2 weeks following the completion of the development:*

- *The date construction on site ceased.*

*Each of these notifications shall include reference to the site address, grid co-ordinates of the turbines and the Local Planning Authority's Planning Application reference number.*

*Reason: In order to inform individuals responsible for aviation safety within the area in accordance with the principles of the National Planning Policy Framework.*

*Address: MoD  
Safeguarding Wind Energy  
Defence Estates  
Kingston Road  
Sutton Coldfield  
West Midlands  
B75 7RL, and;  
**DIO-Safeguarding-Wind@mod.uk***

*Address DTVA  
Senior Air Traffic Engineer  
Durham Tees Valley Airport  
Darlington  
Co. Durham  
DL2 1LU*

## **12. Construction Traffic Mitigation**

*Unless otherwise agreed in writing by the Local Planning Authority, no development hereby approved shall commence unless the developer has undertaken the following steps and not less than one month has expired from their completion:*

- *submission to the Local Planning Authority of a plan of the routes within the administrative boundary of Stockton on Tees to be used by both Heavy Goods*

*Vehicles and Abnormal Load Vehicles associated with the transportation of goods to site required as part of this development;*

- *Submission to the Local Planning Authority in writing or other agreed form of the results of carriageway and footways inspections using Detailed Visual Survey (DVI) survey techniques which will enable the processing of the data through the Local Highway Authorities accredited UKPMS system. All work to be undertaken by accredited inspectors in agreement with the Local Planning Authority; and*
  - *A joint visual inspection with the Local Authority to monitor and assess the condition of the highways on the selected route of construction traffic.*
- Once agreed, all Heavy Goods Vehicles and Abnormal Load Vehicles shall use only the agreed routes, unless otherwise agreed in writing by the Council.*

*Development hereby approved shall not commence until the developer has agreed a scheme in writing with the Local Planning Authority which details how any damage to the highway caused by the traffic associated with the development shall be repaired, made good or mitigated at the applicant's expense. The approved details shall specify the time period within which repair works shall be undertaken.*

*The development hereby approved shall not be brought into operation until such time as the developer has submitted to the Local Planning Authority in writing, or other agreed form, for prior approval, the results of carriageway and footways inspections undertaken following completion of the construction of the development. These inspections shall be undertaken using Detailed Visual Survey (DVI) survey techniques which will enable the processing of the data through the Local Highway Authorities accredited UKPMS system. All inspection work shall be undertaken by accredited inspectors in agreement with the Local Planning Authority. Any works to the carriage way or footpaths identified by the submitted details as being required shall be undertaken in accordance with the approved scheme at the applicant's expense.*

*Reason: In order to ensure the impacts of transport movements associated with the construction phase of the development are adequately mitigated where necessary in accordance with the requirements of the National Planning Policy Framework.*

### **13. Construction Traffic Management Plan**

*Prior to the commencement of the development hereby approved, a Construction Traffic Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Construction Traffic Management Plan shall include but not be restricted to detailing the following:*

- *Site information*
- *Programming*
- *Traffic disruption, speed control, road works co-ordination*
- *Temporary widening, running surfaces, narrow lanes, visibility*
- *Internal access tracks*
- *All statutory utility services that may need protecting or diverting*
- *Temporary safety barriers and safety zones*
- *Routes for emergency vehicles, diverted vehicles, diverted pedestrians*
- *Abnormal Load Movements*
- *Vehicle recovery and incident management*
- *Temporary Traffic Regulation Order's, signing, lighting, vehicle waiting areas*
- *Detailed layout of the Traffic Management scheme*
- *Consultation*
- *Operational hours*

*Throughout the construction phase, the Construction Traffic Management Plan shall be implemented in accordance with the approved details, and any changes to the plan shall only be permitted by prior written consent from the Local Planning Authority.*

*Reason: In the interests of highway safety and free flow of traffic on the Highway Network in accordance with the requirements of the National Planning Policy Framework.*

#### **14 Abnormal Loads Dry Run**

*Notwithstanding details hereby approved, prior to commencement of the development, a 'dry run' for transporting the abnormal loads to the site shall be carried out. The Local Planning Authority shall be informed in writing of timing of the dry run 6 weeks prior to its occurrence. A written statement of the findings of the dry run shall be submitted in writing to the Local Planning Authority prior to any commencement of development on site. Any additional works identified as being required by the Local Planning Authority as a result of the dry run shall be carried out in accordance with a scheme to be first submitted to and agreed in writing by the Local Planning Authority prior to commencement on site.*

*Reason: In order to address any unforeseen impacts of transporting the Abnormal Loads to site in accordance with the principles of the National Planning Policy Framework.*

#### **15. Scheme to retain the highway in a clean state**

*Notwithstanding details hereby approved and prior to commencement of the development on site, details of measures to be employed to prevent the egress of mud, water and other detritus onto the highway and to remove any such substance from the highway, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in strict accordance with the approved scheme unless otherwise agreed in writing with the Local Planning Authority.*

*Reason: In order to ensure site debris does not affect highway safety in accordance with the requirements of the National Planning Policy Framework.*

#### **16. Detailed site operation method statement**

*No construction, decommissioning or removal work as part of the development hereby approved shall commence until a detailed method statement for working practices has been submitted to and approved in writing by the local planning authority. The statement shall include but not be restricted to details of foundations, hard standing, site access tracks, drainage, construction compound, soil handling and storage and fencing. It shall indicate how it has had regard to wildlife surveys undertaken and specify any mitigation measures proposed, including the timing of any work. It shall also demonstrate that any works that abut the highway including adopted verges are to be carried out in accordance with the Councils Design Guide and Specification (Residential and Industrial Estates Development) latest edition. The development shall be undertaken in strict accordance with the approved method statement unless otherwise agreed in writing with the Local Planning Authority.*

*Reason: In order to adequately control the construction phase of development, its impacts on the surrounding area and protection of the highway in accordance with the requirements of the National Planning Policy Framework.*

#### **17. Landscaping scheme, implementation and maintenance**

*Notwithstanding details hereby approved and prior to the commencement of works on site a scheme of soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall provide details including the species, numbers and locations of planting, timescales for implementation and a maintenance schedule for a minimum period of five years. The development shall be carried out in accordance with the approved scheme.*



*Reason: In order to ensure a high quality of development in accordance with guidance contained within Core Strategy Policy CS3.*

### **18. Forest Park Improvement Scheme**

*No development hereby approved shall be commenced until a scheme of improvements to the Stillington Forest Park has been submitted to and approved in writing by the Local Planning Authority. The scheme shall provide details of the improvements to be made and timescales for their implementation and shall include but not be restricted to the provision of new paths, fencing, hedgerows, tree planting and nest boxes. Unless otherwise agreed in writing with the Local Planning Authority, the development shall be carried out in accordance with the approved scheme and the associated timing of works.*

*Reason: In order to ensure the recreational value of the park is maintained in accordance with guidance contained within Core Strategy Policy CS3 and to mitigate the impact of the development on the park.*

### **19 Lighting scheme**

*Notwithstanding details hereby approved all fixed lighting to be erected or used as part of either the construction or operational phases of the development, shall be erected and operated in accordance of a scheme to be first submitted to and approved in writing by the Local Planning Authority. Any scheme should demonstrate how the impacts of lighting on the landscape and on the operational railway line shall be minimised in respect to intensity, number, direction and colour.*

*Reason: In order to prevent undue impact on the character and appearance of the surrounding area and prevent undue safety implications for the safe operation of the railway line in accordance with Core Strategy Policy CS3.*

### **20. Aviation (a)**

*No development hereby approved shall commence until a detailed scheme for the provision to air traffic controllers of Durham Tees Valley Airport ("the Airport") of additional radar information in respect of aircraft and other radar returns over or within 3 nautical miles of the boundary of the application site has been submitted to and approved in writing by the Local Planning Authority and all approvals considered necessary by the Local Planning Authority for the installation, testing and operation of the requirements of the approved detailed scheme have been granted in writing on its behalf. The detailed scheme shall;*

- Provide for data supplied by primary radar ("the additional radar") other than the primary radar located at the airport to be fully compatible with the radar data processing system used by the airport; and*
- Demonstrate that the scheme when operational will ensure that any radar returns from the development will not be displayed to air traffic controllers of the airport and will not otherwise adversely affect the air traffic control at the airport.*

*'Additional radar information' means information from a primary radar optimised in order to be interpreted or combined with information from the primary radar (watchman) located at the airport.*

*Reason: In order to safeguard airport operations in the interests of Public Safety in accordance with the requirements of the National Planning Policy Framework.*

### **21 Aviation (b)**

*The wind farm hereby approved shall not commence operation until the equipment required in accordance with the scheme approved in accordance with condition 20 has been installed, tested and become operational. Any variation to the approved scheme, including its implementation, shall not take place except with the prior written consent of the Local Planning Authority.*

*Reason: In order to safeguard airport operations in the interests of Public Safety in accordance with the requirements of the National Planning Policy Framework.*

## **22 Checking Surveys- Badgers**

*Checking surveys shall be carried out immediately prior to works commencing on site to ensure no Badger Setts have been established on site. If Setts are established or badgers are found to be foraging over the site, no works shall be undertaken until an impact assessment and suitable mitigation strategy has been submitted to and approved in writing by the Local Planning Authority. Development shall be undertaken in accordance with the approved scheme. Should works on site cease for any period over 1 month then further checking surveys shall be undertaken and evidence from those surveys shall be similarly submitted to and approved in writing before the resumption of works on site by the Local Planning Authority.*

*Reason: To conserve protected species and their habitat in accordance with the requirements of guidance contained within Core Strategy Policy CS3 and ODPM Circular 06/2005.*

## **23 Protected species, ecology and ornithology**

*Unless otherwise agreed in writing with the Local Planning Authority, no development hereby approved shall commence until an Environmental Action Plan (EAP) has been submitted to and approved in writing by the Local Planning Authority. The EAP shall be based on Section 7 of the 'Lambs Hill Environmental Statement, September 2010, relating to mitigation, compensation and enhancement measures. It shall include but not be restricted to detailing timing and spatial restrictions, provision of mitigation including protective fencing, habitat enhancements in advance, careful working practices in relation to amphibians, micro siting of turbines, undertaking confirming surveys, adherence to precautionary working methods and appointment of persons responsible for overseeing operations. The development shall be undertaken in accordance with the approved scheme.*

*Reason: To conserve protected species and their habitat in accordance with Core Strategy Policy CS3 and the guidance contained within ODPM Circular 06/2005.*

## **24 Protected Species**

*No development shall take place otherwise than in accordance with the mitigation measures detailed within Section E of the protected species report 'Lambs Hill Wind Farm, Bat and Barn Owl Report, AESL, Summer 2010'. Those measures shall include but not be restricted to: maintenance of a 50m buffer from the nearest part of the rotor swept path to a habitat feature (trees, hedges, waterways), adherence to precautionary working methods and adherence to timing restrictions.*

*Reason: To conserve protected species and their habitat in accordance with Core Strategy Policy CS3 and the guidance contained within ODPM Circular 06/2005.*

## **25 Television Interference**

*Prior to the commencement of development, a baseline television reception study in the area shall be undertaken by a qualified television engineer and submitted to and approved in writing by the Local Planning Authority with a scheme of works to mitigate the effects of the development on domestic television signals in the area. Any claim by a person for domestic television picture loss or interference at their household within 12 months of the final commissioning of the wind farm, shall be investigated by a qualified engineer at the expense of the wind farm operator and the results shall be submitted in writing to the Local Planning Authority within 28 days of the conclusion of the investigation. Should any impairment to the television reception be determined to be attributable to the wind farm operation on the basis of the baseline study, such impairment shall be mitigated within 3 months from such determination in accordance with the approved scheme of mitigation.*

*Reason: In the interests of protecting local amenity in accordance with the guidance of the National Planning Policy Framework.*

## **CONDITIONS: DURING CONSTRUCTION**

### **26 Vegetation clearance timings**

*All site vegetation clearance shall avoid the bird breeding season (beginning of March to end of August), unless otherwise agreed in writing by the Local Planning Authority and subject in any event to a checking survey being undertaken by a qualified ecologist immediately prior to the clearance works being undertaken.*

*Reason: To conserve protected species and their habitat in accordance with Core Strategy Policy CS3 and the guidance contained within ODPM Circular 06/2005.*

### **27 Construction hours of operation and construction traffic movements**

*Notwithstanding details hereby approved, all construction operations on site associated with this development (including delivery of materials onto site but excluding activities associated with abnormal loads) shall be restricted to 8.00 a.m. - 6.00 p.m. on weekdays, 9.00 a.m. - 1.00 p.m. on a Saturday and there shall be no working on Sundays or Bank Holidays unless otherwise agreed in writing by the Local Planning Authority.*

*No development hereby approved shall be commenced until a scheme has been submitted to and approved in writing by the Local Planning Authority detailing the transport routes to site for delivery vehicles. The scheme shall make provision for the routing of vehicles and timing of vehicle movements: to avoid passing along Morrison Street and the associated William Cassidi school between 8.30 and 9.15 a.m. and 3.00 and 4.00 p.m. Monday to Friday; and to avoid passing through Stillington Forest Park outside of the hours 8.30 a.m. to 5.30 p.m. Monday to Friday and at any time on Saturdays or Sundays. The scheme shall be complied with for the duration of the construction phase of the development unless otherwise agreed in writing with the Local Planning Authority.*

*Reason: In order to limit the impact of construction traffic on the amenity of the surrounding area and ensure the safe passage of pupils to school in accordance with guidance contained within the National Planning Policy Framework.*

### **28 Temporary site compound**

*Prior to the site compound being constructed on site, a plan to a scale of 1:500 shall be submitted to the Local Planning Authority showing its location and layout, indicating the location of the buildings, car parking, and boundary fencing. Thereafter any temporary site compound at the site shall be constructed in accordance with the approved plans. Unless otherwise agreed in writing with the Local Planning Authority, the compound and all associated features shall be removed from the site and the land reinstated to its former profile and condition no later than 9 months after the date when electricity is first exported from the wind turbines to the electricity grid network (the First Export Date).*

*Reason: In order to adequately control the appearance of the development and its impact on the character and appearance of the surrounding environment in accordance with the requirements of the National Planning Policy Framework.*

### **29 Control building**

*The control building and its associated compound shall be constructed in accordance with a scheme to be first submitted to and approved in writing by the Local Planning Authority. The scheme shall detail the siting, dimensions, appearance and external finishes of the building, any fencing and the surface material of the compound area. The development shall be carried out in accordance with the approved details.*

*Reason: In order to adequately control the appearance of the development in accordance with guidance contained within Core Strategy Policy CS3.*

### **30 Site cabling and connection**

*All electrical cabling between the individual turbines and the on-site control building shall be located underground in accordance with details to be submitted to and agreed in writing by the Local Planning Authority. Thereafter the excavated ground shall be reinstated to its former condition within 6 months of the commissioning of the wind turbines to the satisfaction of the Local Planning Authority*

*Reason: In order to limit the impact of the development on the character and appearance of the surrounding landscape in accordance with the requirements of Core Strategy Policy CS3.*

### **31 Ice detection equipment**

*Prior to the erection of any turbine hereby approved, details of a scheme for the detection of blade icing and mitigation of its impacts shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved scheme unless otherwise agreed in writing with the Local Planning Authority.*

*Reason: In order to take into account the position of the turbines in respect to the public rights of way and the operation of surrounding land and the need to maintain public safety in general accordance with the guidance contained within the National Planning Policy Framework.*

### **32 Controlling Dust and Debris**

*All vehicles leaving the site which are transporting loads from which dust and debris may be produced shall be fully sheeted prior to leaving the site.*

*Reason: In order to prevent the emission of blown dust and debris from impacting on highway safety in accordance with the requirements of the National Planning Policy Framework.*

### **33 Storage of potentially polluting goods**

*Any facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The volume of the bunded compound should be at least equivalent to the capacity of the tank plus 10%. If there is multiple tankage, the compound should be at least equivalent to the capacity of the largest tank, or the combined capacity of interconnected tanks, plus 10%. All filling points, vents, gauges and sight glasses must be located within the bund. The drainage system of the bund shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipe work should be located above ground and protected from accidental damage. All filling points and tank overflow pipe outlets should be detailed to discharge downwards into the bund.*

*Reason: To prevent pollution of the water environment in accordance with the guidance of the National Planning Policy Framework.*

### **34 Foundation Piling**

*There shall be no piling of foundations or foundations using penetrative methods unless first agreed in writing with the Local Planning Authority.*

*Reason: In order to prevent contamination of the water environment in accordance with Core Strategy Policy CS3 and guidance contained within the National Planning Policy Framework.*

### **35 Wind turbine noise assessment**

*Unless the REpower MM92 2MW wind turbine with a hub height of 78m is installed at all positions hereby approved for wind turbines, prior to the erection of any turbines, a noise assessment shall be submitted to and agreed in writing by the Local Authority which*

demonstrates that the predicted noise levels for the final choice of wind turbine to be installed at the site shall not exceed the values set out in Tables 1 and 2 of condition 40.

*Reason: In order to ensure the selected turbines do not unduly affect the amenity of the surrounding receptors, in accordance with guidance contained in the National Planning Policy Framework*

### **36. Shadow Flicker**

*Prior to any turbine blades being attached to the turbine towers/hubs and rotated, a written scheme detailing mitigating systems and a protocol to deal with the occurrence of shadow flicker shall be submitted to and approved in writing by the local planning authority. The scheme shall also set out a shadow flicker protocol for the assessment of shadow flicker in the event of any complaint from the owner or occupier of a dwelling (defined for the purposes of this condition as a building within Use Class C3 or C4 of the Use Classes Order) which lawfully exists or had planning permission at the date of this permission. The written scheme shall include remedial measures. Operation of the turbines shall take place in accordance with the approved scheme and protocol unless the local planning authority gives its prior written consent to any variations.*

*Reason: In order to adequately mitigate impacts of shadow flicker in general accordance with guidance contained within the National Planning Policy Framework.*

## **CONDITIONS: POST CONSTRUCTION**

### **37 Decommissioning – 25 Years**

*Notwithstanding details hereby approved and unless a renewal permission is granted for the scheme by the Local Planning Authority, the turbines hereby permitted shall cease exporting electricity following a period not exceeding 25 years from the date that electricity from the development is first exported into the electricity grid.*

*The site will be decommissioned within 12 months of its 25 year operational period in accordance with a scheme of decommissioning which has first been submitted to and approved in writing by the Local Planning Authority. The scheme of decommissioning shall detail all parts of the development including tracks, cables, hardstanding, buildings, turbines and masts, whether they are to be removed or retained on site, remediation and reinstatement works as required and any other relevant details. The scheme of remediation shall be submitted prior to the expiration of the 25 year operational period of the wind farm.*

*Reason: In order to ensure suitable decommissioning of the site in a timely manner at the end of the wind farms operational life in accordance with the guidance contained within the National Planning Policy Framework.*

### **38 Turbine removal after 12 months in-operation**

*Unless otherwise agreed in writing with the Local Planning Authority, if any wind turbine ceases to be operational for a continuous period of 12 months it shall be dismantled and removed from the site within a period of 9 months from the end of that 12 month period and the immediate location of the turbine shall be restored in accordance with a scheme of remediation and reinstatement to be first submitted to and approved in writing by the Local Planning Authority before the end of the 9 months period referred to. The scheme shall include details of all highway or landscape features affected by the decommissioning For the purposes of this condition a period of in-operation shall include periods where the wind turbine is operating beyond the approved noise limits as detailed by the noise emission limitations condition hereby imposed.*

*Reason: To ensure turbines are removed at the end of their operational life and do not have an unjustified impact on the character and appearance of the surrounding area in accordance with the guidance contained within the National Planning Policy Framework.*

**39 80m Met Mast - removal**

Unless otherwise agreed in writing with the Local Planning Authority, the two 80m masts approved as part of this permission shall be removed from site within 18 months following their initial erection.

Reason: To prevent an unnecessary longer term impact on the appearance of the landscape in accordance with the guidance contained within the National Planning Policy Framework.

**40 Noise Immission limitations**

The rating level of noise immissions from the combined effects of the wind turbines (including the application of any tonal penalty) shall not, when calculated in accordance with Notes 1–4 at Informative 2 attached to this planning permission, exceed the values set out in Table 1 or Table 2 below (as appropriate).

Noise limits for dwellings (defined for the purposes of these noise conditions as a building within Use Class C3 or C4 of the Use Classes Order) which lawfully exist or had planning permission at the date of this permission but are not listed in the Tables attached shall be those of the physically closest location listed in the Tables, unless otherwise agreed in writing by the Local Planning Authority. The coordinate locations to be used in determining the location of each of the dwellings are listed in Tables 1 and 2 below

**Table 1: Between 23:00 and 07:00 hours (Noise Level in dB L<sub>A90, 10min</sub>):**

Location (easting, northing grid co-ordinates)	Wind speed (m/s) at 10m height measured within the site averaged over 10m minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
Foxton (436313, 524722)	43	43	43	43	43	43	43	43	46	49	52	55
Stillington (437099, 523425)	43	43	43	43	43	43	43	43	43	44	47	49
Old Stillington (436392, 522789)	43	43	43	43	43	43	43	47	49	52	53	53
The Whins (435168, 523576)	43	43	43	43	43	43	43	43	43	46	48	50
Moor House Farm (435082, 524082)	43	43	43	43	43	43	43	44	47	50	53	54
Foxton Farm (435993, 524794)	43	43	43	43	43	43	43	43	43	44	47	50

**Table 2: At all other times (Noise Level in dB L<sub>A90, 10min</sub>):**

Location (easting, northing grid co-ordinates)	Wind speed (m/s) at 10m height measured within the site averaged over 10m minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
Foxton (436313, 524722)	35	35	35	37	38	40	43	45	47	50	52	54
Stillington (437099, 523425)	35	35	35	36	37	38	40	42	44	46	49	52
Old Stillington	35	35	35	37	39	42	45	48	51	54	56	58

<b>(436392, 522789)</b>												
<b>The Whins (435168, 523576)</b>	36	37	37	39	40	41	43	44	46	47	48	49
<b>Moor House Farm (435082, 524082)</b>	35	35	35	35	37	39	42	45	47	48	49	49
<b>Foxton Farm (435993, 524794)</b>	35	35	35	35	36	37	39	41	43	45	48	50

Note: The geographical coordinate 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.

*Reason: In the interests of noise monitoring and the living conditions of occupants of nearby properties in accordance with the guidance contained within the National Planning Policy Framework.*

**41 Noise a**

*Within 28 days from the receipt of a written request from the Local Planning Authority and following a complaint to the Local Planning Authority from the occupant of a dwelling which lawfully exists or has planning permission at the date of this consent, the wind farm operator shall, at the wind farm operators 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 Notes 1-4 at Informative 2 attached to this planning permission. The Local Planning Authority may specify in writing any location or locations at which the assessment measurements are to be taken to contain a tonal component.*

*Reason: In the interests of the living conditions of occupants of nearby properties in accordance with the guidance contained within the National Planning Policy Framework.*

**42 Noise b**

*The wind farm operator shall provide to the Local Planning Authority the independent consultant’s assessment and conclusions regarding the said noise complaint, including all calculations, audio recordings and the raw data upon which those assessments and conclusions are based. Such information shall be provided within 3 months of the date of the written request of the Local Planning Authority unless that period is otherwise extended in writing by the Local Planning Authority.*

*Reason: in order to protect the amenity of neighbouring residents in accordance with the guidance contained within the National Planning Policy Framework.*

**43. Noise c**

*Wind speed, wind direction and power generation data shall be continuously logged in accordance with Note 1 at Informative 2 attached to this planning permission and shall be retained for a period of not less than 12 months. The operator shall provide to the Local Planning Authority in writing such of this data as it may request in writing within 21 days of such request.*

*Reason: In the interests of noise monitoring and the living conditions of occupants of nearby properties in accordance with the guidance within National Planning Policy Framework.*

**44. Noise d**

*No development shall take place until the wind farm developer / operator has notified the Local Planning Authority of a nominated representative to act as a point of contact for local residents (in connection with conditions 40 and 41) together with the arrangements for*

*notifying and approving any subsequent change in the nominated representative. The nominated representative shall have the responsibility for liaison with the Local Planning Authority in relation to any complaints made about noise and any other matters arising during construction, operation and decommissioning of the wind farm.*

*Reason: For the avoidance of doubt.*

#### **45. Compliance with the Environmental Management Plan**

*The construction, operation and decommissioning of the wind farm hereby approved shall be undertaken in accordance with the Environmental Management Plan (the EMP) as listed within the approved documents at condition 2 above as reviewed and updated in accordance with this condition.*

*Notwithstanding the existing contents of the EMP, a scheme detailing the following shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development:*

- The reporting of compliance or non-compliance with the EMP to the local planning authority and how and by when any incidences of non-compliance will be addressed;*
- how and by when recommendations for mitigation identified by the initial investigation referred to in that part of the EMP concerning the Operational Noise Complaints Procedure ('the ONCP part') will be implemented;*
- how and by when any failure to agree to the appointment of an independent and appropriately qualified consultant within the ONCP part will be addressed; and*
- the role, constitution and operation of the Lambs Hill Liaison Committee referred to at EMP section 1.1.5 including in relation to the review and update referred to below.*

*The EMP and the scheme referred to above shall be reviewed and updated by means of the submission by the developer on each anniversary of the date of this permission of details to include details of performance measured against the EMP and scheme above and proposals for their review. Proposals for review of the ONCP part shall take into account the emergence of and changes to best practice and ways and methods of monitoring, assessing and mitigating significant unforeseen noise occurrences.*

*The wind farm hereby approved shall be constructed, operated and decommissioned in accordance with the EMP, the scheme referred to above and annual reviews and updates therefore as approved from time to time in writing by the Local Planning Authority.*

*Reason: In order to ensure control over wide ranging environmental matters throughout the relevant phases of the wind farms lifetime and provide further clarity in terms of roles and responsibilities for actions required.*

#### **46. Turbine in-operation data**

*At the written request of the Local Planning Authority the wind farm operator shall provide, within 28 days from the date of request, a list of ten-minute periods during which any one or more of the turbines was not in normal operation. This information will only be required for periods during which noise monitoring was undertaken in accordance with conditions attached to this permission. 'Normal operation' is defined in the Notes at Informative 2 to this permission.*



*Reason: In order to safeguard the amenity of nearby properties in accordance with the guidance contained within the National Planning Policy Framework.*

## **INFORMATIVES**

### **Informative 1: National Planning Policy Framework**

*The Local Planning Authority have implemented the requirements of the National Planning Policy Framework.*

### **Informative 2- Noise Conditions**

*These notes form part of conditions 40-44 as detailed above. They further explain these conditions and specify the methods to be deployed in the assessment of complaints about noise immissions from the wind farm.*

*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 LA90,10min noise statistic shall be measured at the complainant's property using a sound level meter of EN 60651/BS EN 60804 Type 1, or EN 61672 Class 1 quality (or the replacement thereof) set to measure using a 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 shall be calibrated in accordance with the procedure specified in BS 4142:1997 (or the replacement thereof). These measurements shall be made in such a way that the requirements of Note 3 shall also be satisfied.*
- b) *The microphone should be mounted at 1.2 - 1.5 m above ground level, fitted with a two layer windshield (or suitable alternative approved in writing from the Local Planning Authority), and placed outside the complainant's dwelling. Measurements should be made in "free-field" conditions. To achieve this the microphone should be placed at least 3.5m away from the building facade or any reflecting surface except the ground at a location that shall be agreed with the Local Planning Authority.*
- c) *The LA90,10min measurements shall be synchronised with measurements of the 10-minute arithmetic mean average wind speed as measured within the wind farm site at a height of 10 metres and with operational data, including power generation information for each wind turbine, from the turbine control systems of the wind farm.*
- d) *The wind farm operator shall continuously log arithmetic mean wind speed and arithmetic mean wind direction data in 10 minute periods at a height of 10 metres unless otherwise requested by the Local Planning Authority to enable compliance with the conditions to be evaluated. All 10-minute periods shall commence on the hour and in 10-minute increments thereafter synchronised with Greenwich Mean Time and adjusted to British Summer Time where necessary. It is this measured 10m height wind speed data which is correlated with the noise measurements of Note 2(a) in the manner described in Note 2(c).*

#### **NOTE 2**

- (a) *The noise measurements shall be made so as to provide not less than 20 valid data points as defined in Note 2 paragraph (b). Such measurements shall provide valid data points for the range of wind speeds, wind directions, times of day and power generation requested by the Local Planning Authority. In specifying such conditions the Local Planning Authority shall have regard to those conditions which were most likely to have*

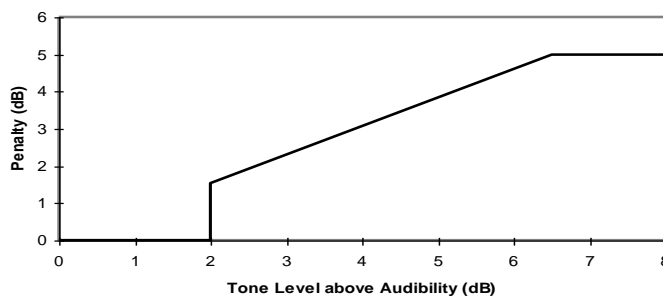
prevailed during times when the complainant alleges there was disturbance due to noise.

- (b) Valid data points are those that remain after all periods during rainfall have been excluded. Rainfall shall be assessed by use of a rain gauge that shall log the occurrence of rainfall in each 10 minute period concurrent with the measurement periods set out in Note 1(c) and is situated in the vicinity of the sound level meter.
- (c) A least squares, "best fit" curve of a maximum 2nd order polynomial or otherwise as may be agreed with the local planning authority shall be fitted between the measured mean wind speed (as defined in Note 1 paragraph (d)) plotted against the measured LA90,10min noise levels. The noise level at each integer speed shall be derived from this best-fit curve.

NOTE 3

Where, in the opinion of the Local Planning Authority, noise immissions at the location or locations where assessment measurements are being undertaken contain a tonal component, the following rating procedure shall be used:

- a) For each 10-minute interval for which LA90,10min data have been obtained as provided for in Note 1, a tonal assessment shall be performed on noise immissions during 2-minutes of each 10-minute period. The 2-minute periods shall be regularly spaced at 10-minute intervals provided that uninterrupted clean data are available. Where clean 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 standard procedure as described in Section 2.1 on pages 104 – 109 of ETSU-R-97 shall be reported.
- b) For each of the 2-minute samples the margin above or below the audibility criterion of the tone level difference,  $\Delta L_{tm}$  (Delta L<sub>tm</sub>), shall be calculated by comparison with the audibility criterion given in Section 2.1 on pages 104-109 of ETSU-R-97.
- c) The margin above audibility shall be plotted against wind speed for each of the 2-minute samples. For samples for which the tones were below the audibility criterion or no tone was identified, a value of zero audibility shall be substituted.
- d) A linear regression shall then be performed to establish the margin above audibility at the assessed wind speed for each integer wind speed. If there is no apparent trend with wind speed then a simple arithmetic average shall be used.
- e) The tonal penalty shall be derived from the margin above audibility of the tone according to the figure below. The rating level at each wind speed shall be calculated as the arithmetic sum of the wind farm noise level, as determined from the best-fit curve described in Note 2, and the penalty for tonal noise.



NOTE 4

If the wind farm noise level (including the inclusion of a tonal penalty applied in accordance with Note 3) is above the limit set out in Condition 40, measurements of the influence of background noise shall be made to determine whether or not there is a breach of condition. This may be achieved by repeating the steps in Note 1 & 2 with the wind farm switched off in order to determine the background noise, L3, at the assessed wind speed. The wind farm noise at this wind speed, L1, shall then be calculated as follows, where L2 is the measured wind farm noise level at the assessed wind speed with turbines running but without the addition of any tonal penalty:

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

The rating level shall be re-calculated by adding the tonal penalty (if any) to the derived wind farm noise L1. If the re-calculated rating level lies at or below the values set out in Condition 40 no further action is necessary. If the rating level exceeds the values set out in Condition 40 the development is in breach of condition.

### **Informative 3- For clarification.**

Notwithstanding the control achieved by conditions within this approval and the requirements of the Environmental Management Plan the council retains its powers to take action in respect of statutory nuisances.

### **Informative 4- Network Rail**

#### **a) Fail Safe Use of Crane and Plant**

All operations, including the use of cranes or other mechanical plant working adjacent to Network Rail's property, must at all times be carried out in a fail safe manner such that in the event of mishandling, collapse or failure, no materials or plant are capable of falling within 3.0m of the nearest rail of the adjacent railway line, or where the railway is electrified, within 3.0m of overhead electrical equipment or supports.

#### **b) Security of Mutual Boundary**

Security of the railway boundary will need to be maintained at all times. If the works require temporary or permanent alterations to the mutual boundary the applicant must contact Network Rails Asset Protection Engineer.

#### **c) Abnormal Loads**

From the information supplied, it is not clear if any abnormal loads will be using routes that include any Network Rail assets (e.g. bridges). We would have serious reservations if during the construction or operation of the site, abnormal loads will use routes that include Network Rail assets. Network Rail would request that the applicant contact our Asset Protection Engineer to confirm that any proposed route is viable and to agree a strategy to protect our asset(s) from any potential damage caused by abnormal loads. I would also like to advise that where any damage, injury or delay to the rail network is caused by an abnormal load (related to the application site), the applicant or developer will incur full liability.

#### **d) Access to Railway**

All roads, paths or ways providing access to any part of the railway undertaker's land should be kept open at all times during and after the development.

Network Rail advises that they are required to recover all reasonable costs associated with facilitating these works.

#### **f) Excavation works near to railway line**

*Network Rail has requested that prior to commencement of works, full details of excavations and earthworks to be carried out near the railway undertaker's boundary fence should be agreed with them and that works shall only be carried out in accordance with the approved details. Where development may affect the railway, consultation with the Asset Protection Engineer should be undertaken. The method statement will need to be agreed with:*

*Asset Protection Engineer Team  
Network Rail (London North Eastern)  
Floor 1B  
George Stephenson House  
Toft Green  
York  
Y01 6JT*

### **Informative 5 - National Grid**

*The National Grid has advised that a Major Accident Hazard Pipeline (MAHP) high pressure gas pipeline runs through the application site with turbines in close proximity and access tracks passing over the pipeline. There are certain requirements that will be required in respect to work around the pipeline, providing an impact slab above the pipeline to protect it from construction traffic, details of cable routing and other similar matters. National Grid advised that the developer consult the Technical Specification HS(G) 47 "Avoiding Danger from Underground Services", further details can be found in their specification for Safe Working in the vicinity of National Grid high pressure gas pipeline and associated installations - requirements for third party : T/SP/SSW22.*

*National Grid will also need to ensure that access to their pipelines is maintained during and after construction that pipelines are normally buried to a depth of 1.1 metres or more below, and that ground cover above pipelines should not be reduced or increased. Some guidance can be found on the UK Onshore Pipeline Operators Associations website [www.ukopa.co.uk](http://www.ukopa.co.uk)).*

*It is strongly recommended that prior to commencement of any part of this development or any pre commencement site works, that any developer contacts the National Grid direct and fully discusses and agrees in writing with the National Grid the impact of their proposals on the National Grid's apparatus, namely the high pressure gas pipeline and a scheme of mitigation, timing and supervision as deemed appropriate. The contact dealt with in respect to this application was:*

*Sarah Robinson,  
Policy Support Officer,  
Land and Development Group,  
National Grid,  
Warwick,  
[sarah.robinson2@uk.ngrid.com](mailto:sarah.robinson2@uk.ngrid.com)*

### **Informative 6- Environment Agency**

#### **a) Turbine Foundations**

*The proposed turbines are above the Magnesian Limestone principal aquifer and lie within the source protection zone of an important public water supply. Any concrete foundations placed at depth may come into direct contact with this important ground water reserve.*

#### **b) Watercourses**

*The applicant should note that any proposal to divert or culvert a watercourse within the site will require the prior written permission of the Environment Agency under the Land Drainage Act 1991.*

#### **c) Culverting works**

*The applicant is advised to seek advice from the Environment Agency regarding any necessary permits required for culverting existing ditches.*

### **Informative 7 - Teesmouth Bird Club – Bird Monitoring**

*A request has been made for the applicant to undertake bird monitoring over a 5 year period following the wind farm commencing operation. The applicant is directed to Teesmouth Bird Club should they wish to undertake this survey work in order to agree the survey parameters.*

### **Informative 8 – New Entrant Trainees**

The applicant is advised that it should use reasonable endeavours for ten per cent (10%) of the workforce on the job site for the development (excluding specialist jobs such as site manager, agent, resident engineer, turbine erection crew and specialist electrical crew) to be new entrant trainees whom are residents of Stockton and the Tees Valley in discussions with the Councils Labour Market Co-ordinator.

## **BACKGROUND**

1. Application 10/2549/EIS sought permission for the erection of four 2 - 2.5MW wind turbines and their associated infrastructure as well as a 60m (max.) lattice anemometry mast and two 80m (max) power performance wind monitoring masts. The ancillary development approved as part of the wind farm consisted mainly of;
  - a) Control building incorporating sub station;
  - b) Temporary lay down area and construction compound;
  - c) Construction of new access to the south of the site (from the road between Stillington and Old Stillington);
  - d) Construction of new access to the east of the site (from the road between the A177 and Morrison Street);
  - e) Construction of approx. 3.5 - 4km of new access tracks;
  - f) Construction of a crane pad adjacent to each turbine;
  - g) Underground electrical cabling;
2. Application 10/2549/EIS was supported by an Environmental Impact Assessment, the aim of which is to assess all of the developments impacts on its surroundings in order to ensure the applicant covers all relevant issues within the Environmental Impact Statement (EIS).
3. Application 10/2549/EIS was placed before committee on the 2<sup>nd</sup> March 2011. Committee resolved to grant planning permission subject to conditions and a Section 106 Agreement being signed. Prior to the signing of the Section 106 Agreement and the decision being issued, the Secretary of State for Communities and Local Government exercised his powers and directed the Council not to grant permission without his authorisation. This allowed the Secretary of State time to consider the application details and whether it was appropriate for the determination of the application to be called in. The Secretary of State considered the application including whether it could have significant effects beyond the immediate locality and whether it would give rise to substantial regional or national controversy and the Governments Localism Agenda. The Secretary of State concluded that, on balance, his intervention would not be justified as there is not sufficient conflict with national planning policies or any other sufficient reason to warrant calling-in the application for his own determination and that the decision should remain with Stockton. Following this, and the signing of the Section 106 Agreement, the Council issued the decision notice.
4. Following the issue of decision, the Council received a claim for Judicial Review challenging the council's decision. Officers concluded that one of the grounds of challenge would result in the quashing of the decision notice and the council

therefore consented to judgement that the decision notice be quashed on limited grounds. That decision notice was quashed by order of the High Court dated 15<sup>th</sup> November 2011. As a result of this the application required a new determination and was placed before Committee on the 7<sup>th</sup> December 2011 where it was approved subject to conditions.

5. A proposal to erect a 60m high cable stayed wind monitoring mast at the Lambs Hill site for a period of 3 years was approved on the 15<sup>th</sup> April 2010 under application 10/0368/FUL. The mast is used to verify estimated wind speed data and the overall viability of a wind farm at a specific location.
6. The approved wind farm approval requires commencement of the development within 5 years from the date of approval which was the 7<sup>th</sup> Dec 2011 and was approved with a 25 year limit to electricity generation from the first date of export of electricity with decommissioning thereafter.

The following is a summarised description of the various components of the wind farm taken from the proposal section of the report to Committee for application 10/2549/EIS.

#### ***Wind Turbines***

7. The turbines are limited to having a maximum height to tip of blade of 125m, an installed capacity of between 2 and 2.5 MW, a 3 blade rotor with diameter around 90 – 92.5m and being finished in a semi matt light grey colour. Once erected the wind turbines require periodic servicing. Typical foundation details were detailed as being 19m x 19m in plan and 3.5m max. in depth, most of which would be below ground level with excavated soil being used to reinstate the surface ground level.

#### ***Cabling and control building incorporating sub station,***

8. Energy generated from the wind turbines is passed to transformers and onto the control building where the wind farms switch gear, protection, metering, communication and control equipment is housed along with other electrical infrastructure. The control building is in turn connected into the National Grid via the Local Distribution Network. The grid connection from the site did not form part of 10/2549/EIS although it would normally be achieved by either underground cables or overland cables on wooden poles. An indicative design was submitted for the control building.

#### ***Temporary lay down area and construction compound***

9. The site layout detailed a temporary site compound and lay down area which would house the temporary site offices, mess facilities and toilets. Fuels and oils would be stored in either a bunded area with concrete plinth or in double skinned containers as required. It was indicated that employment on site will be between 15 to 30 operatives.

#### ***New accesses to highway***

10. The wind farm is split by a railway line crossing the site with three turbines to the south and one to the north. There is an access for small vehicles beneath the railway line although it was advised that this could not accommodate the abnormal loads or the HGV's. As such, two access points were proposed to give access to the turbine sites for large vehicles with a smaller maintenance track running beneath the railway line which can be utilised throughout the construction period to keep smaller traffic off the highway as well as for the future maintenance traffic. The northern access point is taken from the road linking Stillington with the A177. An access track then routes across agricultural land, through the Stillington Forest Park and back through agricultural land until it reaches Turbine T4. The southern access point for Turbines

T1, T2 and T3 is taken from the road between Stillington and Old Stillington to the West.

#### **Internal access tracks & Crane Pads**

11. The submission indicated that there would be between 3.5 km and 4 km of internal access tracks linking the turbines with the public highway. Tracks were detailed as being constructed using compacted stone. Typical track construction was detailed as involving the topsoil being stripped back, the track being laid and top soil being placed at the sides of the track and allowed to re-vegetate. A condition was imposed to address the detail of these tracks.
12. The approved scheme included for a crane pad being constructed next to each turbine to allow each turbine to be lifted into place. The crane pads were shown as being 20m x 40m in plan and having a min. 200 mm thick crushed stone surface.

#### **60m Wind Monitoring Mast & 80m Wind Monitoring Masts**

13. Approval under 10/2549/EIS included approval of a 60m lattice tower wind monitoring mast (25 year period). It also gave approval for two 80m guyed power performance test masts, one being located at the position of turbine T1 and one set a distance away. These two masts would be erected approximately 6 months prior to the commencement of the wind farm and be required for a minimum period of 12 months.

#### **Scoping for 12/1762/VARY**

14. Following approval of 10/2549/EIS and in respect to this current application, the applicant submitted to the Council for a Screening Opinion (12/1940/SCO) as to whether an Environmental Impact Assessment (EIA) would be required for an application to remove condition 45. The Council advised that an EIA was not required for the development.

#### **Other Wind Farm Development**

15. Other wind farm proposals have been considered within the surrounding locality. Those of particular relevance to this proposal are;
  - Foxton Wind Farm – to the north of the site. Durham County Council refused permission and the scheme was further dismissed on appeal.
  - Moor House Farm Darlington – to the south west of the site. Approved with conditions. Currently subject to an application to remove a condition relating to Amplitude Modulation.
  - Newbiggin Wind Farm. Refused permission.

### **PROPOSAL**

16. Planning permission is sought to remove condition 45 of planning approval reference 10/2549/EIS which relates to the control over amplitude modulation.
17. Condition 45 and its associated Informatives were worded as follows;

*On the written request of the Local Planning Authority, following a written or formal complaint to it considered by the Local Planning Authority to relate to Amplitude Modulation (the regular variation of the broadband aerodynamic noise caused by the passage of the blades through the air at the rate at which the blades pass the turbine tower) the wind farm operator shall within 28 days of that written request and at its own expense employ an independent consultant approved in writing by the Local Planning Authority to undertake the assessment described in Note 5 at Informative 2 attached to this planning permission ('Note 5'). The objective of the assessment shall*

*be to ascertain whether AM is a significant contributor to the noise complaint as defined there. This assessment shall be commenced within this 28 day period unless otherwise agreed in writing with the Local Planning Authority and completed within such further period as the Local Planning Authority shall agree in writing. The survey results and associated assessment will be submitted in writing to the Local Planning Authority within 14 days of the completion of the assessment and if his analysis indicates to the independent consultant that AM is a significant contributor to the noise complaint as defined in Note 5, his assessment shall so inform the Local Planning Authority in writing.*

*If the said assessment confirms AM to be a significant contributor as defined in Note 5, the Local Planning Authority shall request that the developer shall submit to the Local Planning Authority for its approval in writing a scheme to mitigate such effect. That scheme may provide for the installation and operation of additional apparatus for the monitoring of conditions when AM occurs and the shutting down of the turbines during such conditions; and it shall include measures for the enforcement of the scheme including the timescale for its implementation. The wind farm shall be operated thereafter in accordance with the approved scheme unless otherwise agreed in writing by the Local Planning Authority.*

*For the avoidance of doubt the wind farm operator is obliged to comply with the obligation described in this condition for the duration of the planning permission, to be enforced by the Local Planning Authority in the normal way.*

*Reason: In order to protect residential and other amenity in the area in accordance with the guidance contained within PPS22.*

#### Note 5 of Informative 2

*Where the Local Planning Authority requires an assessment of AM in accordance with Condition 45 the complainant to the Local Planning Authority shall be provided with a switchable noise recording system by the independent consultant in order to initiate recordings of the turbine noise at times and locations when they consider that AM may occur. Such recordings which shall include an audio recording shall allow for analysis of the noise in one-third octave bands from 50Hz to 10kHz at intervals of 125 milliseconds (the effects of AM are normally associated with impacts experienced inside properties or at locations close to the property - such as patio or courtyard areas- and their assessment therefore necessarily differs from the free-field assessment methodologies applied elsewhere in these Notes).*

*AM will be a significant contributor to a noise complaint if, over a period of 6 months following the installation of the switchable noise recording system, the complainant records 5 or more occurrences of Significant AM in separate 24 hour periods. Amplitude modulation caused by factors not related to the wind farm shall be discounted from the assessment where appropriate evidence is detailed. 'Significant AM' is defined for this purpose as instances where 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 LAeq, 1 minute turbine sound energy level for that minute is not below 28dB.*

*c) The changes identified in (a) and (b) above shall not occur for fewer than 6 minutes in any hour.*

## **SITE AND SURROUNDINGS**

18. The application site is located at the north western edge of the Borough immediately to the west of Stillington and adjacent to the administrative boundaries of both Durham County Council and Darlington Borough Council.
19. The site is located at a high point within the immediate landscape and its wider setting mainly consists of undulating arable farmland, the settlement of Stillington, sporadic properties and farm buildings, country lanes and landscaping in the form of hedgerows and small copses of trees. There is a disused quarry within the site along with watercourses.
20. The largest nearby settlement is Stillington which has both an industrial estate and housing along its western edge. The closest residential properties that are not associated with Stillington are generally sporadic hamlets such as Old Stillington to the south of the site, Foxton to the north and Bishopton Crossings to the west with villages such as Bishopton and Whitton being slightly further afield. Other individual houses and farms also exist within the surrounding area. The site is split by an active railway line which runs east to west across the site.

## **CONSULTATIONS (summarised)**

### Alex Cunningham MP Stockton North

You may recollect that due to the controversial nature of developments like this I carried out my own contact exercise and sent every Stillington resident a letter when the original application was made. Fewer than 20 people responded and there was no overwhelming support or objection to the scheme and I expressed support for it.

I would like to add my objection to this application for the condition being removed. I am sure the basis for the condition cannot have changed since the planning permission was granted and hope there will be no change of mind.

### Councillor Andrew Stephenson

With regard to the wind turbines at Lambs Hill, I have taken soundings at Stillington Parish Council and local residents, all are of the opinion that they and myself are in total opposition to any changes to the planning approval given by Stockton Planning Committee. If Banks did not want these conditions added, that is their problem, not Stockton Councils. The regulations state it is up to Banks to monitor all the rules attached to the planning application, what Banks is attempting to do is pass this duty on to local residents and council, this is a no-goer and should not be considered.

### Councillor Sherris

Objects to the application.

### Stillington and Whitton Parish Council

The Members of Stillington and Whitton Parish Council would like to object to this application requesting the removal of condition no. 45. Due to the close proximity of the proposed turbines to our community Members consider that any planning conditions to ensure that noise levels are as low as possible are essential aspects of the planning permission. It is

also vital that there is an accepted procedure to be followed by Banks Group if there is a complaint about noise levels. If there are any problems with noise levels at any time the Parish Council would like to feel that all possible sources of the noise will be fully investigated and any problems rectified immediately.

As there is obviously further research required into Amplitude Modulation the Banks Group and other energy companies should be supporting research into improving the understanding of this subject to that they are able to fully comply with this planning condition should the need arise.

The original planning application was passed with this condition and this was accepted by Banks Group at that time. As such the Parish Council feel that this and all other conditions should remain.

Stillington and Whitton Parish Council considered the Banks Renewables Environmental Management Plan. Members have the following comments to make:-

#### Drainage

Members have some concerns that the work may affect current drainage patterns - to the ponds in the Forest Park for example - or may cause water to drain onto the roads. If possible they would like a section to be included in the plan stating that if drainage from the site or its associated infrastructure affects any natural features or roads in any way then this will be dealt with quickly to prevent further problems.

#### Timescales

With regard to issues such as noise or flicker problems no timescales are given for Banks to work within to rectify any problems. Members would like to know if there is a problem how quickly should it be dealt with?

#### Transport

Section 1.8 of the Plan states that a visual/photographic survey of the minor public roads will be undertaken prior to the routes being brought into use. Members welcome this but would also like this to be extended to include any related infrastructure - such as retaining walls. In particular Members are thinking of the retaining wall along South Street which is already showing signs of damage.

Members of the Parish Council would appreciate it if these comments can be considered and, if possible, included in the document - other than these comments Members are happy with the Plan.

#### Grindon Parish Council

Objects to the planning application for the following reasons:

- Health concerns
- Noise
- set precedent

Grindon Parish Council strongly objects to the proposed removal of condition 45 (Amplitude Modulation) from the planning permission for the Lambs Hill Wind Farm, Stillington. The condition 45 gives local residents some protection from these industrial turbines. There is evidence that noise from turbines can cause, sleep deprivation, fatigue, headaches, dizziness, nausea, mood changes and the inability to concentrate. Without condition 45 residents will not have any protection, the quality of life for local residents will be affected.

#### Sadberge Parish Council

Submitted a document on Excess and Other Amplitude Modulation (EAM & OAM) that has been prepared by their Clerk. The document explains Amplitude Modulation impacts of wind shear and atmospheric conditions on EAM, synchronising of noise generated by separate turbines causing louder noise emissions. The document suggests that any assessment of

the likelihood that noise from a proposed wind farm will be subject to EAM should include an analysis of the frequency and duration of periods of unusually high wind shear over the proposed site, although recognises that the existence of high wind shear does not necessarily mean that EAM will occur although suggests that there is a higher risk of EAM. The document highlights it being important to examine the pattern of variation of wind shear over time and not simply look at the long term average wind shear. It is indicated that the parish councils analysis of wind speed data from a wind monitoring mast at the Moor House site in Darlington showed that over a 4 month period in 2009, there were 29 periods of very high wind shear, each lasting for over 3 hours and some over 10 hours, (occurring for around 25-35 hours per month and almost exclusively during evenings and night times, between 5pm and 9am. It is indicated that periods of high wind shear occur in clusters, whereby there is nothing for two or three weeks and then 4 or 5 nights consecutively when it occurs.

Sadberge Parish Council advise that the planning inspector in the second Den Brook appeal considered that in circumstances where the result of unforeseen consequences is sleep disturbance, was in no doubt that a condition to regulate the phenomenon is both necessary and reasonable. The Inspector did not see that the rarity of the circumstance constitutes a valid reason to object to such a condition, considering it necessary and reasonable to impose such a condition. Sadberge Parish Council consider that the Den Brook Case has established a basis for drafting such conditions although notes problems with the wording of the conditions and a need for its adaption using logic and common sense. Sadberge Parish Council has recommended two conditions to deal with other AM and have gone into some detail in their assessment of this matter.

Objection has been raised in respect to the EMP and the ambiguity within the wording leaving it open to question.

#### Bishopton Parish council

- Object to the application as the condition affords protection to the residents should noise levels exceed a certain level
- Residents will potentially be left exposed to unacceptable noise problems without adequate protection.
- Recent investigations in the USA support the growing evidence that there are health issues associated with the noise generated by wind turbines.
- It is understood that such conditions have been judged valid by a recent Court of Appeal decision.
- Having studied the EMP it is clear that to be effective, it relies on there being agreement between the LPA and the operator that a particular complaint is substantive. If the operator does not agree then there is no obligation for him to instruct an independent noise consultants investigation, a situation that could place significant pressure on the councils Environmental Health resource. This is not sufficient protection in the event of an AM problem.
- The EMP gives no time scales for a main investigation and the implementation of a scheme where necessary. This could therefore be very time consuming during which time residents could be being affected by noise.
- As the EMP is currently worded, the LPA would have no control over who is appointed to carry out the investigation. The wind farm operator would be free to choose any independently and appropriately qualified consultant and would be able to select one biased in favour of wind farm operators.
- The EMP references best practice although there is no recognition on who defines best practice. This is a problem as there are no government guidelines and are unlikely to be any in the future. In the absence of such, the wind farm operator could refuse to agree or implement any mitigation scheme to deal with EAM and the LPA would be powerless to react.
- The only answer to this dilemma is to maintain condition 45.

### Clerk to Mordon Parish

We have a duty of care to protect our community and would request that until such time Developers should demonstrate that they both understand and can control amplitude modulation, robust conditions should be enforced. Banks statement that "AM problems are unlikely" only serves to raise our concerns higher. We feel that where further application for industrial wind farms are submitted then a minimum setback of 2KM from residences should be applied.

### Campaign to Protection Rural England

CPRE has prepared a comprehensive study into tranquillity as mentioned in our letter of November 2010 concerning the original application. I represent that those issues are relevant to this application. A copy of that letter is attached. In addition the amenity of residents is a relevant consideration for CPRE.

I have considered the representations of Mr Arnott to support the application. This refers to wind data and a letter from Eversheds in paragraph 1.4 but these documents are not on the Web Site. If they are being relied upon, I represent that they should be so published. Mr Arnott addresses various issues concerning Amplitude Modulation. Clearly CPRE does not have the expertise to comment on his findings as a noise expert. He has also made a number of comments concerning the necessity of this condition taking into account Circular 11/95, the judgement in *Hulme v Secretary of State for Communities and Local Government* (the "Den Brook" judgement) and the way this has been dealt with by various inspectors since that judgment. He has also commented on the fact that problems associated with this condition were not argued in the Den Brook case and on the rarity of the phenomenon known as Excessive AM.

As a result, I wish to make the following comments;

It is accepted this condition was imposed as a result of a supplementary report. However it is understood that the applicants did not oppose this condition and have not appealed it, notwithstanding that, as the original permission was quashed, it has been imposed twice.

He produces no evidence of any subsequent surveys at this site to show that this condition is not necessary, relying instead on legal arguments and actions of subsequent inspectors. On behalf of CPRE, I represent that in these circumstances, such evidence should be produced and the onus is on the applicant to show that the condition is not in fact (as opposed to in theory) necessary.

While the Court of Appeal in the Den Brook judgment may not specifically have ruled that this type of condition was necessary and reasonable or that the condition was workable or that EAM was common or so rare that it could be ignored, these points were raised many times in the judgement. Indeed, at paragraph 28, it is noted that the respondents (i.e. the developer and Inspectorate) argued that;

"Furthermore, the inspector did not find that excessive AM would be a problem, but merely that it might be, and in those circumstances he properly judged that the detail should be left to the good sense of the planning authority, rather than making the conditions too prescriptive."

At paragraph 8, Elias LJ also quoted the Inspector who said the condition was of a "precautionary" nature. There does not appear to be any criticism of this approach, either in the High Court or in the Court of Appeal.

While it is accepted that there does not appear to have been any argument before the Court as to the alleged problems associated with this condition, it cannot be assumed that the Court would as a result rule that the condition did not comply with Circular 11/95 and so should not be imposed. It could equally be argued (as indeed commented at paragraph 15 of

the judgment) that, if residents could not be protected by such a condition, the permission would as a result be quashed and referred back to the Inspector to reconsider. It cannot be ruled out that, if the condition could not be validly imposed, permission would have been refused.

Given these circumstances, I represent, on behalf of CPRE, that this condition does meet the requirements of circular 11/95. This remains the case even if the condition is of a precautionary nature. Until and unless the Den Brook judgement is reversed in a further judgement, it remains the law that this type of condition complies with that Circular.

In order to protect the tranquillity in this area and the amenity of residents, CPRE represents that Condition 45 in this case is required and that this application should be refused.

#### Tees Archaeology

The amendments will not have an archaeological impact, however I would ask that the council considers our earlier representations (10/2549/EIS) in regards to the scheme as a whole.

#### The Environment Agency

We did not request condition 45; therefore we have no comments to make in relation to the discharge of this condition.

#### Environmental Health Unit

It is agreed by all parties that problem of excessive amplitude modulation EAM can occur under certain conditions and there is no guarantee this would not happen at this site. Research carried out by Salford University in 2007 into Aerodynamic Modulation of wind Turbine Noise concludes that the conditions associated with EAM might occur about 7% and 15% of the time.

The applicant has put forward the Environmental Management Plan EMP to manage potential problems associated with wind farms including EAM should it occur

The EMP does address to some extent the issue of Amplitude Modulation AM and the annual review mechanism for the EMP should take into consideration new developments in the understanding of AM and any changes to clarify what is 'best practice' in relation to AM.

I am concerned however that for the EMP to be effective it relies on the agreement between the LPA and the operator that a particular complaint is substantive, if the operator does not agree that there is a problem then there is no obligation for him to instruct an independent noise consultant's investigation. Clearly this could potentially put significant staff resource pressures on Environmental Health staff to investigate such an occurrence.

I would sum up that the EMP in its current form does not provide sufficient protection to local residents in the event of an AM problem.

#### The Use of Statutory Nuisance Powers for EAM

It is accepted that statutory nuisance action would provide a lower level of protection to local residents compared with controls under the Planning regime which is designed to protect the amenity of local residents. Nuisance action deals with unreasonable material interference caused to local residents.

Statutory nuisance action generally provides only a reactive response to complaints rather than the proactive protection afforded by a planning condition.

Statutory nuisance action would require the Environmental health staff to carry out detailed measurements /observations at the site using sound level meters and sound recording equipment. As EAM is intermittent and unpredictable this would be time consuming in both site work and analysis of recordings.

If the investigating officer becomes satisfied that a nuisance exists the Council would be required to serve an abatement notice on the person responsible for the nuisance who would have a right of appeal against any notice and the aggrieved person would have a **best practicable means defence BPM**. The appeals procedure could further delay implementation of any improvement works and the nuisance would continue while the appeal was being heard

If the appeal was unsuccessful and the further evidence was obtained that the nuisance was continuing the local authority would have the option of taking legal proceedings for breach of the abatement notice. The aggrieved person could again use the **best practicable means defence BPM** which will permit a nuisance to continue, providing that reasonably practical measures have been used to counteract the nuisance. The Local Authority does have powers to stop or restrict Statutory Nuisances by seeking a high court injunction for a breach of an abatement notice, this procedure can be followed if the person is refusing to co operate with the Council.

DEFRA has published guidance for dealing with wind farm noise [Wind farm Noise Statutory Nuisance Complaint methodology AECOM 2011] this provides a starting point for dealing with cases of EAM but it does not give specific objective guidance on what constitutes EAM.

Additional comments from Environmental Health

I have no objection to the removal of condition 45 amplitude modulation for the following reasons:-

The Institute of Acoustics document 'A good practice guide to the application of ETSU-R-97 for the assessment and rating of wind turbine noise' [section 7.2] [May2013] states that current practice is not to assign a planning condition to deal with amplitude modulation [AM]. I think it would be difficult to go against official guidance provided on behalf of the government department

The developer has submitted an Environmental Management Plan [EMP] as part of the planning application which provides an enforceable mechanism for the control of AM should it occur in this case, it also allows for changes in what is known as 'best practice' in this area. The proposed condition provides adequate protection for noise; I would however recommend the replacement of the word 'harm' with 'detrimental to the amenity of local residents'. I hope this helps please get in touch if you require anything further

#### Natural England

Natural England does not consider that this application poses any likely or significant risk to those features of the natural environment for which Natural England would otherwise provide a more detailed consultation response and so does not wish to make specific comment on the details of this consultation.

#### Highways Agency

I have reviewed the details of these applications, however, the Highways Agency has no specific comments to make in relation to the screening opinion regarding the removal of Condition 45 relating to (Amplitude Modulation) nor do we offer any comments regarding the application under section 73 to remove condition 45 of planning approval 10/2549/EIS at Lambs Hill, Stillington.

#### Head of Technical Services

General Summary - There is no Technical Services objection to this application.

Highways Comments - No comments.

Landscape & Visual Comments - No comments.

#### Civil Aviation Authority

Thank you for your consultation regarding a screening opinion for the removal of condition 45 of the above planning approval. As the condition under consideration is not aviation related the CAA currently has no comment regarding this request.

Newcastle Airport

Thank you for consulting Newcastle International Airport (NIA) on the above scheme. NIA as part of its aerodrome safeguarding process does not consider noise or acoustics and as such would therefore have no comment to make on this application.

Durham Tees Valley Airport

Have no comments.

Hartlepool Borough Council

No objections

Durham County Council

With regard to the above planning application, I have consulted the Council's Pollution Control Wind Farm Working Group. Their response is that, on the basis of recent understanding is that there is no evidence to suggest that AM will materially affect residential properties, they would have no adverse comments to make on removing the condition.

Sedgefield Town Council

Object to the removal of the condition. Members consider it is important to ensure tight regulations are in place in light of the current controversy over wind turbines.

The Ramblers Association

We have no comments.

National Grid – Asset Protection

Accept the positions of the turbines and withdraw its earlier holding objection.

Network Rail

No Comments

Teesmouth Bird Club

As Condition No. 45 concerns specialist noise issues and as TBC restricts its comments to ornithological impact, we are unable to comment on either the Screening Opinion or Planning Application. At a general level, however, if the Condition has been imposed to protect the health and amenity of local residents and involves a valid and nationally recognised method, then we would see no reason to rescind it.

Northumbrian Water Limited

For your information, Northumbrian Water replied 02/06/2010 and 05/11/2010 "no objection" to this development.

Northern Gas Networks

Northern Gas Networks has no gas mains in the area.

Gas pipes owned by other Gas Transporters and also privately owned may be present in this area. Information with regard to such pipes should be obtained from the owners.

CSS Spectrum Management Services Limited

Thank you for your letter dated 16th August 2012 referring to the above wind farm development. Arqiva is responsible for providing the BBC and ITV's transmission network and is responsible for ensuring the integrity of Re-Broadcast Links, and also protect its microwave networks. We have considered whether this development is likely to have an adverse affect on our operations and have concluded that we have no objection to this application.

NATS Safeguarding

Requested grid co-ordinates to allow them to comment further. Grid co-ordinates were sent although no updated comments were received.

#### Joint Radio Company

The removal of the condition is not significant with respect to their earlier clearance.

#### Cable & Wireless

No Objection

#### English Heritage

Consider it is an application which does not require English Heritage to be notified.

### **PUBLICITY**

Neighbours were notified and comments received are summarised:-

#### **Objections have been received from the following;**

1. Lambs Hill Action Group
2. T W Allison, Mill Farm Thorpe Thewles Stockton-on-Tees TS21 3JR
3. Susie Bean, 4 Jasper Grove Stillington
4. Mrs K Blackbourne, 3 Coniston Crescent Redmarshall
5. Simon Brown, Moor House Farm Stillington
6. Lisa Charlesworth, 9 Honeypot Close, Whitton Village
7. Wendy and Trevor Corney 2 Bishopton Crossing Stillington
8. Linda Dickinson, Coppergarth, Brafferton
9. J And C Ellerker, 7 Town Farm Close Bishopton Stockton On Tees
10. J Ellerker, 7 Town Farm Close Bishopton Stockton On Tees
11. Mrs G M Hart, Rafferdene Foxton
12. Mrs Catherine Hart & Mr Greg Hart, Foxton Farm Foxton
13. Mrs Carolyn Hewitson, 5 Bishopton Crossings Stillington
14. Darren Hird, 28 Weare Grove Stillington
15. Mr And Mrs Holloway, Foxton Wood Kennels Spring Lane
16. Stewart Bryan Ireland, 46 Mount Pleasant Stillington
17. Mr Alistair Irvine, Neasless Farm Sedgfield
18. Mr Jon Johnson, 37 St John's Park Stillington
19. Ms Margaret Johnson, 3 School Close, Thorpe Thewles, Stockton
20. Mr Tom Kirby And Petitioners, 4 Bishopton Crossings Stillington
21. Mrs Ann Kirby, 4 Bishopton Crossings Stillington
22. Mrs Eleanor Lane, South Farm Foxton Sedgfield
23. E And A Lane South Farm Foxton
24. Mr W J Ledbetter, 10 Green Leas Carlton
25. Mr K B And Mrs P Mains, 1 Mill Terrace Thorpe Thewles
26. Mrs Judith Mills, 8 Town Farm Close Stockton On Tees
27. Derek Mills, 4 Green Leas Carlton
28. Mrs Ann Nicholson, Foxton Lodge Foxton
29. Linda And Peter Phillipson, Whitton Moor Lodge Stillington
30. Gareth Rees, 2 School Close Thorpe Thewles
31. Mr Michael Riley, 6 Railway Cottages Grindon Lane
32. Mrs Carole Sharkey 17 Durham Road Thorpe Thewles
33. Derek Smith, Darchem Engineering Limited Ironmasters Way
34. Scott Taylor, 48 St John's Park Stillington
35. Jean Tondy, 17 Forest Park Stillington
36. Mr And Mrs Walmsley, 3 The Village Green Whitton
37. John Walsh, 34 St John's Park Stillington
38. Mrs L Webster, Vine Cottage Mill Terrace
39. Kenneth Wilkinson, 3 Park Crescent Stillington
40. Mrs Judith Wood, Merton Grange Stillington



#### 41. Mr T Kirby, Bishopton Crossings

The following have submitted representations to the council although within these, raise objections are raised.

1. Karen Einshoj, Mordon Lodge Mordon
2. Patricia Jackson, Orchard House Foxton
3. Lambs Hill Action Group, South Farm Sedgfield
4. Alastair Mackenzie, Mayfield House Middleton Road
5. Margaret Tinkler, Townend Farm Whitton

#### **Objections (summarised)**

When Excess Amplitude Modulation (EAM) occurs, it can be very disturbing and stressful for residents living up to about 2km from the relevant wind farm. The noise from the wind turbines takes on a loud thumping character and becomes audible at a considerable distance from the wind farm. Although the causes of EAM are not fully understood there are good reasons to believe that it is associated with periods of high wind shear. My analysis of the wind speed data from the anemometer mast on the site of the moor House Wind Farm has shown that there are frequent spells of high wind shear over this part of the Tees Plain. In the interests of protecting residential amenity and quality of life it is vital that the decision should be subject to a condition which gives effective protection should EAM occur.

Reference is made to the Den Brook Appeal Decision where the inspector (para 183) considered that the rarity of excess amplitude modulation did not constitute a reason to object to such a condition and that if EAM is unlikely to occur then it is equally unlikely that the condition would need enforcing. The Inspector noted that the condition was of a precautionary nature and that due to uncertainties; the imposition of conditions is both necessary and reasonable.

Comments made suggesting the Condition 45 as written is weaker than desirable as assessment of complaints could drag out for months leaving residents suffering from sleep deprivation during periods of EAM although consider condition 45 is better than nothing. Condition 45 should not be removed, it should only be varied.

The proposal is to remove a condition imposed to protect residents against noise and no requirement has been placed on the applicant to demonstrate, through an update to the EIA to demonstrate the impacts of removing this condition. Objectors consider that an update to the EIA should have been provided to demonstrate the resultant impacts on residents.

#### **Comments regarding the condition**

- Near-by residents have indicated their support for the AM condition being imposed in the first case, which they consider was done to protect their living conditions and consider that the council has a duty of care to the residents. Some objectors therefore consider it should remain in place believing that the applicant has no good reason to remove it whilst it has also been indicated that there would not be an objection to the removal of the condition were the Environmental Management Plan to be sufficiently robust to achieve appropriate action were an AM noise issue to materialise. Residents consider that the wording in the revised Environmental Management Plan does not give clear guidance and that it would give insufficient protection to local residents.
- The Environmental Management Plan would not enable the LPA to provide necessary protection should amplitude modulation occur as there are no timescales stipulated, there is no requirement for consultants to be employed should AM occur unless in agreement with the LPA (what if both parties do not agree?) and the LPA do not have

control over who is employed to carry out any assessments. Who would decide what is best practice when deciding on the mitigation proposed – there are no guidelines at present. As the EMP is written without any best practice then the LPA would be powerless to insist on mitigation. In addition what status would the EMP have? Could it be enforced, would be binding to future operators and could it be changed without the LPA consent.

- If the applicant considers the scenario of AM noise to be so unlikely then why remove the condition?
- The applicant's consultant suggests that birdsong would affect readings and makes the condition unworkable, however, we cannot imagine any circumstances under which a resident would complain about wind turbine noise if what they heard was bird song and objectors consider a degree of reality needs to be used in this sort of case.
- Developers cannot say 100% that amplitude modulation will not occur so condition should stay.
- Removal of the condition will give residents no chances for recourse should it occur and Council should protect the residents from amplitude modulation
- Objectors have noted the applicant's consultant's comments regarding the AM condition relative to the Den Brook Decision which suggests the condition is fatally flawed. In this, objectors note the requirements for conditions as detailed in Circular 11/95 and that the applicant's consultant considers that certain points of the condition were not argued before the Court of Appeal in this case. Objectors consider that however, that until it is overturned either by another Court judgement or an act of Parliament, it is the law and so must be deemed to comply with Circular 11/95 (the Conditions Circular). Indeed, a Court could say that, instead of the Condition being invalid, the application should be refused if the condition is unworkable.
- Objectors have referenced para 176 of the NPPF which indicates that where safeguards are necessary to make a particular development acceptable in planning terms, the development should not be approved if the measures required cannot be secured via condition or agreement.
- Without the condition it will be more difficult and therefore more traumatic for people experiencing problems caused by these turbines to collect the necessary data to prove the point. Banks wants the responsibility and effort to lay with the Council.
- By removing the condition the application would not be accepting their responsibilities in ensuring the turbines are monitored and problems dealt with.
- Onus should not be put on individuals to monitor these turbines. It should not be the responsibility of individuals to report problems to the council and for the council to assess and act. This would result in the problem falling onto the Local Authority to monitor, collect data, write reports and then issue a nuisance order – all paid for by the ratepayer not the developer.
- In a similar case in another part of the country, the Court of Appeal decided in Residents favor and supported this type of condition
- The reality is that the external funding for the Project is contingent on the Wind Farm maximising electrical generation. Any condition which limits the potential for electrical generation, such as Condition 45, is therefore a significant risk to operational revenue and the return on investment for the external financiers.
- If Banks are convinced that their turbines will not be a problem, they should be happy to leave the condition on.
- There is evidence that noise from turbines can cause, sleep deprivation, fatigue, headaches, dizziness, nausea, mood changes and the inability to concentrate. Without condition 45 residents will not have any protection, the quality of life for local residents will be affected
- Approval granted on false pretences – knowing they were unable to comply with the conditions only to later request the removal. This condition was instrumental in having the application granted initially and was in place to minimise the well documented disruption and disturbance caused by this type of turbine to local residents and wildlife

alike. If they cannot comply with this condition I fail to see how this development could be allowed to proceed.

- Residents fought hard for this condition to be included – so why remove it – should amplitude modulation occur more stress will be caused to the residents trying to prove it and get it rectified
- The argument for removing Condition 45 is not based on any belief that AM may not be an issue. It seems to be based solely on the fact the other Planning Authorities have not sought to impose a condition of this nature on other developments. That Stockton's Planning Authority have greater consideration of their residents welfare should be applauded. Let Banks prove that AM is not an issue or face the consequences. It is the least that the Planning Authority owes to the residents who will be living near the Wind farm.
- In terms of making a complaint if AM is an issue I cannot understand how this would work and how the council can assure us that we will be protected from noise. How would we know if the noise falls within ETSU Guideline levels at the time of the complaint.
- Also in terms of the noise the word “unacceptable” is used in terms of residents concerns. What may be unacceptable to a resident who suffers sleep deprivation may not be unacceptable to an investigating assessor who does not have to live in the house. How can this be fair? Noise from wind farms must be an issue as recently there has been a report from Wisconsin that refers to Low Frequency Noise, another type of noise that we may experience so words like “unacceptable” and “best practice” are very important to us. What do they mean, can they be spelled out.
- As a concerned resident who will be living under 1000 meters from the wind farm I am very worried about this latest application by Banks, the AM Condition was passed and approved by the council and as a resident I do not want the condition removed, it was put there for the benefit of the people who live near the wind farm, the council has a duty of care to the residents and this was put in place for our protection and as far as I can tell nothing has changed to warrant the removal of the condition. The wording in the revised Environmental Management Plan does not give clear guidance and the original plan should stand, as my family lives at the end of the valley, the noise from the wind farm is far greater for us and we need protection from AM Noise, otherwise for us to continue living and working from our family home could become intolerable. Mr Stigwood's latest report proves that AM is a far greater problem than previously believed and can seriously affect the quality of life for the affected residents who live near these wind turbines. The change to the E M P does not give enough protection to local residents and as such the original condition NO.45 (amplitude modulation) should stay in place
- I have a responsibility to my child not to leave this their legacy because of some short term inducements paid by the developer. If they cannot comply with the conditions then SBC has a responsibility to act on behalf of the residents to ensure planning approval should be cancelled.
- The principle of containing the method of controlling noise issues within an EMP is not opposed provided the EMP is made subject to a suitable condition to ensure it is enforceable. Paragraphs a to d of the EMP appear to relate to noise which is already dealt with by conditions 39-43 and not Amplitude Modulation. Condition 45 is drafted to refer to blade swish or amplitude modulation which exceeds that permitted within the ETSU guidelines. It is acknowledged that the planning system seems to require us to accept any AM that falls within 3 to 6dB. The condition as drafted however means that any AM in excess of this is something that can be controlled under the planning system and so is determinable. However, affected residents who complain about noise levels are unlikely to know whether or not they fall within ETSU Guideline levels and measurements taken under the EMP may not reveal the full picture.
- Dr Bullamore recommends that the test procedure shall also include for the evaluation of AM noise in accordance with the agreed current best practice although there is no similar provision in the EMP. Whilst it is noted that an independent assessor should carry out an investigation, if measurements carried out under paragraphs a-d do not reveal a breach of the ETSU guidelines, this procedure may never come into play. It is represented that

this is hugely important as residents may be suffering from other forms of noise problems but that never get fully investigated as a result.

- The reference to 'unacceptable levels of noise' is much more fluid than set figures and this concerns residents. What may be unacceptable to a resident who suffers sleep deprivation may not be unacceptable to an investigating assessor who does not have to live in the house. The EMP also mentions best practice and it is believed at the moment that there has been no determination of best practice, but if that is the case, residents should not suffer due to lack of best practice procedures. The wording in the EMP needs to be made more water tight and there must be an enforceable condition related to it.
- The councils consultant has agreed to the removal of the condition but does not provide any environmental information about the site to justify this yet has suggested a similar provision be placed within the EMP. We are therefore concerned as to how such a provision would be enforced should there be a noise problem as there does not appear to be a condition regarding the management plan.
- The EMP is acknowledged but the original AM condition cannot be ignored and should remain. The EMP should include EU guidance. Banks have failed to acknowledge the Environment Protection Agency Guidance Note on Noise Assessment of Wind Turbine Operations at EPA sites. This should be considered.
- Comment has been made regarding the proposed condition, suggesting there is inadequacies within it, querying particular wording such as 'clear evidence' and 'agreed in advance' and suggesting such wording is open to interpretation. Who would select the 'independent assessor' were problems to arise.
- An objector has considered the Best Practice Guide from the Institute of Acoustics (IoA) and has concerns for the impacts of noise on their home, highlighting in particular paragraph 4.3.9. Based on this the objector advises that a re-appraisal of predicted noise levels is needed as the EIA was based on G=0.5, and as there is a valley between the wind farm and them (Foxton residents) and it warrants the addition of 3dB to predicted levels. Objectors consider this has not been addressed.
- If the developers are so confident Amplitude Modulation (AM) does not occur why do they need to remove Condition 45 in the first place? The real reason for wishing to change the PP is that they now ACCEPT the noise hazard may occur and their backers are sensibly keeping a distance away for fear of losses incurred in the future. The applicant should be modifying the views of their backers and shareholders...not trying to bend the intent of an elected council doing its best to protect its residents.
- The report also indicates that the monitoring should be left up to the Wind Turbine Operator and that the Local Authority need have nothing to do with it! The local planning authority are supposed to be there to protect the local environment and community, not rubber stamp or even ignore the wanton destruction of our landscape, in order that a Developer can line his/her own pockets with the ridiculous grants they gain from our hard earned cash in the guise of government grants.

The objectors counsel have suggested that from the viewpoint of residents, the statutory nuisance legislation is not an effective and practicable safeguard for a number of reasons including;

- The criteria of the law of nuisance does not provide the same protection as loss of amenity.
- Arguments over the difficulty of identifying whether AM is occurring would similarly arise through a statutory nuisance procedure.
- For the Local Authority to prove beyond reasonable doubt, that Excess Amplitude Modulation, is occurring, when it is occurring, for how long and how often, it will be costly and demanding in resources.
- The existence of the wind farm will change the areas character and therefore the expectation that noise intrusion from it should be tolerated.

- The local authority has only to take such steps as are reasonably practicable to investigate the complaint. In view of the difficulty of investigating and proving an imperfectly understood phenomenon, one can usually justify inaction.
- Any notice must allow reasonable time for compliance.
- There is a defence of Best Practicable Means and in view of there being no best practice, the operator could claim that compliance with ETSU-97 (as required by the remaining conditions) is sufficient. And secondly, that the alternative of shutting down the turbines for the time being would be excessive due to the financial implications. The operator may be able to argue best practicable means simply by arguing that the turbines were of a modern design and property maintained.
- A criminal conviction can only be obtained by reasonable proof.
- The legal procedure is lengthy and cumbersome,
- The cost is high for the authority and prohibitive for members of the public.
- A fine is not large compared with the profits from running the wind turbine and a fine on a corporate entity does not remedy the nuisance. If the nuisance continued after conviction, the local authority would have to bring the matter back to court to seek further fines.

### **Comments in General**

- It appears that the EMP recognises other forms of noise apart from basic breaches of ETSU and AM and given the Wisconsin report on Low Frequency Noise, this is welcomed.
- The Noise would have an adverse impact and would effect the tranquillity of the area
- National Statistics quoted to justify the Turbines are not proven
- Turbines would have an adverse visual impact on the landscape
- Turbines would dominate the views from properties and adversely impact on the right to having a peaceful enjoyment of homes and gardens
- Turbines would have an adverse impact on the natural landscape and wildlife
- Turbines would have an adverse impact on quality of life due to fears over height of structures, noise, shadows and flickering
- Object due to the increase in traffic through Stillington, close to a school
- Disruption during construction phase
- The access track leading to turbine no. 4 is a disgrace and unnecessary. Why do they have to plough through beautiful fields and skim past Forest Park, of which a lot of time and effort has been put into. Why are they being allowed to put miles of maintenance roads in when they could use a road closer to the turbine in the industrial estate?
- Another concern is the concrete legacy that these turbines leave. The access tracks will permanently scar the landscape, but what about the concrete bases of the actual turbines. Who is going to clean up the area when the turbines lifespan/government interest ends? Does that mean the field will move into the brown field category making building application even easier?
- Development would set a precedent, just look at the impact in the area around Seamer N Yorks
- Green space is dwindling and less places for children to play
- Enough Turbines in Teesside area
- No benefits to residents in this area
- Turbines should be sited off shore
- Turbines are inefficient, require backup power, are expensive to build and will be decommissioned in 25 years causing more disruption
- Temperamental Technology comparable to Windmills which were also subject to the elements
- Devaluation of Property Prices and if approved would like a reduction in Council Tax

- The access road leading to turbine No. 4 is a disgrace and unnecessary. Why do they have to plough through fields and skim past Forest Park, of which a lot of time and effort has been put into by Villagers? Why are they being allowed to put miles of maintenance roads in when they could use a road closer to the turbine in the industrial estate?? The area is a sanctuary for wildlife and birds, which will now be carved up by the turbines as they fly out of the park area. The fields which are affected regularly have deer, birds of prey, and a multitude of wildlife. All of which are going to be driven away or killed by the construction and daily use of the turbines.
- The turbines have and will continue to affect the house prices in the village. It's already difficult to sell houses in Stillington, and this is going to directly affect our house valuation and any future housing sales. The noise and view of the 4 turbines is going to seriously affect our house price, surrounding environment, and enjoyment of the area. The thought of having to listen to the constant noise from the turbines is very depressing. The prevailing westerly winds mean that the village will take the brunt of the constant drone of the turbines. We moved to Stillington from a City to enjoy rural life, only to have it destroyed by a company building something we don't need. It has already been demonstrated, using information from existing wind farms, that this is not a sustainable or "clean" source of energy. Not to mention the fact that we have a nuclear power station supplying plenty of electricity only a couple of miles away.
- Another concern is the concrete legacy that these turbines leave. The access tracks will permanently scar the landscape, but what about the concrete bases of the actual turbines. Who is going to be responsible for removing the concrete bases which will be the size of two Olympic swimming pools beneath each turbine? Who is going to clean up the area when the turbines lifespan/government interest ends? The company who installs them has no legal requirement to clean up the mess. So is the local government (i.e. the taxpayer) going to pay out hundreds of thousands to fix the mess? I doubt local council has the money for this.
- Parliament has a bill before it to address increasing complaints about AM, suggesting a distance between turbines and home as just one example, for a turbine height of 100-150m the minimum distance from a dwelling would be 2km.

Various documents have been submitted from USA, Australia etc. These include surveys of sleep disturbance and associated impacts relative to the proximity of residential properties to wind turbines, the nature of noise and how it affects individuals differently depending on whether it is a welcome or unwelcome noise and dependent on timing of the noise etc. These documents are not planning guidance documents within this country, but papers and surveys that interested parties are undertaking in other parts of the world.

#### **Other comments made**

- Compensation should be paid to residents if this condition is removed.
- This request for the removal of Condition 45 categorically shows that Banks were also economical with the truth at the original Planning Meeting where Mr. Steve Tonks, Banks Group Director, stated that Banks never had, and never would go back for a change to an approved planning application! Stockton Borough Council needs to show the legal and democratic compliance that it has failed to do with regards to Lambs Hill Wind Farm so far - and refuse this application to remove Condition 45.
- A number of objections have been raised in respect to the literature which Banks have passed around in community, a letter dated 31st July 2012 regarding this planning application is nothing more than a letter of bribery trying to highlight how the village "could" receive benefits from the company if we don't oppose the planning application. This alone should prevent them from getting any form of planning permission.
- How is the councils position affected by the recent United Nations legal tribunal which "ruled that the UK Government acted illegally by denying the public decision-making powers over their approval and the "necessary information" over their benefits or adverse effects. The new ruling, agreed by a United Nations committee in Geneva, calls into question the legal validity of any further planning consent for all future wind-

farm developments based on current policy, both onshore and offshore" (The Independent, 27th August 2013). How does this affect the current planning consent for Lambs Hill? It calls into question the legal validity of any further planning consent for all future wind-farm developments based on current policy??

### **Representations made by;**

Ann Calvert, 24 West Street Stillington

Mt T Kirby, 4 Bishopton Crossings

- Turbines are better to look at than pylons and are much safer
- Having undertaken a petition / survey of nearby residents relative to the application, I have come to the worrying conclusion that, with respect to the consultation exercise, None of the surveyed residents knew what the councils consultation letter meant, none knew what condition 45 was, none knew what AM was, none knew what the letter was asking them to do and only two had sent the letter back. This approach by the council seems only to be a measure of the degree of bewilderment / apathy. The method of consultation is seriously lacking in methodology.

A petition has been submitted objecting to the application with 72 signatures on it. The petition header indicates the objection as being in order to protect the tranquillity in the area and the amenity of residents, the persons having signed considering that the condition should be retained and that the application should be refused.

**ADVERT & SITE NOTICE EXPIRY DATE:** 5 September 2012

### **PLANNING POLICY**

#### ***National Planning Policy Framework (extracts)***

The NPPF advises that the role of planning is to contribute to the achievement of sustainable development which is taken as including;

- ***an economic role***, contributing to building a strong, responsive and competitive economy by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and co-ordinating development requirements, including the provision of infrastructure.
  - ***A social role***, supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being; and
  - ***an environmental role*** – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.
- NPPF March 2012. Para. 7

The NPPF advises that there is a presumption in favour of sustainable development which for decision makers this means:

- *approving development proposals that accord with the development plan without delay; and*
- *where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:*

- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
- specific policies in this Framework indicate development should be restricted

NPPF March 2012. Para. 14

There are 12 core planning principles within the NPPF which include for planning to be;

- *genuinely plan-led, empowering local people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the future of the area,*
- *be a creative exercise in finding ways to enhance and improve the places in which people live their lives,*
- *proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs.*
- *always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings;*
- *take account of the different roles and character of different areas, promoting the vitality of our main urban areas, protecting the Green Belts around them, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it;*
- *support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change, and encourage the reuse of existing resources, including conversion of existing buildings, and encourage the use of renewable resources (for example, by the development of renewable energy)*
- *contribute to conserving and enhancing the natural environment and reducing pollution. Allocations of land for development should prefer land of lesser environmental value, where consistent with other policies in this Framework;*
- *encourage the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value;*
- *promote mixed use developments, and encourage multiple benefits from the use of land in urban and rural areas, recognising that some open land can perform many functions (such as for wildlife, recreation, flood risk mitigation, carbon storage, or food production);*

NPPF March 2012. Para. 17

The NPPF advises that the planning system should contribute to and enhance the natural and local environment by:

- *protecting and enhancing valued landscapes, geological conservation interests and soils;*
- *preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability;*

NPPF March 2012. Para. 109

When determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by applying the following principles:



- *if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;*  
NPPF March 2012. Para. 118

*In doing so, local planning authorities should focus on whether the development itself is an acceptable use of the land, and the impact of the use, rather than the control of processes or emissions themselves where these are subject to approval under pollution control regimes. Local planning authorities should assume that these regimes will operate effectively. Equally, where a planning decision has been made on a particular development, the planning issues should not be revisited through the permitting regimes operated by pollution control authorities.*  
NPPF March 2012. Para. 122

## **Planning Policy Statement 5: Planning for the Historic Environment Practice Guide Planning for Biodiversity and Geological Conservation – A guide to good practice**

### **Local Planning Policy**

21. Where an adopted or approved development plan contains relevant policies, Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that an application for planning permissions shall be determined in accordance with the Development Plans for the area, unless material considerations indicate otherwise. In this case the relevant Development Plan is: - the Adopted Stockton on Tees Local Plan (STLP) and the Stockton on Tees Core Strategy Development Plan.

#### **Saved Local Plan Policy EN4 - Sites of Nature Conservation Importance**

*Development which is likely to have to have an adverse effect upon sites of nature conservation importance will only be permitted if:-*

- *There is no alternative available site or practicable approach and;*
- *Any impact on the sites nature conservation value is kept to a minimum*

*Where development is permitted the council will consider the use of conditions and /or planning obligations to provide appropriate compensatory measures.*

#### **Saved Local Plan Policy EN13 – Limits to Development**

*Development outside the limits to development may be permitted where;*

- It is necessary for a farming or forestry operation; or*
- It falls within policies EN20 (reuse of buildings) or TOUR 4 (Hotel conversions);*  
or
- In all remaining cases and provided that it does not harm the character or appearance of the countryside; where:*
  - It contributes to the diversification of the rural economy; or*
- It is for sport or recreation; or*
- It is a small scale facility for tourism.*

#### **Saved EN30. Sites of Archaeological Interest**

*Development which affects sites of Archaeological Interest will not be permitted unless:*

- An investigation of the site has been undertaken; and*
- An assessment has been made of the impact of the development upon where remains; and where appropriate;*
- Provision has been made for preservation in situ.*

*Where preservation is not appropriate, the Local Planning Authority will require the applicant to make proper provision for the investigation and recording of the site before and during development.*

### **Core Strategy Policy CS3 – Sustainable Living and Climate Change**

*All new residential developments will achieve a minimum of Level 3 of the Code for Sustainable Homes up to 2013, and thereafter a minimum of Code Level 4.*

*All new non-residential developments will be completed to a Building Research Establishment Environmental Assessment Method (BREEAM) of 'very good' up to 2013 and thereafter a minimum rating of 'excellent'.*

*The minimum carbon reduction targets will remain in line with Part L of the Building Regulations, achieving carbon neutral domestic properties by 2016, and non domestic properties by 2019, although it is expected that developers will aspire to meet targets prior to these dates.*

*To meet carbon reduction targets, energy efficiency measures should be embedded in all new buildings. If this is not possible, or the targets are not met, then on-site district renewable and low carbon energy schemes will be used. Where it can be demonstrated that neither of these options is suitable, micro renewable, micro carbon energy technologies or a contribution towards an off-site renewable energy scheme will be considered.*

*For all major developments, including residential developments comprising 10 or more units, and non-residential developments exceeding 1000 square metres gross floor space, at least 10% of total predicted energy requirements will be provided, on site, from renewable energy sources.*

*All major development proposals will be encouraged to make use of renewable and low carbon decentralised energy systems to support the sustainable development of major growth locations within the Borough.*

*Where suitable proposals come forward for medium to small scale renewable energy generation, which meet the criteria set out in Policy 40 of the Regional Spatial Strategy, these will be supported. Broad locations for renewable energy generation may be identified in the Regeneration Development Plan Document.*

*Additionally, in designing new development, proposals will:*

- \_ Make a positive contribution to the local area, by protecting and enhancing important environmental assets, biodiversity and geodiversity, responding positively to existing features of natural, historic, archaeological or local character, including hedges and trees, and including the provision of high quality public open space;*
- \_ Be designed with safety in mind, incorporating Secure by Design and Park Mark standards, as appropriate;*
- \_ Incorporate 'long life and loose fit' buildings, allowing buildings to be adaptable to changing needs. By 2013, all new homes will be built to Lifetime Homes Standards;*
- \_ Seek to safeguard the diverse cultural heritage of the Borough, including buildings, features, sites and areas of national importance and local significance. Opportunities will be taken to constructively and imaginatively incorporate heritage assets in redevelopment schemes, employing where appropriate contemporary design solutions.*

*The reduction, reuse, sorting, recovery and recycling of waste will be encouraged, and details will be set out in the Joint Tees Valley Minerals and Waste Development Plan Documents.*

***Core Strategy Policy CS10- Environmental Protection and Enhancement***

- i. In taking forward development in the plan area, particularly along the river corridor, in the North Tees Pools and Seal Sands areas, proposals will need to demonstrate that there will be no adverse impact on the integrity of the Teesmouth and Cleveland Coast SPA and Ramsar site, or other European sites, either alone or in combination with other plans, programmes and projects. Any proposed mitigation measures must meet the requirements of the Habitats Regulations.*
- ii. Development throughout the Borough and particularly in the Billingham, Saltholme and Seal Sands area, will be integrated with the protection and enhancement of biodiversity, geodiversity and landscape.*

- iii. *The separation between settlements, together with the quality of the urban environment, will be maintained through the protection and enhancement of the openness and amenity value of:*
- Strategic gaps between the conurbation and the surrounding towns and villages, and between Eaglescliffe and Middleton St George.*
- Green wedges within the conurbation, including:*
- \_ River Tees Valley from Surtees Bridge, Stockton to Yarm;*
  - \_ Leven Valley between Yarm and Ingleby Barwick;*
  - \_ Bassleton Beck Valley between Ingleby Barwick and Thornaby;*
  - \_ Stainsby Beck Valley, Thornaby;*
  - \_ Billingham Beck Valley;*
  - \_ Between North Billingham and Cowpen Lane Industrial Estate.*
- iii) *Urban open space and play space.*
- iv. *The integrity of designated sites will be protected and enhanced, and the biodiversity and geodiversity of sites of local interest improved in accordance with Planning Policy Statement 9: Biodiversity and Geological Conservation, ODPM Circular 06/2005 (also known as DEFRA Circular 01/2005) and the Habitats Regulations.*
- v. *Habitats will be created and managed in line with objectives of the Tees Valley Biodiversity Action Plan as part of development, and linked to existing wildlife corridors wherever possible.*
  - vi. *Joint working with partners and developers will ensure the successful creation of an integrated network of green infrastructure.*
  - vii. *Initiatives to improve the quality of the environment in key areas where this may contribute towards strengthening habitat networks, the robustness of designated wildlife sites, the tourism offer and biodiversity will be supported, including:*
- Haverton Hill and Seal Sands corridor, as an important gateway to the Teesmouth National Nature Reserve and Saltholme RSPB Nature Reserve ; Tees Heritage Park.*
- viii. *The enhancement of forestry and increase of tree cover will be supported where appropriate in line with the Tees Valley Biodiversity Action Plan (BAP).*
  - ix. *New development will be directed towards areas of low flood risk, that is Flood Zone 1, as identified by the Borough's Strategic Flood Risk Assessment (SFRA). In considering sites elsewhere, the sequential and exceptions tests will be applied, as set out in Planning Policy Statement 25: Development and Flood Risk, and applicants will be expected to carry out a flood risk assessment.*
  - x. *When redevelopment of previously developed land is proposed, assessments will be required to establish:*
    - \_ the risks associated with previous contaminative uses;*
    - \_ the biodiversity and geological conservation value; and*
    - \_ the advantages of bringing land back into more beneficial use.*

### **Core Strategy Policy CS 11 – Planning Obligations**

*All new development will be required to contribute towards the cost of providing additional infrastructure and meeting social and environmental requirements.*

*When seeking contributions, the priorities for the Borough are the provision of:*

- \_ highways and transport infrastructure;*
- \_ affordable housing;*
- \_ open space, sport and recreation facilities, with particular emphasis on the needs of young people.*

### **Supplementary Planning Document 6 – Planning Obligations**

Emerging Policies can be given weight in determining this application. Emerging policies within the Regeneration and Environment Local Development Document preferred options which are relevant to this application are;

***Strategic Policy SP1 - Presumption in favour of sustainable development***

1. When considering development proposals the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework. It will always work proactively with applicants jointly to find solutions which mean that proposals can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area.

2. Planning applications that accord with the policies in this Local Plan (and, where relevant, with policies in neighbourhood plans) will be approved without delay, unless material considerations indicate otherwise.

3. Where there are no policies relevant to the application or relevant policies are out of date at the time of making the decision then the Council will grant permission unless material considerations indicate otherwise - taking into account whether:

- Any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework taken as a whole; or
- Specific policies in that Framework indicate that development should be restricted.

***Strategic Policy SP3 - Limits to Development.***

Outside the Limits to Development, the Council will support development which provides:

- a. Housing essential for farming, forestry or the operation of a rural based enterprise
- b. Affordable housing meeting the rural exceptions policy
- c. Appropriate farm diversification
- d. Appropriate equestrian activity
- e. A recreation or tourism proposal requiring a countryside location
- f. Facilities adjacent to villages which are essential to their social and community needs
- g. A suitable scale extension to an existing building
- h. Other development requiring a countryside location for technical or operational reasons.

The conversion, reuse and replacement of a suitable existing building will be supported in certain circumstances.

***Policy T1 Footpaths, Cycle Routes and Bridleways***

1. Major new developments will be required to include new footpaths and cycle routes, integrated into existing networks and any proposed extensions to them.

2. Existing footpaths, cycle routes and bridleways will be protected from development which would impair their functioning for recreation or as alternatives to the private car for accessing employment opportunities, shops and other community facilities.

3. Development of the Strategic Access Routes identified in the Stockton-on-Tees Green Infrastructure Strategy and its Delivery Plan will be supported and their routes safeguarded from development which would impair their functioning for recreation or as alternatives to the private car for accessing employment opportunities, shops and other community facilities.

***Policy SL1- : Development and Amenity***

1. New development will be designed to take into account the amenity of occupiers of adjoining or nearby properties.

***Policy ENV3 – Local Sites***

1. The Council will not support proposals for development on a Local Site, which could destroy or adversely affect, directly or indirectly, unless:

- a. It can be clearly demonstrated that the need for the proposal outweighs the need to safeguard the site
- b. There is no satisfactory alternative location for the proposal

2. If development is permitted then mitigation or compensatory provision for the lost habitat will be sought. All options should be explored for retaining the most valuable parts of the nature conservation interest as part of the development proposal. Particular consideration should be given to conserving habitats that cannot readily be recreated within a reasonably short timescale, for example ancient woodland and ancient meadows.

#### ***Policy ENV5 - Landscape Character***

The Council will support proposals which reflect the local distinctiveness, condition and sensitivity to change of the local character areas as defined in the Tees Lowlands National Character Area and the Stockton-on-Tees Landscape Character Assessment and Capacity Study. Development proposals will be expected to demonstrate that their location, scale, design and materials will protect and where possible, enhance the special qualities and local distinctiveness of the area.

#### ***Policy HE1 - Historic Landscape***

1. The Council require proposals for development to be informed by the historic context of the landscape as detailed within the Historic Landscape Characterisation.
2. The Council will expect developers to demonstrate that they have fully considered their impact on the historic characteristics of the landscape. This should include how the development by virtue of its location, scale, density, pattern of development, design and materials will protect, interpret and where possible, enhance the characteristics which make up the historic landscape.

### **MATERIAL PLANNING CONSIDERATIONS**

22. This application seeks the removal of condition 45 of application 10/2549/EIS relating to the Lambs Hill Wind Farm. It is an application in its own right and although a permission already exists for the wind farm (a material planning consideration in determining this current application), assessment of the proposed change and its associated impacts needs to be considered along with any physical or policy based changes relevant to the overall scheme which would indicate that different views should now be taken from those taken in determining the initial application.
23. Application 10/2549/EIS is an approved wind farm scheme located just to the north west of Stillington. Condition 45 of the approved scheme related to control over a type of noise known as amplitude modulation (AM). Application 10/2549/EIS was supported by an Environmental Impact Assessment although in view of this submission seeking solely to remove the need to adhere to condition 45 (requiring monitoring and mitigation of AM following complaint) and the amount of the development, its scale, position, duration of operation and other matters remaining unaffected, an update to the EIA was considered to be unnecessary.
24. Importantly, if permission is granted for this application, it would not extend the time period which the developer would have to commence the development from that imposed by application 10/2549/EIS (7<sup>th</sup> December 2016).

#### ***Changes in policy affecting the proposal since the determination of 10/2549/EIS***

25. Application 10/2549/EIS was previously considered against the national guidance in Planning Policy Guidance Notes and Statements (PPG's & PPS's), The Regional Spatial Strategy for the North East (RSS), the Adopted Stockton on Tees Local Plan

and the Adopted Core Strategy Development Plan. Other recent documents also factor into considerations. The Local Plan and Core Strategy remain in place although National Policy has changed whereby the majority of the former PPG's and PPS's have been replaced by the National Planning Policy Framework (NPPF). This includes the loss of the companion guide to PPS 22 *Renewable Energy*, which was a detailed policy guidance document for various renewable energy types including onshore wind. The Regional Spatial Strategy has been revoked in its entirety which set targets for energy generation from renewable sources for the region / borough. Practice Guides to PPS 5 'Planning for the historic environment' & PPS 9 '*Planning for biodiversity and geological conservation*' remain in place.

26. The Council's saved Local Plan Policy EN4 (Sites of Nature Conservation interest – SNCI's) remains in place, however, SNCI's are now Local Wildlife Sites or Local Nature Reserves which are part of an emerging policy (ENV3) within the councils Regeneration and Environment Local Development Document (Preferred Options stage). As it is a preferred option which has not yet been adopted, although afforded some weight, it has a reduced weight to that of an adopted policy. Other emerging policies within the Regeneration and Environment Local Development Document (preferred options) are;
- Strategic Policy SP1 – Presumption in favour of sustainable development,
  - Strategic Policy SP3 – Limits to Development,
  - Policy T1 – Footpaths, cycle routes and bridleways,
  - Policy SL1 – Development and amenity,
  - Policy ENV5 – Landscape Character,
  - Policy HE1 – Historic Landscape
27. Whilst the site is outside the 'limits of development' as defined within the Stockton on Tees Local Plan (1997) and therefore contrary to Policy EN13 which advises on what forms of development may be permitted outside the Limits (farming, forestry, sport, recreation and tourism), guidance within Core Strategy Development Plan Policy CS3 (7) indicates that suitable medium to small scale renewable energy generation schemes which meet criteria of Regional Spatial Strategy (RSS) Policy 40 will be supported. Emerging Policy SP3 (Limits to Development) of the councils Regeneration and Environment Local Development Document (preferred options stage) indicates that the council will support development which provides other development requiring a countryside location for technical or operational reasons. Emerging Policy SP1 of the Regeneration and Environment LDD (preferred options stage) indicates that when considering development proposals, the council will take a positive approach that reflects the presumption in favour of sustainable development and that planning applications that accord with policies will be approved without delay, unless material considerations indicate otherwise. The wind farm is a use which is considered to be in general accordance with this emerging policy. The Regional Spatial Strategy (Policies 40 & 41) similarly supported such schemes although reliance can no longer be placed on these following the revocation of the RSS.
28. The NPPF indicates that the role of planning is to contribute to the achievement of sustainable development giving support for economic development which is sustainable and for planning to have social and environmental roles which create high quality environments, support vibrant and healthy communities, protect and enhance the natural and built environments and help to improve biodiversity whilst using natural resources prudently and mitigate and adapt to climate change including moving to a low carbon future, all of which are very broad aspirations.
29. The NPPF further advises that there is a presumption in favour of sustainable development which for decision makers this means "*approving development proposals that accord with the development plan without delay*". Core planning

principles within the NPPF include for planning to proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs whilst seeking a good standard of amenity for all existing and future occupants of land and buildings whilst taking account of the different roles and character of different areas and recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it. Core principles of the NPPF further support the transition to a low carbon future in a changing climate which includes the encouragement of the use of renewable resources (for example, by the development of renewable energy) as well as conserving and enhancing the natural environment and reducing pollution.

30. Specifically, the NPPF advises that,

*Planning plays a key role in helping shape places to secure radical reductions in greenhouse gas emissions, minimising vulnerability and providing resilience to the impacts of climate change, and supporting the delivery of renewable and low carbon energy and associated infrastructure. This is central to the economic, social and environmental dimensions of sustainable development.*

NPPF Para. 93.

*When determining planning applications, local planning authorities should;*

- *not require applicants for energy development to demonstrate the overall need for renewable or low carbon energy and also recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions;*
- *and approve the application if its impacts are (or can be made) acceptable. Once suitable areas for renewable and low carbon energy have been identified in plans, local planning authorities should also expect subsequent applications for commercial scale projects outside these areas to demonstrate that the proposed location meets the criteria used in identifying suitable areas.*

NPPF Para..98.

*The planning system should contribute to and enhance the natural and local environment by:*

- *protecting and enhancing valued landscapes, geological conservation interests and soils;*
- *preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability;*

NPPF Para 109

*When determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by applying the following principles:*

*if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;*

NPPF Para. 118

*To prevent unacceptable risks from pollution and land instability, planning policies and decisions should ensure that new development is appropriate for its location. The effects (including cumulative effects) of pollution on health, the natural environment or general amenity, and the potential*

*sensitivity of the area or proposed development to adverse effects from pollution, should be taken into account.*

NPPF Para. 120

*Planning policies and decisions should aim to:*

- *mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions;*
- *recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established; and*
- *identify and protect areas of tranquillity which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason.*

NPPF Para. 123

31. In view of this guidance, it is considered that the NPPF is generally supportive of renewable development subject to it being in the right places and taking into account relevant constraints and impacts. Importantly, government has advised that the UK has some of the best wind resources in Europe and onshore wind is one of the most cost-effective large-scale renewable energy technologies. The Government indicates that it is committed to using onshore wind as part of the UK's energy mix.
32. In view of the above, although remaining to be contrary to saved Local Plan Policy EN13 as was the initially approved scheme, the principle of the wind farm is considered to be in general accordance with the NPPF (2010) the Core Strategy and Emerging Policy.
33. Whilst objectors consider condition 45 was instrumental in gaining approval initially in order to minimise what they consider to be well documented noise based disruption and that the development should not proceed if they cannot comply with the condition, a detailed assessment of all relevant matters is required, as is detailed below.

### **Background to condition 45 (Amplitude Modulation) of approval 10/2549/EIS**

34. Condition 45 of 12/2549/EIS which was designed to deal with the type of noise generally known as Excess Amplitude Modulation (EAM), where it is beyond the limiting factors of other controlling conditions relating to noise (which would remain in place were permission to be granted). EAM is noise which occurs beyond the general noise associated with the wind farm and is also referred to as Other Amplitude Modulation (OAM). Guidance suggests that it is not a mechanical noise but one which is caused by the rotating blades, particularly as they pass the turbine tower. It is said to be a rhythmic noise, described as a 'swish' 'swoosh' 'whistle' or at times of high activity a 'thumping sound' and which goes up and down in loudness (modulates in amplitude) in a regular manner relative to the rotational rate of the wind turbine blades.
35. The Planning Committee Report for application 10/2549/EIS considered comments and concerns raised in respect to the potential occurrence of Aerodynamic Modulation or Amplitude Modulation (AM) created as a result of the operation of the turbines. It took into account a study undertaken by Salford University which was commissioned by DEFRA, BERR (formerly DTI) and CLG, the aim of which was to ascertain the prevalence of AM on UK wind farm sites in order to try to gain a better understanding of the likely causes to establish whether further research into AM was required. It considered that conditions for AM would prevail between about 7% and



15% of the time and would not therefore be present most days, although it could occur for several days running over some periods. The report concluded that since AM cannot be fully predicted at present, and its causes are not fully understood it is considered that it might be prudent to carry out further research to improve understanding in this area. The quality of the survey work associated with the report has since been questioned on a number of points, with suggestion that it cannot be reliably used as a guide to the prevalence of AM noise related complaints, occurrences or impacts. The consultant acting on behalf of objectors has suggested that for 9 out of 9 sites where they are measuring for Excess AM, it is occurring, they further advise that they '*are satisfied based on good evidence that EAM is a cause of complaint at over 60 wind farms in the UK*'. (Derived from data associated with 'The Salford Report', reports from EHO's and other consultants, professionals and individuals including videos, audio and data.

36. It was further indicated to the authority that there was an emerging international awareness of AM nuisance, suggesting that the application of the 'Den Brook' condition (a condition to deal with AM which had been scrutinised by the Court of Appeal) was an appropriate way to deal with the matter. This court case related to the imposition of two conditions on a planning permission for a wind farm, designed to deal with the potential impact of noise resulting from the rotation of the turbine blades. Evidence before the inquiry accepted by the planning inspector was that if this type of noise is excessive, it can interfere with the amenity of local residents and in particular can disturb sleep. The principal question in the appeal was whether the conditions as drafted were capable of achieving the objective of preventing inappropriate aerodynamic noise (AM) levels which they were designed to secure. The decision of the Court of Appeal was that;
- there is an obligation on the developers to comply with the AM levels specified in the condition,
  - the obligation will run for the duration of the planning permission; and
  - the obligation can be enforced by the planning authority in the normal way.
- The finding in the Den Brook case formed part of the considerations which led to officers recommending the imposition of an AM condition in respect to the Lambs Hill proposal.
37. In reaching a conclusion on AM when considering application 10/2549/EIS, officers considered that although the overall occurrence of AM may be limited and unpredictable, it was nevertheless possible. It was understood that mitigation measures existed to deal with this, which include attaching monitoring equipment and shutting down the turbine/s during certain periods. In view of this and taking into account the proximity of the site to residential properties, the Council's Environmental Health Officer considered that the imposition of condition 45 would be able to address this matter and secure the amenities of residents. Officers used the 'Den Brook' condition as a base and then sought to improve elements of it to provide greater clarity and factor out non turbine generated AM noise which is reported as being a flaw in the Den Brook condition.

#### **The proposed removal of condition 45 and current matters**

38. Having had time to reflect on Condition 45 and following advice from a noise consultant (TNEI Services) the applicant considers that the imposition of Condition 45 is unlawful. They consider there to be no guidance or policy to suggest that the local planning authority would be justified in imposing planning conditions to guard against potential impacts that are no more than statistically highly unlikely to occur. The applicant has indicated that Circular 11/95 (The use of Conditions in Planning Permissions) states that as a matter of policy, a condition ought not to be imposed unless there is a definite need for it. It is therefore not for the applicant to demonstrate that there is no possibility of an adverse effect occurring'.

39. The applicant has advised that the issue of AM has been considered at length in wind farm inquiries throughout the UK being considered by Planning Inspectors and has cited a number of these. The applicant considers that condition 45 imposed by the council is based on methodology which is not robust, results would be open to contamination to extraneous noise sources, and that there is no ability at this time, based on the current level of scientific understanding, to measure turbine noise modulation levels external to a property in the presence of other ambient noise sources with sufficient accuracy and repeatability.
40. Whilst the guidance of Circular 11/95 is known to officers, the condition was imposed on a basis of, whilst there is no evidence to indicate it will occur or be highly likely to occur on site, there is no evidence to suggest it would not occur on site. Officers were of the opinion that, in instances where AM does occur, it could potentially be a significant impact for neighbouring residents. It was imposed therefore as a precautionary approach in light of there being insufficient scientific evidence to support a case being made either way to demonstrate Other or Excessive Amplitude Modulation would or would not occur.
41. Objections have been made against this proposal which are detailed within the report. Objections indicate that noise levels should be kept as low as possible, that the condition should be retained to protect residents, that residents would be exposed to unacceptable noise problems without the condition being in place and that the accepted procedures should be followed by the applicant. Objectors consider that condition 45 should be left in place until the developer can demonstrate that they both understand and can control amplitude modulation. Objections further indicate that such conditions have been judged valid by the court of appeal decision and that recent investigations and surveys elsewhere in the world support growing evidence that there are health issues associated with the noise generated by wind turbines. These comments are noted and are encompassed within the considerations within the following paragraphs. The objectors noise consultant has advised of the following;

***Need for control:***

Due to it being highly noticeable due to the change in noise level that can occur and have indicated that it can be worse further away from a turbine due to convergence of noise generated from different parts turbines.

***Enforceable and precise:***

MAS indicate that they have tested their EAM condition at 10 sites and had success every time on being able to implement it, being able to filter out false positives (noise from non-turbine sources). They advise that the Renewable Energy Foundation undertook their own study and have independently verified this. MAS have found no impediment with the enforceability of the their condition that wouldn't apply to any noise based condition, particularly as filtering extraneous noise is a basic first step of assessing if the wind farm is generating EAM.

***Necessary or reasonable:***

AM recognised by ETSU-R-97 is limited to mid frequency noise which is effectively non-existent at distances greater than 500m. Modern large turbines cause AM in a different frequency range and over greater distances. Excess is common and not rare, suggesting a number of predisposing topographical features supports the likelihood of Excess AM which includes dwellings across a valley with wide ranging topographical features. MAS have appended to their comments a mathematical study which they feel shows the occurrence of EAM to be a common phenomenon depending wind direction and blade pitch and which effectively shows all turbines can cause EAM.

***The level of adverse impact***

MAS advise that there has been past discussion and social studies over the point of when does AM become Excess AM in the sense that it becomes an adverse or unacceptable impact. MAS advises that the governments guidelines on adverse noise impact within ETSU-R-97 is not based on any social studies and that adverse impact can occur at the rates below their suggested levels.

***Statutory nuisance as a remedy***

MAS indicates planning and environmental health are different regimes, under different acts, with different aims of control. MAS refer to something being dealt with as a Statutory Nuisance, is subject to the defence that the best practicable means of counteracting the nuisance have been applied which is not available under planning. MAS further highlight that governments ETSU-R-97 recognises that wind farms meeting its criteria could still cause a statutory nuisance whilst the Defra report AECOM '*Wind Farm Statutory Nuisance Complaint Methodology*' does not provide a measure of statutory nuisance. MAS suggest that any action for nuisance would need to consider both Excess AM and the general wind farm noise which is complex.

42. The CPRE consider that the applicant has not demonstrated that the condition is not required and have relied upon legal arguments and actions of subsequent Inspectors. The CPRE refer to the Den Brook judgement indicating that this may not have specifically ruled that this type of condition was necessary and reasonable or that the condition was workable or that it was a common or uncommon phenomenon, these points were raised within the judgement and there does not appear to be any criticism of a precautionary approach to this matter, either in the High Court or Court of Appeal.
43. Whilst the Den Brook case is noted, although it is a court decision, it has come under notable debate and criticism and numerous appeal decisions have not used this decision in moving forward conditions for AM. Appeal decisions are material planning considerations and officers have also taken into account governments latest endorsed guidance in this matter along with advice of noise professionals and counsel. Officers are satisfied on the recommendation being made.
44. Some of the objectors have employed a noise consultant (MAS Environmental) to advise them in respect to the application. MAS Environmental have made representations against the proposal, indicating that the principle reason why developers seek the removal of an AM condition is due to difficulties it creates in them getting funding. They further consider that wind industry acousticians have tried to undermine the development of an EAM condition which leaves the problem uncontrolled although considers this is unravelling as more cases are reported and recorded. MAS consider the result to be a large and growing number of problem wind farms with no real expectation of a solution via any other control mechanism. They further indicate that any acousticians who speak out against the industry are unlikely to gain future work for the industry.
45. Objectors have referenced proceedings currently taking place in Wisconsin (USA) where a number of families have left their homes as a result of living close to the Shirley Wind Farm. Other similar situations have been referenced as occurring at existing wind farm sites in the UK. In the Wisconsin Case, a survey was carried out as part of the court proceedings and a report produced by four acousticians, who are indicated as being of the opinion, that enough evidence and hypotheses have been given to classify Low Frequency Noise and infrasound as a serious issue, possibly affecting the future of the industry. Based on such occurrences, objectors to the Lambs Hill Scheme consider there is clear evidence that there is a need for residents close to wind farms need to be adequately protected by conditions.

46. Two papers have also been submitted from the 5<sup>TH</sup> International Conference on wind turbine noise Denver, August 2013. One paper is by MAS environmental which details investigations into wind farm noise complaints and Amplitude Modulation, problems associated with this and with a number of conclusions being drawn. Objectors consider that this paper demonstrates that regulators and decision makers need to experience the effects of AM to fully to understand wind farm noise impact and the limited relevance of average decibel controls in relation to the psycho-acoustical effects. The paper by Mr Stigwood references a 'Listening Room' experience which he has set up to try and replicate the noises which are caused by wind turbines which cause noise nuisance with the intention of giving the listener a better understanding of the matter.
47. The second paper relates to a 3 year study program undertaken for the Japanese government, conducted around 34 wind farms. Seven measurement positions were stationed within 1km of each turbine and surveys done for a continuous 120 hours (5 days). The survey indicated that testing for 5 of the 34 wind farms failed due to noise from the sea affecting readings and being unable to be extracted. The findings of the survey was that Amplitude Modulation can increase annoyance of wind turbine noise and it should be assessed. It indicates that in almost all cases, amplitude modulation is present in wind turbine noise and therefore the effect of this component should be considered when setting noise limits. The study findings suggest that the study findings will be useful for Japan's Ministry of Environment who have started drafting a guideline for the assessment of wind turbine noise. The UK already have such a document which is indicated makes some allowance for the presence of Am. The Japanese paper is noted and it highlights matters already known to some degree. However, site characteristics and meteorological factors of the wind farms in Japan are likely to differ from those relative to Lambs Hill and as such this research cannot be relied upon as evidence that the same impacts would occur at the lambs Hill site. Also, UK government already has guidance documents on wind turbine noise in the form of ETSU-R-97 and the recent Institute of Acoustics guidance which has been endorsed by government and which advises that best practice at the time of writing the report (published May 2013) is to not condition Amplitude Modulation.
48. Sadberge Parish Council have submitted a detailed document on Excess Amplitude Modulation that has been prepared by their Clerk. The document explains Excess Amplitude Modulation (EAM), impacts of wind shear and atmospheric conditions on EAM and the possibility of synchronising of noise generated by separate turbines causing louder noise emissions. The document suggests that any assessment of the likelihood that noise from a proposed wind farm will be subject to Excess AM should include an analysis of the frequency and duration of periods of unusually high wind shear over the proposed site, although recognises that the existence of high wind shear does not necessarily mean that Excess AM will occur although suggests that there is a higher risk of Excess AM. The document highlights it being important to examine the pattern of variation of wind shear over time and not simply look at the long term average wind shear. It is indicated that the parish councils analysis of wind speed data from a wind monitoring mast at the Moor House site in Darlington showed that over a 4 month period in 2009, there were 29 periods of very high wind shear, each lasting for over 3 hours and some over 10 hours, (occurring for around 25-35 hours per month and almost exclusively during evenings and night times, between 5pm and 9am. It is indicated that periods of high wind shear occur in clusters, whereby there is nothing for two or three weeks and then 4 or 5 nights consecutively when it occurs.
49. Whilst objectors consider new survey work and evidence should be provided to update the EIA on matters including noise impacts, officers do not share this view due to the proposal only seeking to affect on matters of Amplitude Modulation and there

being no set survey work undertaken directly relevant to Amplitude Modulation. Objectors have indicated that average wind shear figures were used in the supporting documents to the approved Lambs Hill Wind Farm and that specific figures should have been used, with the inference that this can be a factor in defining likelihood of the occurrence of excess AM. Whilst note, high wind shear is a postulated factor of Am along with several other factors, although AM is known to occur during times of low wind shear. There is no defined list of matters which trigger AM at a wind farm and as such, it was considered unjustified to require further noise measurements to be undertaken to support the proposal.

50. In view of this submission the Local Authority are required to reconsider whether they are justified in retaining the condition taking into account all relevant material planning considerations which includes some guidance documents published since the determination of the earlier application. The three key considerations in this regard therefore are, does condition 45 pass the tests, are other mechanisms sufficient should condition 45 be removed and required for conditions should other mechanisms not be sufficient, should permission be refused. These are discussed in the following paragraphs.
51. Darlington Borough Council have had similar considerations as those raised by this application as Banks Renewables also had a wind farm application approved at Moor House in Darlington which also had a noise condition associated with it controlling Excess AM. Banks similarly applied for this to be removed and following their considerations, Darlington Borough Council approved the removal of the condition subject to an alternative condition and Environmental Management Plan (EMP). In reaching this decision, Darlington Borough Council sought specialist advice from a consultant. Their consultant advised that at the current time (Jan 2013) they considered that a condition could not be devised which would pass the relevant tests required for conditions. They also advised that caution should be applied to the success of the EMP due to its wording and that, although the Statutory Nuisance regime was not there to pick up problems resultant from the planning system, in the case of noise problems arising from Excess Amplitude Modulation, the authority should take swift action to invoke their powers under the Statutory Nuisance Regime.

#### ***Consideration of Condition 45 against the tests for planning conditions***

52. Conditions associated with planning permissions need to comply with Government Circular 11/95 and para. 206 of the NPPF. These advise of the need for conditions to only be imposed where they satisfy all the tests, these being;
- Necessary
  - Relevant (to planning and the development)
  - Enforceable
  - Precise; and
  - Reasonable in all other aspects
- The applicant considers that condition 45 does not meet the tests of being necessary, enforceable, precise or reasonable.
53. The supporting submission by TNEI (Noise Consultants) acting on behalf of the applicant refers to factors which may contribute to a higher probability of Other or Excess AM occurring as presented at a Institute of Acoustics Wind Turbine meeting and within the Den Brook Wind Farm Public Inquiry, these being;
- *Blade passing the tower;*
  - *Angle of attack changes;*
  - *High shear / stable atmosphere;*
  - *High turbulence (or tip vortex);*
  - *Yaw error;*

- *Rotor / wake effects;*
- *Interaction between turbines;*
- *Synchronicity between*
- *Propagation effects*
- *Short towers, unusual topography; and*
- *Specific turbine types*

54. The applicant considers that condition 45 is neither necessary or reasonable as there is no evidence that Other or Excess AM would occur as the site does not display any of these postulated risk factors in that there is no linear turbine arrangement, turbines are not closely spaced together and there is not a high level of wind shear on the site, with the applicants assumption therefore that statistically, it is highly unlikely that Other or Excess AM would be an issue for Lambs Hill Wind Farm. The applicant therefore concludes on this matter that the inclusion of a condition on the basis that it will do no harm to include it, is not sufficient and that it is not appropriate to apply the precautionary principle unless there is objective scientific evidence to demonstrate that there is a real risk of Other or Excess AM occurring on the application site, and that such evidence does not exist. The applicant considers that as there is no consensus on a robust assessment methodology for detecting Other AM that it is therefore not possible to produce a condition that includes a robust and tested assessment thereby rendering condition 45 as being neither enforceable or precise.
55. In view of officers previous considerations reported under 10/2549/EIS and the challenge made by this submission, the Local Planning Authority employed the services of Counsel in order to give independent advice. Counsel has advised officers that the applicants assertions that the condition is neither enforceable or precise do not appear to be well founded and the applicants complaint is not therefore that condition 45 is unenforceable and imprecise (as there is no specific criticism of the wording of Condition 45 or the associated informative) but that its administration will, in light of the state of technical knowledge, involve difficult matters of judgement. Counsel considers that whilst the technical application of meeting the condition may involve difficult matters of judgement, it does not follow that the condition is unlawful. Indeed, Counsel has advised that the condition appears to be particularly clear and avoids the failings relied upon (without success) in the *Hulme v Secretary of State for Communities and Local Government* [2011] case and the associated Court of Appeal Judgement (the Den Brook condition).
56. The submission has highlighted several appeal decisions where such conditions were not imposed and officers have assessed other appeal decisions (Inquiries) which similarly did not impose conditions to deal with Other or Excess AM (See appendix 18). Stockton Borough Council's Counsel advised that the trend of appeal decisions places the Council on clear notice that it must consider a decision to refuse to remove Condition 45 with care. Counsel advised that the appeal decisions are reached on the basis of evidence available to the Inspector and the Council's decision must be likewise, being based upon evidence available to it, considered in the context of this wind farm with previous appeals being important but not necessarily determinative. In view of this, Counsel advised the council of the need to employ the services of an independent expert to provide advice on the technical merits of the retention, removal or variation of Condition 45. Consequently, the Local Planning Authority instructed Hoare Lea Acoustics. Advice from the councils acoustic consultant differs from that of Counsel in respect to the enforceability of the condition on the basis of matters relating to the technical implementation of the condition (problems, in particular, associated with undertaking noise based survey work on an automated basis and systematic review over extensive periods of time involving disproportionate time and resource).

57. Near-by residents have indicated their support for the AM condition being imposed in the first case, which they consider was done to protect their living conditions and consider that the council has a duty of care to the residents. Some objectors therefore consider it should remain in place believing that the applicant has no good reason to remove it. Some objectors have indicated that they would not object to the removal of the condition were the Environmental Management Plan to be sufficiently robust to achieve appropriate action were an AM noise issue to materialise although at the moment, objectors consider that the wording in the revised Environmental Management Plan does not give clear guidance and that it would give insufficient protection to local residents.
58. Hoare Lea Acoustics have provided guidance to the council on matters of Amplitude Modulation, firstly by explaining its occurrence and detailing the findings of 'The Salford Report' which indicates Other AM being a limited phenomenon. Hoare Lea advises that Amplitude Modulation is any noise whose amplitude (perceived loudness) modulates (goes up and down in level) over time. There are many sources of noise whose amplitude modulates such as emergency vehicle sirens, the passage of cars in a steady stream of traffic or the regular chirping of birds. For wind turbines, as blades pass through the air they produce aero dynamic noise and the intrinsic nature of this being generated at the blade surface is generally a continuous type sound often described as a 'whoosh'. Due to the rotation of the rotors, people standing on the ground close to a turbine do not experience a continuous 'whoosh' instead, the listener would experience the noise from the blade tips coming towards them and then receding. This up and down variation in noise level will repeat with every passage of every blade with the consequence of the amplitude being modulated (the noise going up and down). Hoare Lea, have indicated that this feature of wind turbine noise has long been accepted as a natural consequence of wind turbine operation, being allowed for within governments guidance on such matters (ETSU-R-97) and factored into the standard noise level condition (Condition 40) which would remain attached to the permission. The issue arises when considering the specific nature of AM and their being the occurrence of Other or Excess Amplitude Modulation to that described above.
59. The Hoare Lea assessment advises that in attempting to deal with Other or Excess AM any condition needs to be robust and effective in terms of the intended outcome of protecting residents whilst not unfairly hindering the operation of the consented wind farm. Hoare Lea consider that at the present time there is insufficient knowledge of Other or Excess AM to derive a suitable method capable of quantifying this aspect of turbine noise which can then be reliably used to infer subjective perception of Other or Excess AM noise. They consider that, within the current state of knowledge the goal of protecting wind farm neighbours against Other or Excess AM by means of such unproven objective rating and penalty scheme would be untried, untested and unproven which could render a condition seeking to control this invalid. MAS environmental disagree with this, indicating that they developed the 'Den Brook AM Condition' and have since improved it and applied it to field work on sites where noise complaints exist. They indicate the metric behind the condition has been independently tested by the Renewable Energy Foundation and in their experience, there is a wealth of information supporting the appropriateness of the condition levels.
60. Condition 45 of the approval was devised from adapting wording from similar conditions which had known short comings with the aim of producing a robust condition. Hoare Lea has considered the precise wording of Condition 45 and the associated informative of the Lambs Hill approval as detailed in the proposal section of this report. Hoare Lea have noted the possible contributory casual factors of Other AM detailed in the applicants submission which notes that evidence to support these at present are largely anecdotal and purely speculative and do not address whether

these factors cause Other or Excess AM either on their own or in combination. Hoare Lea note that the applicants submission suggests that, in considering some of the characteristics as detailed in para. 53 above, the proposed turbines do not have a particularly short tower, the site is not considered to have unusual topography, (although there is no statement of what unusual topography would constitute) and the wind farm layout achieves reasonable spacing as typically suggested by manufacturers. Hoare Lea agree that the condition of high wind shear occurring under stable atmospheric conditions is the factor that has probably attracted most attention in more recently reported research into Other AM, although this has not yet been confirmed by measurement. Notwithstanding this, high wind shear is unlikely to be a sole contributor bearing in mind Other AM has been recorded at sites of low and high wind shear. Hoare Lea considers that the data presented in the TNEI report to support the application to be insufficiently detailed to enable them to comment meaningfully on the true range of wind shears actually experienced at the site as the values show average wind shear values rather than actual ones and wind shear will change throughout the day based on wind speed, land / air temperature. The wind shear values of the approved application are criticised by objectors with the suggestion that further evidence / survey work is required in respect to these.

61. An objector has referred to guidance contained within the Institute of Acoustics good practice guide to the application of ETSU-R-97 for the assessment and rating of wind turbine noise which suggests that where there is a valley between receptor and source of noise (i.e. turbine and residential property), there can be an increase in noise due to the reflection of the noise from varying surfaces within the valley. Based on this, objectors consider that the original noise limits for the wind farm may require adjustment. The applicant has assessed the scheme using a formula given within this guidance document which confirms that no additional allowance is required due to the presence of a valley between the turbines and the nearest residential properties. The Councils Environmental Health Officer agrees with this finding. In addition to this, high wind shear is only one possible contributory factor to the occurrence of AM and the list of possible contributory factors is not a definitive proven list of cause. In view of these matters, no further recordings or assessments have been requested in this regard.
62. It is the view of the councils consultant that given the lack of available evidence relating to the likelihood of Other or Excess AM occurring at any particular site, there is presently no means of determining whether or not an AM condition is more or less necessary at the Lambs Hill site than at any other wind farm site. Hoare Lea agree that given the available evidence that Other AM is an uncommon occurrence across UK wind farms, this logically leads to the conclusion that Other AM problems at Lambs Hill are less likely rather than more likely to occur. Hoare Lea therefore accept the TNEI submission in that the validity of imposing an AM condition on the Lambs Hill Wind Farm can be reasonably compared against the decisions reached in connection with other wind farm planning applications and appeals where AM conditions have previously been considered. Hoare Lea have advised that they do not disagree with the TNEI conclusion that the weight of evidence is clearly to resist an AM condition, as not satisfying at least the test of necessity.
63. Hoare Lea have also advised they consider that Condition 45 of the Lambs Hill Approval would fail to meet the tests of reasonableness, precision and enforceability. Hoare Lea indicate that the requirement of an objective assessment of AM is triggered by a subjective assessment by the Local Planning Authority that AM is contributing to the noise complained of. Notwithstanding this, Hoare Lea are satisfied that Points a, b, and c of informative 2 note 5 could be implemented and tested against as they factor out noise from non wind farm related sources. Although this is the case, Hoare Lea is not of the opinion that a purely objective procedure could be so simply implemented that could be adequately robust. Hoare Lea's concerns



therefore are that it is not that Condition 45 could not be implemented, but rather that it could not be robustly implemented on an automated basis. Hoare Lea consider that as research is undertaken and analysis techniques become more advanced, an appropriate, objective and robust methodology for the rating of AM noise may become available. In contrast to the advice of the councils consultant, the acoustician (MAS Environmental) representing objectors considers that he has developed the 'Den Brook' Condition, to be more easily enforceable and has indicated that he has used it successfully to measure AM noise.

64. MAS Environmental, acting on behalf of objectors consider that, if it is accepted that the AM condition fails due to the potential for extraneous noise triggering it then all noise conditions fail for the same reason, and that if accepted that statutory nuisance legislation can deal with it then all planning controls over noise could be dealt with in the same way. Whilst these comments are noted, in view of some noises from development being permanent or regular and definitive such as noise from an air conditioning unit, or plant and machinery, and some being unpredictable and not certain at all, then a different approach to these matters is considered to be not unreasonable.
65. MAS Environmental have advised of a recent court case where it was confirmed that planning conditions applied to address rare occurrences are legitimate in law and do not fail the tests of conditions, therefore suggesting that the council do not need to consider the arguments made about the limited likelihood of Excessive AM occurring. MAS further advise that if the condition is not enforceable, then there is no need to seek its variation. MAS have recommended a condition to deal with AM. MAS have further given details of wind farm sites where they have been monitoring noise and where they indicate AM does occur. In one case it is indicated that the level of AM at one site is greater than that which some wind industry acousticians have indicated could be achieved. Sound graphs provided by MAS Environmental who have also indicated that they have built a listening room experience where the sound of the AM occurring relative to the graphs of it occurring are open to use and invited the committee to use this. Due to there being no argument that amplitude modulation occurs and that it can be at a level which is detrimental to residential amenity, listening to recordings of amplitude modulation would not assist the considerations of this application which revolve more around whether there is enough certainty of it occurring at this site to justify a condition and whether a condition can be sufficiently robust. During the application process officers met with a representative of MAS Environmental and objectors to listen to recordings of AM occurring. MAS consider readings they have taken at over 1km of a wind farm are over the limits anticipated within government's guidelines (ETSU-R-97) at sites where it was considered unlikely to occur. MAS have indicated that they have evidence that Excessive Amplitude Modulation is occurring at sites where permission has been granted on appeal without conditions controlling AM and where inspectors and supporting consultants, including the consultant advising the council on this application, advised against the need for such a condition.
66. Objectors have submitted extracts / papers and survey findings in respect to wind turbines and noise. Some of this relates to work done in other countries, etc. These submissions include;
  - Survey indicating people within 1.4km of wind turbines show signs of sleep deprivation characteristics to a greater level of those residing further away,
  - People living near to other wind farms have moved out of their homes citing unbearable living conditions due to noise as the reason
  - Newspaper extract where residents of a property were claiming that the unbearable noise from the wind turbine drove them from their farmhouse and where the wind farm operator settled with the residents for an undisclosed sum of money,

- The suggestion that impacts of noise disturbance on a person are not necessarily relative to the level of the noise but also affected by the listeners perception of the noise, i.e. whether they view it as an unwelcome noise etc.
67. Objectors have commented on the applicant's reference to the 'Den Brook' Case, and their assertion that certain issues relating to the implementation of an AM condition were not argued before the court of appeal. Objectors consider that until the judgement is overturned, it is a matter of law and is therefore binding on future cases. Objectors therefore consider that the condition can only be removed from the Lambs Hill application if environmental information is produced to show that it is not necessary.
  68. The planning inspector in the second Den Brook appeal cited by both the applicant and objectors considered that in circumstances where the result of unforeseen consequences is sleep disturbance, there was no doubt that a condition to regulate the phenomenon is both necessary and reasonable. The Inspector did not see that the rarity of the circumstance constitutes a valid reason to object to such a condition, considering it necessary and reasonable to impose such a condition. Sadberge Parish Council consider that the Den Brook Case has established a basis for drafting such conditions although notes problems with the wording of the conditions and a need for its adaption using logic and common sense. Sadberge Parish Council have themselves put forward example conditions to deal with other or excess AM.
  69. The Councils consultant (Hoare Lea) consider that Condition 45 could offer less protection to wind farm neighbours than they would otherwise be afforded with no AM condition, this being due to the indicators it uses (A-weighted noise level) which could leave a noise passing the rating test of Condition 45 yet remaining to have lower frequency components that people were complaining about and which may then prevent action being reasonably taken under Statutory Nuisance powers as the wind farm would be operating in accordance with the planning conditions. Hoare Lea considers this to be a clear danger of adopting unproven and untested criterion in an AM condition.
  70. MAS Environmental (objectors consultant) suggest that the Wind Industries position since the developing of a condition to control AM is that they have tried to undermine it, leading to a situation where there is no consensus and which can lead to a reason to reject the condition which in turn results in an uncontrolled problem and allows developers to continue without restraint. MAS Environmental consider this position is slowly unravelling as more cases are reported and recorded which MAS Environmental indicate the consequence of is a large and growing number of problem wind farms with no real expectation of a solution via any other control mechanism. MAS also consider that sites where inspectors considered that AM conditions should not be imposed, have been recorded as generating AM. MAS further indicate that they have recorded Excess AM at a wind farm on which the council's noise consultant resisted an AM condition. These matters are noted.
  71. Officers have considered the appeal decisions cited by the applicant whereby AM conditions were not imposed and have considered their own findings on other appeals. Extracts relevant to amplitude modulation from some recent Planning Appeals decisions at Inquiry are detailed at appendix. ref: 18 a - f The general considerations and outcome of the appeals is that amplitude modulation is a phenomenon that is difficult to predict, is linked to only a small number of wind farms, that in each case there was no evidence submitted that amplitude modulation would occur or be likely to occur and therefore, that imposing a condition to address this matter on a precautionary basis does not pass the relevant tests for conditions to be imposed. Whilst every site / proposal needs to be considered on its own merits, consideration needs to be given to relevant appeal decisions and the formulation of

conclusions within them. With this in mind, Counsel has advised that the Local Planning Authority should avoid reliance on the prospect that it will succeed on appeal on the basis of the same evidence that has failed to persuade inspectors elsewhere but has highlighted that the authority needs to consider this application on matters directly relevant.

72. Taking into account the submission, available guidance and the current state of knowledge Hoare Lea have advised the council that they believe the planning condition would fail the tests of being necessary, reasonable, precise and enforceable. In view of this advice and there being a possibility of Other or Excess AM occurring at a wind farm site, Hoare Lea were asked about possible means of protecting amenity following a noise complaint. Hoare Lea have advised that on appeal it has been repeatedly argued that the appropriate means of control of Other or Excess AM is via the route of Statutory Nuisance rather than via a condition, with the Wooley Hill planning appeal decision giving the most detailed discussion on this matter (see appendix ref: 18e). MAS Environmental acting on behalf of objectors has indicated they have direct evidence of two councils who accept statutory nuisance is being caused by wind farms but whom refuse to take formal action, suggesting that such action can soar to in excess of 6 figure sums where contested.
73. Hoare Lea (noise consultant to the council) has advised that notwithstanding their technical advice, there exists the opportunity to incorporate some protection via the Environmental Management Plan (EMP) submitted as part of the application, within the guidelines of which, the developers would be duty bound to co-operate.
74. Officers note that there is a difference of opinion between Counsel and the Acoustic Consultant on matters of the enforceability of Condition 45 of 10/2549/EIS. This comes down, however, to Hoare Lea basing their comments on the ability to carry out and resource implications of a robust assessment rather than the condition actually being able to be implemented. Hoare Lea do not refer to the precision of the condition as such. But in light of other failings of the condition considered in this report it has not been necessary to consider this matter further. Based on the advice from Hoare Lea Acoustics, as professionals in their fields and having considered the Appeal Decisions as detailed and referenced within the report, it is accepted that there is no list of proven contributory factors to the occurrence of AM published within relevant guidance, rendering it an unpredictable phenomenon at the current time and that there is no precise and agreed methodology for conditioning AM. This finding takes into account the counter arguments submitted by objectors and their representatives. Officers are advised that there are not only difficulties in implementing the condition but concerns that by retaining the condition this could prevent action being taken on noise which passes the condition tests but which remains to be a 'nuisance'.
75. Officers have considered guidance more recent to the determination of the original wind farm scheme at Lambs Hill. In 2013, Government is indicating that the method of assessing the noise impact of a wind farm remains to be as described in ETSU-R-97: *The assessment and rating of noise from wind farms*, which requires assessment of the likely impact of noise from wind turbines on local residents and those working in the vicinity to be considered in relation to the existing background noise levels taking into account the characteristics of particular locations. In response to concerns about the current appropriateness of some of the measurement methods set out in ETSU-R-97, DECC commissioned acoustic experts at Hayes McKenzie to review the measurement and prediction aspects used to determine noise impacts as part of the planning application process. Their report was published in June 2011 and found that good practice guidance was needed to update, confirm, and where necessary clarify the way the measurement and prediction aspects in ETSU-R-97 should be implemented in practice. The Department of Energy and Climate Change (DECC)

asked the Institute of Acoustics (IOA) to develop this additional good practice guidance. The guidance has been produced independently of Government by the Institute of Acoustics and they have drawn on the expertise of a range of represented members, including local authorities, acoustic consultancies, developers, and a range of other interested parties, to produce and peer review the guidance. The guidance was subject to a 12 week public consultation. The guidance was published by the IOA on 20 May 2013. The Secretary of State for Energy and Climate Change accepted that the Good Practice Guide represents current industry good practice, and to endorse it as a supplement to ETSU-R-97 to provide a valuable technical supplement to ETSU-R-97 (the method for assessing noise impacts from wind turbines), and in turn help to improve the consistency of its application in the consideration of wind farm projects.

76. On the matter of noise and specifically Amplitude Modulation, the IOA 'A Good Practice Guide to the application of ETSU-R-97 for the assessment and rating of wind turbine noise' as published in May 2013 advises at paragraph 7.2.1 "*The evidence in relation to 'Excess' or 'Other' Amplitude Modulation (AM) is still developing. At the time of writing, current best practice is not to assign a planning condition to deal with AM.*" This guidance further supports officers recommendation to allow the removal of the condition controlling AM.
77. Objectors have suggested that if condition 45 does not meet the tests required by legislation and the NPPF then perhaps the permission should not have been granted at all. Officers consider that this may be the case where there is a clear demonstration and accepted understanding that AM would be a significant issue at the site, however, it is considered that there is insufficient accepted evidence on such matters.
78. In view of these matters, accepting the removal of condition 45 and replacing it with a reliance on the Environmental Management Plan (EMP) as well as a condition controlling the implementation of the EMP is considered to be appropriate. Further control is also available from Statutory Nuisance Legislation should it be required.
79. Durham County Council was consulted as part of this application. Some of the residents local to this wind farm are residents of Durham County. Further to this, Durham County Council had a recent appeal against their refusal of a wind farm at Foxton, a short distance to the north of the Lambs Hill scheme. The Inspectors decision to the Foxton Wind Farm Appeal (para. 44) advised that;
- "There is no evidence to suggest that excess amplitude modulation (AM) (the 'whooshing' noise produced when the blades pass the tower) is likely at this scheme. ETSU seeks to achieve a level of noise which is reasonable and which would allow the nearest neighbours acceptable living conditions; it does not seek to reduce wind farm noise to a level which would be inaudible to local occupiers or that no-one will ever be disturbed by it. I conclude that the issue of noise does not weigh heavily against the scheme"*
80. The consultation response from Durham County Council to this application advises that there is no evidence to suggest it will materially affect residential properties and they therefore have no adverse comments.
81. Banks Renewables (the applicant) had a wind farm scheme approved in Darlington (Moor House) recently and in granting permission, a condition controlling Amplitude Modulation was imposed, similar to that imposed on the Lambs Hill approval by this authority. Objectors noted that within the initial Darlington Moor House Report to committee and the Newbiggin Wind Farm Application there was suggestions that the

available evidence as submitted by the applicants concluded that there is a greater than average risk of AM at the site. Objectors considered that this is likely at the Lambs Hill site due to its proximity to these other sites. Whilst these comments are noted, there are differences in location, turbine layout and positioning of residential properties relevant to turbines and this is not necessarily the case. Also, due to a lack of complete understanding on the factors resulting in AM, officers consider that such assumptions could not be relied upon in determining this application.

82. Objectors have referenced para. 176 of the NPPF which indicates that where safeguards are necessary to make a particular development acceptable in planning terms, the development should not be approved if the measures required cannot be secured via condition or agreement, although indicating that the development should not be inhibited unnecessarily. Officers imposed condition 45 as a precautionary measure as there was no direct evidence that excess amplitude modulation would occur at this site. The latest government endorsed guidance in respect to Excess or Other Amplitude Modulation (May 2013) indicates that the evidence in relation to this is still developing and current practice is to not impose conditions in respect to Amplitude Modulation. Having reviewed a number of recent appeal decisions which had been carried out at Inquiry, planning inspectors are avoiding the imposition of conditions relating to amplitude modulation, generally citing there being insufficient evidence to warrant such a condition being imposed. The council's independent acoustician has advised that amplitude modulation is still unpredictable and not fully understood, that condition 45 is not suitable considering that a purely objective procedure could not be so simply implemented on an automated basis that could be made adequately robust as it would require a very significant amount of user intervention. The Council's consultant acoustician considers that were this unpredictable phenomenon to occur, it should be dealt with through the provision of an Environmental Management Plan. In view of these matters, notwithstanding there being notable objections and challenges to the submission from local residents and their representatives, officers consider that there is insufficient evidence to suggest amplitude modulation would occur at the site and the impacts of this could therefore not be predicted. It is further considered that the overall method of controlling such a phenomenon (measurement, assessment and mitigation) would be too constrained by the condition to be practically controlled and for it to ensure all occurrences of amplitude modulation would be addressed. Its retention has the potential therefore to compromise the council's ability to take restraining action under statutory nuisance legislation where the noises were within the limiting controls of the noise conditions. It is the officers' opinion therefore that the council should, in this instance, remove condition 45 in accordance with current best practice.

***Consideration of the Environmental Management Plan as submitted (in respect to AM noise)***

83. The Environmental Management Plan details how the applicant would deal with certain matters relevant to the construction, operational and decommissioning phases of the wind farm. This includes a section on noise which is detailed in full at appendix 16.
84. The Council has taken advice from Hoare Lea consultants in respect to improving the applicant's Environmental Management Plan with the aim of making this more robust on the matter of Other or Excess AM. Officers have discussed this with the applicant and a revised EMP has been provided. Officers are generally satisfied with this revised document, as it results in a scheme of investigation, assessment and mitigation triggered by a noise complaint raised by a resident should it occur.
85. A number of objectors have raised concerns over the precise wording of the EMP, have questioned how it would be enforced should there be a noise problem and are

generally concerned that the EMP does not protect residents from nuisance caused by AM. Particular areas of the wording highlighted by objectors are summarised as follows;

- *Having studied the EMP it is clear that to be effective, it relies on there being agreement between the LPA and the operator that a particular complaint is substantive. If the operator does not agree then there is no obligation for him to instruct an independent noise consultant's investigation, a situation that could place significant pressure on the councils Environmental Health resource. This is not sufficient protection in the event of an AM problem.*
- *The EMP gives no time scales for a main investigation and the implementation of a scheme where necessary. This could therefore be very time consuming during which time residents could be being affected by noise.*
- *As the EMP is currently worded, the LPA would have no control over who is appointed to carry out the investigation. The wind farm operator would be free to choose any independently and appropriately qualified consultant and would be able to select one who is biased in favour of wind farm operators.*
- *The EMP references best practice although there is no recognition on who defines best practice. This is a problem as there are no government guidelines and are unlikely to be any in the future. In the absence of such, the wind farm operator could refuse to agree or implement any mitigation scheme to deal with AM and the LPA would be powerless to react.*
- *What happens if there is a problem acknowledged by the developers but they say they have employed "best practicable means"? Does that "make it all right then"? "Best Practicable Means" may well not be a defence to an action in private nuisance, but that means a failure of the planning permission conditions.*
- *The EMP will cause continual disagreement between residents and the operator due to lack of clarity and potential noise cases will have to be dealt with by the Council. This will cause considerable hardship to all concerned.*
- *The reference to unacceptable levels of noise is much more fluid than set figures and this concerns residents. What is acceptable to a resident may be different to what is acceptable to an assessor.*
- *What happens if there is "clear evidence" that the turbines are causing a nuisance but the evidence is obtained in a manner not in accordance with the EMP. What does this mean to residents who may be effected?*
- *What is meant by "to be agreed in advance"? There appears to be a 2 week window here unless it is extended. If there is a problem, a resolution has to be determined but if the developer prevaricates, this may be delayed for an unreasonable period. What happens if the LPA does not extend the period and no measures are agreed?*
- *The LPA should be able to control the situation and say "enough is enough". Therefore there should be a power for the LPA to take direct action (egg: shut the wind farm down) in the event of no agreement being reached.*

Objectors consider that the answer to failings of the EMP is to maintain condition 45 or to amend the wording of the EMP to make it more robust.

86. An objector has suggested that the Environmental Management Plan should include EU guidance highlighting the Environment Protection Agencies Guidance Note on Noise Assessment of Wind Turbine Operations at EPA sites (2011). This document is noted, being a guidance document for Ireland. It makes some recognition of Amplitude Modulation, accepts that evaluation of the significance of such effects is not covered by any recognised process and suggests that there are features thought to enhance this effect (Close spacing of turbines in linear rows, tower height to rotor diameter ratio less than approx.0.75, stable atmospheric conditions and topography leading to different wind directions). This document is considered to add nothing to the points already considered.

87. Officers consider that the wording of the EMP is clear and will require agreement between the operator and the Local Planning Authority. The wording in the EMP does not give final say to the Local Authority in instances where agreement cannot be reached and it also refers to the use of Best Practice approaches to be taken at a time when there is no best practice available. Best Practice may emerge in the future within the lifetime of the operational phase of the wind farm and as such, reference to it is considered appropriate in this case. However, as there is currently no best practice the wording of the EMP would not impose an absolute requirement on the operator to carry out mitigation were a problem to occur. In view of this, officers requested that a clause be included in respect to action being taken stating '**or as required by the LPA**'. This would mean that overall control remained with the LPA as to when mitigation was necessary in the event of no current best practice. The applicant has not been willing to include such a reference and as such, whilst the applicant may actively monitor and mitigate any relevant occurrences of Other or Excess AM, it is the opinion of officers that that the EMP places the control of whether mitigation is undertaken with the developer and Local Planning Authority although were these parties to disagree with one another on any matter then ultimate control would not rest with the Authority.
88. The objectors consultant (MAS Environmental) have made several submissions which support objectors position against the removal of the condition. These have been considered by the council's noise consultant. Whilst MAS consider the EMP to lack precision, the councils consultant considers this to be necessary in order for it to be able to allow for the fact that the assessment of AM noise is a developing science. Whilst MAS consider the EMP should be clearly defined and avoid ambiguity, as does the councils consultant, the councils consultant advises that were this possible, it would be able to form a condition, meeting the tests of precision and enforceability. The councils consultant advises that despite the claims of MAS, this is not where the assessment of AM noise is presently at due to its emerging nature although it may become possible in the future to adequately control AM by condition but presently this is not the case. In view of this position the councils consultant has considered whether it is beneficial to deal with AM (should it occur) by statutory nuisance or first via an Environmental Management Plan (EMP) which would be undertaken with the agreement of the Local Planning Authority and at the expense of the wind farm operator. The council's consultant considers that by including AM within the EMP, this does not lessen the potential protection offered to wind farm neighbours. The EMP makes it clear that it covers AM and that it would be worked in conjunction with the other noise conditions. The Council's consultant considers that as there is no definition of 'acceptable' as a term used within the EMP relative to AM noise levels, then it is reasonable for this to be determined in line with best practice at the time of any investigation.
89. A condition could not now reasonably address all matters relevant to AM, as already discussed, and therefore the flexibility that can be achieved through the Environmental Management Plan and updating of this to be in line with best practice, is considered the most appropriate, and certainly a reasonable, tool to deploy. A condition has been recommended requiring the development to be undertaken in accordance with the EMP although subject to further information to be agreed to provide further clarity. In view, amongst other things, of the condition referencing the EMP, which would be a flexible and evolving document subject to annual review, it is considered that this would pass the relevant tests required of a condition. However, were there to be unacceptable noise which was not dealt with by mechanisms within the EMP, then the Council would need to consider action under the Statutory Nuisance regime.

### ***The Use of Statutory Nuisance Legislation***

90. Objectors consider there to be problems with adapting the statutory nuisance procedure to suit this circumstance and have submitted a note of Counsel that discusses the issues. The note advises that planning law is not generally concerned with private rights and property law is not generally concerned with land use, being fields of law with different functions. It suggests that the common law of nuisance does not afford the same degree of protection as a planning requirement, and interference with amenity is not the criterion for whether a nuisance exists. A statutory nuisance must be either a nuisance or prejudicial to health. Harm to amenity is again not the criterion. It further indicates that the wind farm will change the character of the area and that noise from it will result in the expectation that residents should tolerate a greater degree of noise intrusion. It further advises that a reasonable user of land is not a nuisance, even if harm is caused as a result to a neighbour's occupation or enjoyment of his land, suggesting that if the wind farm is operating within the noise limits of conditions, there will be difficulties in establishing that the user is unreasonable, even if excess amplitude modulation has been identified.
91. The objectors counsel have suggested that from the viewpoint of residents, the statutory nuisance legislation is not an effective and practicable safeguard for a number of reasons including;
- The criteria of the law of nuisance does not provide the same protection as loss of amenity.
  - Arguments over the difficulty of identifying whether AM is occurring would similarly arise through a statutory nuisance procedure.
  - For the Local Authority to prove beyond reasonable doubt, that Excess Amplitude Modulation, is occurring, when it is occurring, for how long and how often, it will be costly and demanding in resources.
  - The existence of the wind farm will change the areas character and therefore the expectation that noise intrusion from it should be tolerated.
  - The local authority has only to take such steps as are reasonably practicable to investigate the complaint. In view of the difficulty of investigating and proving an imperfectly understood phenomenon, one can usually justify inaction.
  - Any notice must allow reasonable time for compliance.
  - There is a defence of Best Practicable Means and in view of their being no best practice, the operator could claim that compliance with ETSU-97 (as required by the remaining conditions) is sufficient. And secondly, that the alternative of shutting down the turbines for the time being would be excessive due to the financial implications. The operator may be able to argue best practicable means simply by arguing that the turbines were of a modern design and property maintained.
  - A criminal conviction can only be obtained by reasonable proof.
  - The legal procedure is lengthy and cumbersome,
  - The cost is high for the authority and prohibitive for members of the public.
  - A fine is not large compared with the profits from running the wind turbine and a fine on a corporate entity does not remedy the nuisance. If the nuisance continued after conviction, the local authority would have to bring the matter back to court to seek further fines.
92. Whilst these points are noted, the proposed Environmental Management Plan and its associated conditions make it clear that noise nuisance beyond that controlled by the other conditions would remain to be dealt with. Advice, to the council from its noise consultant is that a condition to deal with AM could not be produced at this point in time which would pass the tests required of it. The procedure detailed within the



EMP should deal with outstanding noise related matters. However, in the event that there is noise which does not get resolved by the conditions and the EMP, advice to officers is that this could then be dealt with by Statutory Nuisance Legislation, which, although not ideal as it can be a drawn out process and one which would potentially cost the council time and money to progress, it is nevertheless an available fall-back position.

93. Consideration has been given to a report 'AECOM report produced in April 2011 entitled "*Wind Farm Noise Statutory Nuisance Complaint Methodology*" which was commissioned by DEFRA to examine the use of Statutory Nuisance powers of Local Authorities when dealing with wind farm noise complaints. The submission notes the various risk factors which might give rise to Other AM suggesting these include a linear layout of turbines, turbine spacing and high wind shear or a combination of these factors although the AECOM report indicates that "*despite research by numerous investigators over the last 20 years, there is to date no universally accepted explanation as to the causes of AM or means to predict its occurrence*" and accepting that it only occurs at a minority of sites. The Councils Environmental Health Officers have been involved with both the initial application, the generation of conditions and this current application as well as considering advice and guidance from Counsel and Hoare Lea Acoustics and the AECOM report titled "*Wind farm Noise Statutory Nuisance Complaint methodology*". Environmental Health Officers have advised that statutory nuisance action would provide a lower level of protection to local residents compared with controls under the Planning regime which is designed to protect the amenity of local residents. They have indicated that nuisance action deals with unreasonable material interference caused to local residents and generally provides only a reactive response to complaints rather than the proactive protection afforded by a planning condition. Action under Statutory Nuisance Legislation would require the Environmental Health staff to carry out detailed measurements /observations at the site using sound level meters and sound recording equipment. As Excessive Amplitude Modulation is likely to be intermittent and unpredictable this would be time consuming in both site work and analysis of recordings. If the investigating officer becomes satisfied that a nuisance exists the Council would be required to serve an abatement notice on the person responsible for the nuisance who would have a right of appeal against the notice. The appeals procedure could delay implementation of any improvement works and the nuisance could therefore continue while the appeal was being heard unless the applicant was willing to take immediate action to address the matter. If the appeal was unsuccessful and further evidence was obtained that the nuisance was continuing the local authority would have the option of taking legal proceedings for breach of the abatement notice. The aggrieved person would have a best practicable means defence which will permit a nuisance to continue, providing that reasonably practical measures have been used to counteract the nuisance. The Local Authority does have powers to stop or restrict Statutory Nuisances by seeking a High Court injunction for a breach of an abatement notice. Environmental Health Officers have pointed out that the DEFRA commissioned AECOM 2011 report '*Wind farm Noise Statutory Nuisance Complaint methodology*' provides a starting point for dealing with cases of Excess AM but it does not give specific objective guidance on what constitutes Excess AM. The Councils EHO's have noted that within recent appeal decisions, inspectors concluded that Excess AM is a statutory nuisance issue and should be dealt with under other legislation to planning.
94. The Councils Environmental Health Officer has indicated that he has no objection to the removal of condition 45 for the following reasons:-
- The Institute of Acoustics document 'A good practice guide to the application of ETSU-R-97 for the assessment and rating of wind turbine noise' [section 7.2] [May2013] states that current practice is not to assign a planning condition to deal with amplitude modulation (AM), considering it to be

inappropriate to go against official guidance provided on behalf of the government department.

- The developer has submitted an Environmental Management Plan (EMP) as part of the planning application which provides an enforceable mechanism for the control of AM should it occur in this case, it also allows for changes in what is known as 'best practice' in this area.
- The proposed condition provides adequate protection for noise;

### **Other Noise Concerns**

95. The CPRE have objected to the removal of Condition 45, referencing their tranquillity study which was submitted as part of their comments to the initial application and the CPRE consider that those comments remain to be relevant. They consider condition 45 is required to protect tranquillity in this area and the amenity of residents, highlighting that the applicant had the opportunity to appeal the imposition of the condition. Whilst noted, there is no evidence that the wind turbines would affect tranquillity due to Amplitude Modulation which is the same argument already discussed in respect to amenity. As such, it is considered that the condition could not be retained for the same reasons.
96. Emerging Policy SL1 of the Regeneration and Environment Local Development Document deals with development and amenity. The policy requires new development to be designed to take into account the amenity of occupiers of adjoining or nearby properties. Considerations relating to this are detailed elsewhere within the report. The impacts of this proposal over the already approved scheme are considered to only potentially impinge on amenity of residents in respect to noise related matters and these are detailed at length elsewhere within the report. As such, this emerging policy has no additional considerations above those already being made.

### **Remaining Matters**

97. The remaining part of the report addresses the material planning considerations relating to whether the other original planning conditions of planning permission 10/2549/EIS should be amended in the light of changed circumstances without altering the fundamental nature of the planning permission granted

### **Renewable Energy Targets & the principle of wind farms**

98. Objections have been raised which suggest that the turbines should be positioned off shore, that there are no benefits to the residents of the area from the scheme and that there are enough turbines within the Teesside area already. Similar objections were raised against application 10/2549/EIS.
99. In commenting on this under 10/2549/EIS it is advised that targets for renewable energy were set at between 15 and 20% by 2020 although that these were minimum targets, not maximum targets and as such, reaching the target in itself would not constitute a standalone reason for refusal of a renewable energy scheme. The benefit of limiting onshore landscape impacts by placing turbines out at sea is appreciated, however, planning policy remains to support the development of a wide range of renewables including on shore wind farms.
100. The position of approved and operational schemes for renewable energy within Tees Valley is not known to have significantly changed and there is no new policy guidance that would suggest that this submission for wind energy should be resisted based on the existing level of provision or any percentage based targets. Indeed, government remains committed to tackling climate change and remains generally supportive of renewable energy schemes.

## **Traffic, Transport and Highway Safety**

101. Application 10/2549/EIS was considered based on its anticipated impacts on traffic, transportation and highway safety, these being construction and decommissioning traffic including the abnormal loads (turbine parts); and maintenance traffic associated with the operational wind farm. The application was supported by various traffic related assessments.
102. The Head of Technical Services considered the submissions taking into account the proposed abnormal load route and a swept path analysis of vehicles at pinch points and junctions and it was determined that the analysis demonstrated that the route is acceptable although a condition was imposed which required a Dry Run of the abnormal load to be undertaken which would highlight any mitigation additional to that already calculated. Considerations of the previous application took into account objections relating to traffic movements and highway safety and some have again been raised to this application, in particular, the increase in traffic through the village in close proximity to a school. In determining the previous application, a condition was also imposed requiring a scheme of traffic management to be agreed with the aim of minimising the impact on highway safety. As the application / operational detail is not sought for amendment and circumstances affecting highways are not known to have changed, the controlling conditions previously imposed in this regard remain to be relevant.
103. The proposed routes for moving Heavy Goods Vehicles are not altered by this proposal and would therefore remain to utilise part of the "West Stockton Lorry Routes" network which is a scheme to concentrate HGV movements onto roads suitable to cater for them. The Head of Technical Services previously considered that the proposed route was acceptable for HGV movements and this remains to be the case subject to a Traffic Management Plan being required by condition (as previously required) which would allow for limiting traffic movements in peak traffic hours and during school opening and closing times to minimise impact on existing delays and highway safety. Conditions were previously imposed to require road surveys to be undertaken in order to assess the condition of roads and associated structures pre and post construction in order to deal with wind farm traffic related damage with a condition being imposed requiring roads to be kept in a clean state. The Head of Technical Services previously considered that the levels of operational traffic to maintain the wind farm post construction were not significant and levels of traffic for this purpose are not intended to be increased from the previous approval. In view of their being no change in traffic as a result of this proposal, subject to the re-imposition of relevant conditions it is considered that the scheme would remain to be in accordance with the development plan and the NPPF. The Highways Agency and the Councils Head of Technical Services have advised they have no comments to make on the submission.

## **Impact on the character of the Landscape**

104. The impacts of the wind farm were considered under application 10/2549/EIS against a report commissioned by the Association of North East Councils' *Wind Farm Development and Capacity Studies – East Durham Limestone and Tees Plain* dated 2008 and undertaken by Arup consultants (The Arup Report) as well as a detailed assessment.
105. The methods of considering the impact of a wind farm on the surrounding landscape remain to be consistent with those used to consider the scheme under 10/2549/EIS. The previously considered document '*Wind Farm and Landscape Capacity Studies: East Durham Limestone and Tees Plain (2008) and addendum (2009)*' formed the

principle for consideration and would remain to do so. This document considers the landscape capacity for wind farms within this area of north east England. The Stockton Renewables Study was also considered which defines the area of the proposed Lambs Hill development as having variable constraints, indicating that the area may be suitable for a commercial scale wind farm development. In view of guidance at the time and based on other wind farms either operational or approved at the time, it was considered that the landscape had the capacity to accommodate the Lambs Hill Wind Farm without a significant cumulative detrimental impact on the landscape occurring. This took into account the approved Wind Farm Scheme at Moorhouse Farm (Darlington) and the Newbiggin and Foxtton Schemes to the north and south of the site. There are no new wind farms with permission within the immediate vicinity which would influence the previous considerations made in respect to the visual impact of the scheme when taken cumulatively with other wind farms and importantly, the Foxtton Wind Farm was refused and dismissed on appeal which would prevent the detrimental impacts as reported under 10/2549/EIS occurring had both Lambs Hill and Foxtton wind farms been constructed.

106. An application for the A1 wind farm was previously discussed under 10/2549/EIS although this application was withdrawn from the planning system and although an application is expected to be lodged, this has not yet happened.

### **Landscape considerations**

107. There are no known notable changes to the landscape contours / topography / view points for the localised area around the consented wind farm and there remain to be no landscape designations on the application site or within 1 km of it as was previously the case. The impacts on the immediate landscape as well as the landscape at greater distance such as the North Yorkshire Moors would remain to be consistent with the level of impact that would be created from the implementation of the approved scheme. Emerging Policy ENV 5 of the Regeneration and Environment LDD supports proposals which reflect the local distinctiveness, condition and sensitivity to change of the local character areas as defined in the Tees Lowlands National Character Area and the Stockton-on-Tees Landscape Character Assessment and Capacity Study. The original application was considered against the guidance of the Stockton on Tees Landscape Character Assessment and Capacity Study and was found to be acceptable. This current proposal does not affect those earlier considerations and does therefore not conflict with emerging policy ENV5 in this respect.
108. In view of these matters, there is no reason why this proposed variation to the approved scheme would affect the previous landscape considerations and there is no change in policy that would warrant a different conclusion of landscape matters to be arrived at. The same considerations apply for the visual impacts of the scheme on the surrounding settlements (and associated Conservation Areas), the nearby registered Parks and Gardens (Hardwick Hall and Wynyard Park) located around 4km from the application site and the previously considered sites of Archaeology / Scheduled Ancient Monuments, the impacts upon which were considered to not be significantly adverse due to matters such as distance, topography, screening and vegetation, all of which remains largely the same.
109. Visualisations were provided for application 10/2549/EIS which were considered to provide an accurate representation of cumulative visual impacts that the Lambs Hill Wind Farm may contribute to taking into account other existing and proposed wind farms in the area. The topography of land has not notably changed since this approval whilst the landscape features within it remain generally consistent. Further to this, there are no new wind farms consented within the immediate vicinity. The same applies to considerations of views where blades from separate turbines would

overlap from certain view points. It is considered that there are no changes in circumstance that would affect the previous considerations on these matters.

### **Impacts on views from settlements and properties**

110. The previous application considered the impacts against existing settlements and individual properties surrounding the wind farm whilst objection has been raised that the turbines would have an adverse impact on quality of life due to fears over the height of the structures. The properties surrounding the site remain in position and the scheme being proposed under this application would not affect the position, scale or appearance of the turbines. Resident objections have been raised to this current application on grounds that it would have an adverse visual impact on the landscape and would dominate views from properties. There are no new properties within the immediate vicinity of the wind farm that would suggest a revised assessment of impact should be undertaken, particularly as the turbines could be built out under the existing approval. As such, the considerations reported in respect to 10/2549/EIS remain to be relevant which advised that the settlements suffering greatest impact would be Old Stillington, Foxton (including Shotton), Stillington, Whitton, Bishopton and Great Stainton and individual sporadic properties would also be similarly impacted. It was noted that the wind farm would be a prominent feature for specific properties which faced the wind farm, of lesser impact for those set within settlements where there were intervening structures or landscaping in close proximity and that there would be notable views from the surrounding highway network although these will change as people move through the landscape / area. The Head of Technical Services considered that the visual impacts of the wind turbines would be acceptable taking into account the intervening distances, various elements of screening and filtering, topography and building orientation. Comments have been submitted from a nearby neighbour to the application site indicating that turbines are better to look at than pylons and are much safer.

### **Visual impact of other parts of the wind farm**

111. Under 10/2549/EIS it was considered that the construction phase of the development would have a notable impact on the appearance of the site from a local perspective although much of this will be as a result of the activity on site which is temporary, including the presence and use of the construction compound area. The impacts of the transformer cabinets, control building, met masts etc were all considered accordingly. The proposed scheme does not seek to affect these details whilst there is no change in Policy which would warrant a reconsideration of the previous considerations.

### **Public Rights of Way**

112. There are several public rights of way (PROW) within the surrounding area and which pass through the wind farm site. No new footpaths or bridleways have been constructed within the immediate surrounding environment since the approval of application 10/2549/EIS. There are no changes to policy other than the existence of emerging Policy T1 (footpaths, cycle routes and bridleways) of the Regeneration and Environment LDD. Emerging Policy T1 protects footpaths and bridleways from development which would impair their functioning for recreation. Despite objectors concerns, officers previously considered that the wind farm impacts on the Public Rights of Way in the area would not unduly affect the use of the footpaths. The removal of the controlling condition in respect to Excess AM noise may result in a greater level of noise being experienced for users of the footpaths intermittently, however, all indications are that this would be an intermittent matter which would not prevent the physical use of the path.
113. There have been a very small number of recent instances where turbines on other wind farms within the country have toppled over in high winds and where blades have failed. These occurrences need to be considered against there being approx. 3500

turbines in the UK and the nature of the failures. Clearly such matters pose risk to health and safety although turbines should be manufactured and installed to meet the rigours of their use / position and planning is not specifically there to deal with quality in workmanship or construction. A small number of turbines were known to have collapsed as well as some blade failure at the time of determining the previous application. These recent events do not notably alter the limited extent of such occurrences and it is considered that these matters would not alter the considerations under 10/2549/EIS in this regard. The Ramblers Association have raised no objection to this current application.

114. Having taken into account the guidance of the emerging policy and previous considerations, it is considered that this proposal would not result in unacceptable impacts on the PROW / Bridleway network.

#### **Ancillary landscape impacts**

115. The impacts of transporting abnormal roads and the provision of accesses are considered to remain as previously demonstrated in that, in several locations there will be a requirement to remove areas of hedging, grass verge and a number of small trees and shrubs to allow vehicles and loads to pass and the accesses to be created. These circumstances remain as would the requirement for new planting works to be undertaken. There is no change in physical / policy circumstances which would warrant a detailed reconsideration of these matters.

#### **Noise**

116. The impacts of noise from the proposed wind farm were previously considered as Operational Noise, Low Frequency Noise and Amplitude Modulation. This proposal to remove condition 45 is relative to Amplitude Modulation and would not affect the previous considerations in respect to operational noise and low frequency noise although the following remains to advise on these matters for completeness.

#### **Operational noise**

117. The relevant guidance document to assess wind farm noise in the UK is the ETSU-R-97 'The Assessment and Rating of Noise from Wind Farms (1996)' which provides a framework for the measurement of wind farm noise and its impact on amenity. Condition 40 of approval 10/2549/EIS imposes the limits for noise being generated from the wind farm and this condition would remain in place. The condition was relative to background noise limits which were taken as part of the initial assessment and whilst a period of time has passed since the previous approval, there are no known notable changes to noise generating uses within the immediate landscape which would suggest new noise levels and further assessments with regards to condition 40 would be required. Furthermore, there are no changes within the NPPF that would indicate a change in recommendation would be required on a policy basis as impacts on amenity were already taken into account. The results of the previous assessments showed that the wind farm would not increase the quiet day time or night time background noise levels beyond the 5 dB(A) tolerance and therefore meet the criteria proposed within ETSU-R-97.
118. Objectors have highlighted that additional noise related survey work should be undertaken taking into account landscape topography and guidance of the Institute of Acoustics guide on wind farms which suggests that certain landscapes can require an additional allowance to be made for noise figures. The applicant has considered the formula within the IoA document and confirmed that no changes to noise figures are required in this regard. The Councils Environmental Health Officer has agreed this point.

#### **Low Frequency Noise**

119. It was previously reported that due to the typical separation distances between wind turbines and residential receptors the levels from infrasound from wind turbines are well below the level at which would be noticed by humans, with reference taken from PPS 22:

*'There is no evidence that ground transmitted low frequency noise from wind turbines is at a sufficient level to be harmful to human health. A comprehensive study of vibration measurements in the vicinity of a modern wind farm was undertaken in the UK in 1997 by ETSU for the DTI (ETSU W/13/00392/REP). Measurements were made on site and up to 1 km away in a wide range of wind speeds and direction. The study found that:  
Vibration levels 100m from the nearest turbine were a factor of 10 less than those recommended for human exposure in critical buildings (i.e. laboratories for precision measurement).  
Tones above 3.0 Hz were found to attenuate rapidly with distance – the higher frequencies attenuating at a progressively increasing rate.'*

120. In view of that guidance, in reporting on application 10/2549/EIS, as there are no sensitive properties within 100m of any turbine it was considered that the proposed wind farm would not compromise residential amenity, health or similar as a result of low frequency noise emission. There is no new policy document which would contradict this previous assessment and no change to the position of turbines relative to properties / receptors and as such, no change on view is made from the 10/2549/EIS report.
121. Objection has been received that there should be a minimum set back from industrial wind farms of 2km from residential properties. Whilst this is noted, there is no evidence or policy to support this suggestion as being necessary and the detailed considerations within this report deal with the matter of the distance between the turbines and residential properties.

#### **Construction traffic noise**

122. The impacts of the construction noise were generally accepted as being a temporary impact (10 month period at either end of the 25 year operational life of the wind farm). The proposal would not affect the build period for the wind farm and the same properties / routes would be affected. Although there will be notable disruption from both the construction and decommissioning phases of development, subject to a condition controlling construction working hours, the overall impact was considered to be acceptable. There are no changes in policy which would warrant a different consideration to be made.

#### **Nature, Conservation and Ornithology including the Stillington Forest Park**

123. Application 10/2549/EIS was submitted with ecological survey work including an ecological desk based study which assessed land within both the application site boundary as well as a 2 km area surrounding it including field surveys, an extended Phase 1 Habitat Survey (mid 2009) and an assessment of the route through the Forest Park and the access to the north and south of the site (mid to late 2010). Standing Advice from Natural England advises that for medium to high impact schemes, surveys should not be over 2 to 3 years old and as such the submitted information remains to be relevant in this instance. There is no notable change in landscape type which may have had significant impacts to the previous circumstances although matters relating to animals etc are likely to be ever changing. Notwithstanding this, the previous scheme was approved with a condition requiring commencement by 7<sup>th</sup> December 2016 and subject to conditions requiring confirming surveys for badgers and for an Environmental Action Plan to be produced for

protected species, ecology and ornithology. The proposal relates to the removal of a noise condition and were this permission to be granted, there would be no notable additional impacts on nature, conservation and ornithology than would be the case through the implementation of the scheme under 10/2549/EIS. Whilst objection has been raised from residents in respect to the schemes impact on wildlife, there are no changes in planning policy or site designations since the approval of 10/2549/EIS which would warrant a different approach being taken. The Teesmouth Bird Club have advised they have no comments on the application although indicate they don't see why the condition should be rescinded.

124. Objectors have indicated that there are a considerable number of Herons in the area which, are a protected bird, that large numbers of geese migrate across the area of these wind farms and have done so for the 36 years and that there are deer and birds of prey which use the area too. These matters are noted and the determination of this application to remove a noise condition is considered to have no notable additional evidenced impacts in regard to these species above those which would occur due to the implementation of the extant permission.

#### ***Impact on Stillington Forest Park Local Nature Reserve***

125. One of the more notable impacts of the proposed Wind Farm was previously considered to be on the Stillington Forest Park due to the access track for the northern turbine running through it. The Stillington Forest Park is now defined within the Regeneration and Environment LDD (at preferred options stage) as being a Local Nature Reserve (LNR) although is classified as a Site of Nature conservation Interest (SNCI) within saved Policy EN4. The replacement of saved policy EN4 was considered as part of the initial approval and as a policy it is currently in transition. Its designation within the preferred options LDD is under Policy ENV3 and this designation would offer similar protection / guidance to that of EN4.
126. Objection to the impacts on the Forest Park have again been raised with question as to why these tracks could not be put in via the industrial estate, thereby reducing the need for the extent of tracks being proposed. The track positions were based on the need to get the particularly long turbine components to site. The Forest Park and associated landscaping within the Forest Park will have matured slightly since the previous approval and its use may have increased, however, the degree of impact on the Forest Park from the previous approval is not being impacted on by this proposal and mitigating works would remain to be required by condition. Objectors to this application have raised specific issues that the Forest Park is a sanctuary for wildlife and birds all of which are going to be driven away or killed. These matters have been taken into account in determining the initial application and it is anticipated that this current application would not notably increase the impacts of the scheme on the Forest Park and associated wildlife beyond that of the previous application, were it to be implemented.
127. The emerging policy ENV3 for local sites such as the LNR's indicates that the council will not support proposals for development on a Local Site which could destroy or adversely affect (directly or indirectly) unless there is a clearly demonstrated need for the proposal that outweighs the need to safeguard the site and there is no satisfactory alternative location for the proposal. These requirements are integral to saved Policy EN4. Government has highlighted its commitment for on shore renewable energy, thereby defining a need whilst due to the nature of the turbine loads, this is the most accessible route. Importantly, emerging policy ENV3 requires, where development is permitted to a Local Site, mitigation or compensatory provision for the loss of habitat with options being explored for retaining the most valuable part of the nature conservation interest. The tracks were largely placed along the line of existing tracks within the park, thereby helping to minimise its overall impact. Furthermore, the tracks and their use would be a temporary provision. Conditions were previously imposed requiring the works to be agreed in detail and for mitigation



to be undertaken in agreement with the council. In view of these matters it is considered that the proposal would not conflict with the emerging policy subject to retaining previously imposed conditions.

### **Cultural Heritage and Archaeology**

128. The proposed scheme was previously considered against its impact on cultural heritage and archaeology including listed buildings, Scheduled Monuments, Registered Parks and Gardens. Guidance contained within PPS 5 'Planning for the Historic Environment' has now been replaced with the NPPF although the practice guide to PPS 5 remains. Similarly to PPS 5, the NPPF requires submissions to set out the significance of heritage assets affected and for Local Authorities to consider the desirability of sustaining the significance of an asset and its positive contribution. It further advises that (para. 133) where a development would lead to substantial harm or total loss of a designated heritage asset then consent should be refused unless it can be demonstrated that public benefit outweighs the harm or loss. It further advises that a balanced approach should be taken to impacts on non-designated heritage assets. Emerging Policy HE1 '*Historic Landscapes*' requires proposals for development to be informed by the historic context of the landscape and expects developers to demonstrate that they have fully considered their impact on the historic characteristics of the landscape. These matters were detailed as part of the approved scheme and it is considered that this emerging policy would have no influence on these matters above those as already considered.
129. As part of the previous approval, it was considered that whilst the wind farm may be visible from heritage assets and within the same view point as some heritage assets, the wind farm would not (as a result of the nature and context of those assets, their distance from the wind farm and therefore associated separation, intervening topography and built and natural features) significantly affect these heritage assets. With regards to the ridge and furrow and historic hedgerows within the site, which would be directly affected, previous account was taken of them having a local value, their extent and the extent of affect. It was considered that impacts were acceptable based on policy guidance and this view remains to be the case taking into account there being no notable changes to national guidance on cultural heritage and archaeology as detailed within the NPPF. Tees Archaeology have advised they have no comments on this current proposal although ask for reference to their previous comments to be made, which were addressed as part of the report to 10/2549/EIS.

### **Aviation**

130. Wind turbines and wind farms can affect military and civil air traffic movement and safety as either a physical obstruction to low flying aircraft or through effects on aeronautical radar systems. These associated impacts were considered as part of the previous submission, taking into account comments from consultees including Durham Tees Valley Airport, Newcastle airport, the MOD and the Civil Aviation Authority. Approval 10/2549/EIS is able to be implemented and there are no changes to the position, height, type or scale of the turbines as approved. As such, this proposal would not affect aviation beyond the limitations which could arise from the existing approval and approving this current permission would not extend the time period for commencement. As such, subject to the re-imposition of conditions associated with 10/2549/EIS which required supply of data and installation of equipment to Durham Tees Valley Airport then the impacts on aviation matters would not need to be considered further. The Airports and the MOD are in a position to have factored the operation of the wind farm into their business models for the future and when commenting on other wind farm schemes in the areas which affect their radar. Conditions 7, 11, 20 & 21 were previously imposed to address aviation matters and these would remain to be relevant. The Civil Aviation Authority and

Newcastle Airport have advised they have no comments to make in respect to the application.

131. One objector has highlighted this year there has been a considerable increase in aircraft in this area. Whilst this may be the case, the recommendation is made taking into account the views of the local airport, as was the determination of the earlier application. Based on these, this objection does not affect the recommendation.

### **Wind Turbine Icing & Shadow Flicker**

132. Matters on wind turbine icing and shadow flicker were both considered under 10/2549/EIS and objection has again been raised regards shadow flicker in respect to this application. The proposal would not have any additional impacts on such matters taking into account there being no physical changes to the scheme as approved and there being no change to the surrounding area, position of the closest properties / footpaths etc or the use of land. There are no additional planning policy considerations that would affect the considerations or determination of this application in these respects.

### **Radio and Microwave Communications including Television link interference**

133. The physical details of the wind farm are not being sought for amendment through this proposal and the same impacts on such links as a result of the approved wind farm would therefore remain. Any new links within the area since the approval of the wind farm should have taken into account its potential construction and it would be unreasonable on the wind farm to require the positioning of turbines to take into account new links were any to exist. In view of these matters and there being no new planning policy which would affect such considerations further than those detailed above, there are no circumstances which would require a change to the recommendation / decision. No objections have been raised from consultees with interests in these matters.

### **Other Material Planning Considerations**

#### **Ground Conditions and Contaminated Land**

134. The schemes impacts on ground conditions and the potential to contaminate the land was considered as part of the initial approval with assessments having being undertaken in respect to soils, land use, hydrology (including flood risk), hydrogeology and contaminated land. The submission was considered by the Environment Agency and considerations took into account their response. The circumstances of the submission remain to be the same as when previously considered in that the overall site is located on part green field, part brown field land, and partly above a groundwater source protection zone. It was and remains to be considered that the proposed development is in accordance with relevant policies and that previous conditions imposed relative to contamination and ground conditions, (3, 5 & 34) should be imposed. The Environment Agency advised they have no comments to make on the application.

#### **Impact upon Tourism**

135. The scheme was previously considered against its impacts on Tourism. The physical appearance of the scheme would not change from that approved although the control of noise related impacts could be argued as being capable of affecting tourist visits to the area such as walkers etc. However, as OAM or EAM noise is a limited phenomenon and there is no evidence of it being likely to occur at the site, it is considered that this proposal would not affect tourism which in the immediate surroundings of the wind farm.

### **Impact on National Grid's High Pressure Gas Pipeline**

136. Considerations of the previous scheme took into account there being a high pressure gas pipeline across the site, the need to space turbines away from the pipeline and the need for construction traffic moving throughout the site in the vicinity / over the pipeline. The developer would have a duty to agree operations in the vicinity of the pipeline with the National Grid and specific conditions controlling such matters are not required. The installation of protective fencing within the site was considered would impact on the character and appearance of the area for a period of time and conditions were imposed to address this impact. These remain to be relevant and it is recommended condition 16 be re-imposed.

### **Grid Connection**

137. The Companion Guide to PPS 22 suggests that developers should provide details on the most likely route and method of grid connection links as part of their submissions although this has now been revoked.
138. It was previously considered that an over ground connection link mounted on wooden poles (which are normally of a limited height) would be acceptable in principle as it is a common form of development within the countryside / urban fringe around settlements, which is not considered to significantly contrast with the surroundings due to its limited scale and established appearance within a wider landscape where undulations, tree cover, landscaping and other features would serve to break up any views. The proposal does not affect these matters.

### **Property Prices**

139. Objection has been made that the wind farm will de-value properties, however, impact on property prices is not a material planning consideration and concerns over this cannot therefore be taken in to account in determining this application.

### **Energy Savings and Viability of the Site**

140. Matters of energy saving and the viability of the site was previously considered and have been raised again in objection to this application. As previously reported, a previous High Court decision held that the viability of such a scheme was a matter for the developer and not the Local Authority whilst the NPPF (para. 98) advises that when determining planning applications, local authorities should not require applicants for energy development to demonstrate the overall need for renewable or low carbon energy and recognise that even small scale projects provide a valuable contribution to cutting greenhouse emissions. Objection has been raised to this scheme over the temperamental nature of wind turbine technology, however, in view of NPPF guidance it is considered that there is no amendment to policy which would affect the previous considerations on these matters.

### **Trust Fund**

141. The committee report associated with 10/2549/EIS considered comments relating to a potential trust fund associated with the development which would be available for spending on community related projects in the Local Area. It was previously reported that the provision or otherwise of a trust fund is not a material planning consideration and cannot be taken into account when considering the merits of the planning application. This remains to be the case.
142. An objector has referred to the recent announcement that on-shore wind generating companies will be expected to contribute up to five times the current community fund to appease "locals" as well as a yearly subsidy in compensation to those adversely affected by the proximity of these structures and that this will, in time, become implemented policy. This relates to the announcement by DECC (Department of Energy and Climate Change) and DCLG (Department for Communities and Local Government) published a press release on the 6<sup>th</sup> June 2013 relating to Onshore

Wind based around communities having a greater say in respect to wind farms and gaining greater benefits from wind farms through increased community benefits. The press release announced Governments intention to make pre-application consultation with local communities compulsory for the more significant on shore wind farm applications, and that the Government will be expecting the industry to revise its Community Benefit Protocol by the end of 2013 to increase from £1000/MW of installed capacity to £5000/MW of installed capacity for the lifetime of the wind farm. These measures are not as yet in place and as such do not affect the determination of this application.

### **Decommissioning**

143. The initial Environmental Impact Assessment submitted under 10/2549/EIS advised that the decommissioning would result in the removal of above ground structures, although tracks to be used for on going agriculture and land management operations would be left in situ with other tracks being allowed to re-vegetate. It was indicated that the turbine foundations would be left in place and top soiled over following the removal of the turbines. Objection has been raised in respect to the disruption that would be caused in the decommissioning phase of the development and in respect to the remnants of the access tracks and concrete bases that may exist. In order to ensure the turbines are not left as a landscape feature when their effective life has ceased and to adequately control decommissioning, it is considered necessary to condition the requirement for their decommissioning and removal (including ancillary works) and for the reinstatement and restoration of the site following the expiration of their anticipated life span which is indicated as being 25 years. Whilst the comments within the EIA were noted it was considered appropriate to consider the scale and extent of decommissioning that the site owner / operator would need to undertake at the time of a detailed scheme being submitted, i.e. at the end of the wind farms life span. Objectors have re-raised the issue of the scheme 'scaring' the landscape and concerns over who will undertake this. Condition (37) remains to be recommended to address this matter and there are no material changes in circumstance or policy which suggest an alternative approach should be taken.

### **Turbine Positions – Micro Siting**

144. The need to include a degree of flexibility for the absolute final siting of the turbines was based around the potential for unknown ground conditions or other variables should they occur. The term given to this slight movement of the turbines from the positions as shown is micro siting. The proposed removal of condition 45 would not affect issues around the micro siting of the turbines specifically although micro siting of turbines could move the turbines closer to nearby properties which themselves can be affected by noise from the wind farm. The previous submission detailed an indicative micro siting plan which detailed known constraints and the resultant plan showed that the areas for micro siting were relatively restricted.
145. The condition which formed part of the approved scheme allowed for the micro siting of the turbines up to a maximum of 50m, although first requiring agreement with the Local Planning Authority which would allow adequate account to be taken of constraints and impacts such as landscape and visual, wildlife, amenity, noise, aviation etc and in order to ensure the scheme remains in broad compliance with the details of the Environmental Assessment as considered. It is considered that micro siting could still be acceptable were Condition 45 to be removed as turbines could be moved further away from properties and in view of the LPA having final agreement to any revised siting.

### **Turbine Safety**

146. The issue of turbine safety was considered as part of 10/2549/EIS and there are no material changes to these considerations as the proposal under this submission does not affect the construction / operation of the wind farm. it remains to be considered

that the proposed scheme would not have any significant impact on or unduly compromise safety in association with the concerns raised including blade failure, turbine collapse, ice throw or fire.

### **Loss of agricultural land**

147. This proposal would not have any additional impacts on the loss of agricultural land and there is no notable change in policy which would affect the previous considerations on this matter.

### **Surface Water Drainage**

148. Network Rail previously required surface water drainage be controlled to ensure there is no additional impact on the railway line or the associated embankment as a result of surface water run off. Condition 4 is recommended to be reimposed to address this matter along with the need to prevent uncontrolled surface water run off at the access points onto the highway. There are no changes in circumstances which would affect these considerations. The Environment Agency and Northumbrian Water advised they have no comments with respect to this application.

### **Earthworks**

149. Network Rail requested that any excavations or earthworks to be carried out in the vicinity of Network Rail property or structures must be designed and executed such that no interference with the integrity of that property / structure can occur and that if temporary works compounds are to be located adjacent to the operational railway, these should be included in a method statement for approval by Network Rail. Having considered the proposed site layout plan and the minimal scope for movement of the proposed infrastructure as would be achievable through the conditions as recommended, it was previously considered unnecessary to impose a controlling condition in this regard. However, an informative was, and remains to be recommended to advise the applicant of Network Rails comments in this regard.

### **Lighting**

150. Network Rail previously requested that any lighting of the proposed site is controlled to prevent undue impact on the safe operation of the railway line to prevent train drives being dazzled or to prevent confusion with line signalling. This remains to be relevant and appropriate and a lighting condition (19) has been recommended.

### **Setting a precedent for Wind Farm Development and cumulative impact**

151. Objection has been raised that this proposal would set a precedent. Notwithstanding this, all applications have to be considered on their own merit and any subsequent proposals for wind turbines either at this site or other sites, would need to be considered at the time of submission, against all relevant policy and guidance. Due consideration of other permitted or operational wind farms was taken account of in determining 10/2549/EIS and other future schemes would need to do similar.

### **Planning Obligations**

152. An informative was attached to 10/2549/EIS relating to the guidance within the Planning Obligations SPD which advised that the applicant should use reasonable endeavours for ten per cent (10%) of the workforce on the job site for the development (excluding specialist jobs such as site manager, agent, resident engineer, turbine erection crew and specialist electrical crew) to be delivered by new entrant trainees whom are residents of Stockton and the Tees Valley in discussions with the Councils Labour Market Co-ordinator. There is no change in material planning circumstances which would affect this and the informative should remain a part of any new approval.

### **Economic Development**

153. It is considered that the proposed removal of condition 45 would not affect economic development beyond the impacts of the previous scheme. The NPPF has a general presumption in favour of sustainable economic development and for renewable energy and this proposal therefore remains to be in accordance with policy in this regard.

#### **Other Matters**

154. General objection has been raised to the removal of the condition on the basis that circumstances haven't changed and that the developer should have a duty to adhere to the conditions as imposed initially. Whilst these are noted, the reconsideration of the condition is an integral requirement of the submission and the paragraphs above have gone through the relevant considerations.
155. The Stillington and Whitton Parish Council have made comment on the Environmental Management Plan submitted in support of this application. They have made specific reference to surface water drainage, timescales for noise / shadow flicker issues to be addressed and in respect to transport surveys to include highway associated structures. Surface water drainage was and would remain to be addressed by the conditions as recommended, as would the matter of shadow flicker and transport surveys and no material weight is reflected on the EMP for these matters. With regards to the timescales relating to noise, the majority of noise matters are dealt with by condition. With regards to AM, Banks are not willing to amend their EMP further on this matter and for the reasons detailed in this report, officers recommend that the condition is not sustained. AM would therefore have the fallback position of Statutory Nuisance legislation and timescales relevant to action being taken and mitigation being achieved would be variable depending factors relevant at the time of the occurrence (were there to be one).
156. Objection has been raised regarding the disruption during the construction phase of the development. This was considered as part of the initially approved scheme and there are no known changes to legislation / policy or scheme circumstances which would suggest a different approach is taken. Conditions were previously recommended to deal with such matters and remain to be recommended. This will allow for a planned approach for construction works and their associated impacts.
157. A number of objections were made relating to the literature that the applicant has passed around the community which includes reference to the potential community benefit from the scheme. Whilst these comments are noted, the content of the applicant's newsletters or other public consultation / advice notes is not a matter which affects the consideration of this application and is not a matter which the Local Planning Authority have formal control over.
158. An objector has referred to a recent announcement from Wales, regarding a feasibility study on the ineffectiveness of on-shore installations. Whilst it is noted that there is a lot of debate over the value of wind farms in terms of actual energy generated when compared to other forms of energy generation, the efficiency of wind turbines is not a matter which is considered to add weight against this proposal and government guidance Para. 98 of the NPPF advises that authorities should not expect developers to demonstrate a need for renewable schemes and that even small contributions are valuable ones. The proposal is therefore not being judged on its overall provisions to renewable energy in this regard.
159. Objectors have queried what safeguards the council will put in place to address the potential issue for the application to sell the site to a third party who has not been involved in any of the process to date, raising concern that the current applicant or developer may not be around for the decommissioning of the site and whether any of the governments forthcoming changes in policy will be retro applied. A number of

controls achieved by condition are relevant to the operational phase of the wind farm, including one relating to the de-commissioning of the site. Officers consider adequate control is achieved in the instance that the wind farm changes ownership throughout the course of its lifetime.

160. An objector has raised the matter of a Private Members Bill in Parliament which sought for minimum distances to be provided between dwellings and turbines. This Bill has not been brought in and as such should not be taken into account in the determination of this application.
161. Objectors have suggested that all the information upon which decisions and changes would or could be made on the Section 73 removal of condition 45 will be largely out of date. Whilst this is noted, the impacts of the scheme do (except for noise) do not extend beyond the impacts that would occur were, the existing permission to be implemented, and approving this current scheme, would not extend the date for commencement, and thereby would not extend the date by which the impacts of the scheme would start to occur on site. There is no evidence to suggest that new data would be required in regards to the information considered as part of the initial submission.

### **Human Rights Implications**

162. Objectors believe that it would be contrary to their rights under the European Convention of Human Rights to approve this application without fully considering the way this development could well affect them as outlined in a report submitted by the objector's consultant (MAS Environmental) and in respect to a requirement for respect of private and family life.
163. Objectors have commented on the schemes impacts on the human rights of residents. Article 8 of the European Convention of Human Rights (2010) indicates that everyone has the right to respect for his private and family life, his home and his correspondence. Whilst this also indicates that there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, objectors consider that the impact of this proposal on Human Rights would remain to need consideration even if there is a wider national benefit of the scheme.
164. The proposed development has been considered in the context of the European Convention of Human Rights 1950. Consultation has taken place with relevant parties, comments and views of parties has been considered and reported accordingly, thereby forming part of the decision making process as is required by relevant legislation. Importantly for this decision, account needs to be taken of the extant permission under 10/2549/EIS and relevant government guidance as well as the nature of the proposal, the impact on residential properties and their occupiers as well as visitors to the area and other relevant parties responsible for, or with interests in, the immediate and surrounding area. Consideration has been given to the level of impact and mitigating circumstances with conditions being recommended to reduce the impacts of the scheme where it is considered necessary to do so. It is considered that the balancing exercise (between the rights of all those parties potentially affected by the proposed development and the rights of the applicant and in the public interest) intrinsic to the planning regime and undertaken in this report with specific reference to this planning application has demonstrated that a decision to grant conditional planning permission is compatible with the European Convention of Human Rights. With respect to the specific issue of Amplitude Modulation, there is no clear evidence that it would occur at this site and government endorsed guidance is that the understanding on this matter is still emerging and that best practice is to not impose a condition in this regard. Instead, in the instance of an AM related noise

problem, reliance would be placed on the Environmental Management Plan and were this to be unsuccessful, statutory nuisance powers. As there is a fall-back position, it is considered that human rights relative to this impact can be adequately preserved.

## **CONCLUSION**

165. The proposed development has been considered against the submission under 10/2549/EIS as well as this current submission in the context of the Environmental Impact Assessment / Statement, consultee and consultation responses, its associated impacts and other environmental information / impacts, in particular in respect to noise. The impacts of the proposal have been considered against national and local planning guidance and other relevant documents. There are no changes in the scheme or in planning guidance which would suggest a different view should be taken on all matters (excluding noise) to the considerations reached in determining application 10/2549/EIS.
166. Condition 45 was imposed as a precautionary measure as there was no direct evidence that excess amplitude modulation would occur at this site. The latest government endorsed guidance in respect to Excess or Other Amplitude Modulation (May 2013) indicates that the evidence in relation to this is still developing and current practice is to not impose conditions in respect to Amplitude Modulation. Having reviewed a number of recent appeal decisions which had been carried out at Inquiry, planning inspectors are avoiding the imposition of conditions relating to amplitude modulation, generally citing there being insufficient evidence to warrant such a condition being imposed. The council's independent acoustician has advised that amplitude modulation is still unpredictable and not fully understood, that condition 45 is not suitable considering that a purely objective procedure could not be so simply implemented on an automated basis that could be made adequately robust as it would require a very significant amount of user intervention. The Councils consultant acoustician considers that were this unpredictable phenomenon to occur, it should be dealt with through the provision of an Environmental Management Plan. In view of these matters, notwithstanding there being notable objections and challenges to the submission from local residents and their representatives, officers consider that there is insufficient evidence to suggest amplitude modulation would occur at the site and the impacts of this could therefore not be predicted. It is further considered that the overall method of controlling such a phenomenon (measurement, assessment and mitigation) would be too constrained by the condition to be practically controlled and for it to ensure all occurrences of amplitude modulation would be addressed. Its retention has the potential, therefore, to compromise the councils ability to take restraining action under statutory nuisance legislation where the noises were within the limiting controls of the noise conditions. It is the Head of Planning's opinion therefore that the council should, in this instance, remove condition 45 in accordance with current best practice (alongside the associated informative).
167. Notwithstanding this, in order to achieve some control over the implementation of the Environmental Management Plan which the applicant is referring to as a method of some control over matters, a condition is recommended requiring adherence to the Environmental Management Plan, subject to regular review to ensure an up to date document is operational through the lifetime of the wind farm and subject to further agreement via condition relating in respect to matters of how and when compliance / non-compliance shall be dealt with.
168. Beyond control by conditions and the operation of the Environmental Management Plan, the Statutory Nuisance regime will remain available to address unpredicted



problems of noise. This takes into account the findings of recent planning appeal Inquiry's for wind farm development and other guidance.

169. In view of all matters detailed, it is considered that the proposals accord with the guidance of the practice /companion guides to PPS5 & PPS9, the National Planning Policy Framework, Saved Local Plan Policy EN4 and EN30, Core Strategy Policies CS3 and CS10, and emerging policies as detailed within the report. The proposal is contrary to saved Local Plan Policy EN13, the guidance of which is considered to be not specifically relevant to this development type.

**Corporate Director of Development and Neighborhood Services**

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**Financial Implications** – This application is recommended for approval without control over a certain type of noise which it is considered cannot be definitively said, will occur at the site. Conditions are recommended which deal with general noise and an Environmental Management Plan would exist to deal with other noise causing harm / detriment should it occur. The Local Authority would not have ultimate control of action taken under the Environmental Management Plan and as such, should noise occur which needs addressing which is not dealt with by either the recommended conditions or the Environmental Management Plan, then there may be a requirement for action to be taken under Statutory Nuisance Legislation at the cost to the authority.

**Environmental Implications** – Within this report consideration has been given to all environmental implications of the proposed scheme including pollution, amenity, ground conditions, nature conservation and ornithology, health and safety, heritage, visual, landscape matters as well as climate change and renewable energy.

**Legal Implications** – There are no known legal implications in determining this application.

**Community Safety Implications** – Within this report consideration has been given to implications in respect to community safety including the impact of traffic and transportation of goods, the operation of the turbines and the use of surrounding Public Rights of Way as well as impacts relating to residential properties. Impacts are considered to be acceptable taking into account policy and the existence of approval for a wind farm under application 10/2549/EIS.

**Human Rights Implications** – The provisions of the European Convention of Human Rights 1950 have been taken into account in the preparation of this report. The detailed considerations within this report take into account the impact on residential properties and their occupiers as well as visitors to the area and other relevant parties responsible for, or with interests in, the immediate and surrounding area. Consideration has been given to the level of impact and mitigating circumstances with conditions being recommended to reduce the impacts of the scheme where it is considered necessary to do so, with an overall account being taken of the approval granted under 10/2549/EIS and the limited changes being proposed.

**Background Papers**

Planning Policy Statement 5: Planning for the Historic Environment Practice Guide

Planning for Biodiversity and Geological Conservation – A guide to good practice

DCLG Planning Practice Guidance for Renewable and Low Carbon Energy – July 2013

Adopted Stockton on Tees Local Plan (June 1997)

Stockton on Tees Core Strategy Development Plan

Stockton on Tees Supplementary Planning Documents

SBC Landscape Character Study  
ODPM Circular 06/2005 Biodiversity and Geological Conservation  
Wind Farm Development and Landscape Capacity studies – East Durham and Tees Plain and the Addendum  
UK Renewable Energy Strategy  
North East Regional Renewable Energy strategy (on behalf of The North East Assembly)  
DECC – 2050 Pathways Analysis  
Onshore Wind Energy Planning Conditions Guidance Note – RaB and BERR  
Update of Shadow Flicker Evidence Base, Final Report – PB / DECC  
Salford University (on behalf of DEFRA) – Research into Aerodynamic Modulation of Wind Turbine Noise: Final Report July 2007.  
Environmental Protection Agency: Guidance Note on Noise Assessment of Wind Turbine Operations at EPA Licensed Sites.  
IoA – A Good Practice Guide to the Application of ETSU-R-97 for the Assessment and Rating of Wind Turbine Noise.  
European Convention of Human Rights 1950

**Ward and Ward Councilor**

WARD	Western Parishes
Ward Councillor	A Stephenson