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Decision by Malcolm Mahony, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-140-2069
- Site address: land south west of Lurgiescleuch (Pines Burn), Hawick
- Appeal by Energiekontor UK Ltd against the decision by the Scottish Borders Council
- Application for planning permission 17/00010/FUL dated 3 January 2017 refused by notice dated 6 November 2017
- The development proposed: wind farm comprising 7 turbines up to 149.9 metres high to tip, 5 turbines up to 130 metres to tip and associated infrastructure
- Application drawings: listed in schedule
- Dates of site visits by Reporter: 17 May, 14 June, 26 July 2018

Date of appeal decision: 17 August 2018

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## Decision

I allow the appeal and grant planning permission subject to the 35 conditions listed at the end of the decision notice. Attention is drawn to the 4 advisory notes at the end of the notice.

## Preliminary

1. On 16 May 2017, the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 came into force. The 2017 regulations revoked the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 with certain exceptions. The 2011 Regulations continue to have effect for an application (and any subsequent appeal) for planning permission where the applicant submitted an environmental statement in connection with the application before 16 May 2017. That was done in this case. I have therefore determined this appeal in accordance with the 2011 regulations as they applied before 16 May 2017.

## Reasoning

2. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. My attention has been drawn to the Scottish Borders Local Development Plan 2016 and particularly Policies ED8: Archaeology and ED9: Renewable Energy Development. I am satisfied that these comprise the relevant provisions of the development plan in this appeal.



3. Having regard to the provisions of the development plan the main issues in this appeal are: landscape character and visual amenity; impact on archaeological assets and historic landscape; cumulative visual impacts with other existing, consented and proposed wind farms; residential amenity; tourism; falcon breeding businesses; roads; benefits; and policies on renewable energy.

### **The proposal**

4. The wind farm is proposed for a location some 8 kilometres south-south-east of Hawick, 6.5 kilometres south-west of Bonchester, and 12 kilometres south-south-west of Denholm. The turbines would be located on the eastern slopes of Pike Fell and on Brown's Hill. This is an upland landscape comprising coarse unimproved grassland used for grazing and coniferous plantation forestry. There are scattered dwellings in the vicinity, the closest of which has a financial involvement with the scheme.

5. The proposal is for seven turbines (numbers 4, 6, 7, 9, 10, 11 and 12) with a maximum height to blade tip of 149.9 metres and a nacelle height of 91.4 metres, and five turbines (numbers 1, 2, 3, 5, and 8) with a maximum height to blade tip of 130 metres and a nacelle height of 80 metres. The larger turbines were reduced from the original proposed height of 158.5 metres to avoid the requirement for visible aviation lighting in line with Civil Aviation Authority requirements. The smaller turbines were introduced in the most topographically elevated locations to achieve an even position on the skyline from many viewpoints. The modifications also avoided Ministry of Defence threat radar visibility. Supplementary Environmental Information was submitted to the council in support of the amendments.

6. The scheme is designed to achieve approximately 36 megawatts of generating capacity, depending on the final turbine selection. Each turbine would have an output capacity of between 2.5 and 3.3 megawatts. Using standard calculations, this could save up to 40,681 tonnes of carbon dioxide emissions each year. The Distribution Network Operator has indicated that there is a suitable grid connection at Hawick. The new grid connection line would be subject to a separate consent process.

7. An existing agricultural access track from the B6399 road would be up-graded to form the site entrance road for construction and maintenance vehicles. A total area of 23.24 hectares of trees would be felled to accommodate infrastructure; this would be compensated by equivalent replacement planting within the application site boundary. Site tracks would have a minimum running width of 4.5 metres and be surfaced with coarse aggregate. A temporary construction compound and storage area measuring 100 metres by 50 metres would be located on the lower eastern slopes of Pike Fell and a 15 metre by 10 metre single storey building housing the substation would stand nearby.

### **Reasons for refusal**

8. The council refused the application on the grounds that:

1. The proposal is contrary to Policy ED9 of the adopted Scottish Borders Local Development Plan in that it would have unacceptable adverse impacts that cannot be mitigated and that are not outweighed by the wider economic, environmental and other benefits that would be derived from its operation. In particular: the scale, form and location of the development would represent a significant and harmful change to the

existing landscape character and visual amenity of the immediate locality and the wider area; and the development would give rise to an unacceptable and dominating impact upon the residential properties at Langburnshiels.

2. The proposal is contrary to Policies ED9 and EP8 of the adopted Scottish Borders Local Development Plan in that the development would give rise to significant and unacceptable impacts upon the setting and appreciation of known archaeological assets, including the Scheduled Monuments of Penchrise Pen fort and earthwork, as well as to other designated and undesignated sites of archaeological importance in the area. The wind farm would also introduce large-scale industrial structures on the fringes of an historic landscape.

### **Landscape character and visual amenity**

9. The site stands in hilly country close to the edge of blanket forestry plantations which extend for many kilometres to the east and south and eventually over the national border to Kielder. There is some topographical screening by higher ground to the east, west and south. To the west and north is a tract of more open land which encircles Hawick.

10. The site lies within Landscape Character Type 4CHG: Southern Uplands Type with Scattered Forest Cauldcleuch Head Group. This is an upland landscape characterised by large-scale rolling heather moorland and grassland covered hills with locally prominent scattered large coniferous plantations. Broadly speaking, this type of landscape is a better fit for commercial wind farms than areas with detailed relief and small-scale features.

11. The area of the appeal site has no landscape designation. The Teviot Valley Special Landscape Area is the closest designated area, its boundary lying some 6 kilometres to the north-east. This is a local designation including the valley of the Rule Water, which is relatively small in scale and intimate, and Bonchester Hill, Rubers Law and Minto Hill, local landmark hills which are accessible to walkers.

12. Policy ED9: Renewable Energy Development of the Scottish Borders Local Development Plan, 2016, makes reference to a report which the council commissioned from Ironside Farrar, namely the Wind Energy Landscape Capacity Report and Cumulative Impact Study, 2013. The policy states that proposals for wind turbines should demonstrate that they can be satisfactorily accommodated in the landscape, and they should properly address the issues raised in that report.

13. The 2013 report identifies the landscape type of the appeal site - the Southern Uplands with Scattered Forest (Cauldcleuch Head Group) - as having medium capacity for very large turbines in small or medium size groups with minimum separation distances of 5-10 kilometres. Very large turbines are defined for this report as those over 100 metres in height (with no upper limit stated). Capacity for turbines of this size is stated to be located in the more elevated upland areas where topographical containment reduces intervisibility. The area is described as sparsely populated.

14. As Policy ED9 points out, the Ironside Farrar report is a strategic level study. It gives general guidance about the location and scale of potential development, but it does not purport to advise on specific proposals. In this case, the proposal is for a medium-size wind

farm with turbines over 100 metres in height which also satisfies the other criteria in the report. I therefore consider that it falls within the scope of the report's recommendations. However, its overall acceptability has to be assessed on the individual merits of the scheme.

15. The council's consultants have since prepared an updated report (2016), which forms part of draft Supplementary Planning Guidance on Renewable Energy. However, as the council planning officer points, since this has not been approved or adopted by the council, it carries little weight in the determination of this application. I note, however, that it continues to recognise some capacity for very large turbines (over 120 metres in height) in the area of the appeal site and therefore does not signal any significant change in approach.

16. Scottish Natural Heritage does not object to the proposal, albeit its remit to do so is restricted to matters of national interest. However, it advises that the proposal would have localised adverse effects. Among other things, it comments that the turbines would tend to appear out of scale, diminishing the apparent expansiveness of these uplands, reducing the prominence of Bonchester Hill and detracting from key focal points in the landscape such as the Maiden Paps. They would be prominent from Rubers Law (from where they would be stacked in rows) and Bonchester Hill. They would adversely affect the smaller scale and more complex landscape of part of the Rule Water valley (to the north-east). If all currently proposed schemes were consented, wind farms could become the characterising feature of the area between Hawick and the Southern Upland ridges.

17. The council's landscape architect does not object to the proposal. In more detail, he accepts that the 2013 Capacity Study offers some support for a wind farm of "very large" turbines at this location. Effects on the closer viewpoints, including around Bonchester Bridge, are relatively localised because visibility is quite contained. At locations beyond Hawick, the views would not be character changing at that distance. The site does not lie within designated wild land or have a strong sense of remoteness. The scheme has visual coherence and avoids the appearance of stacking. The turbines are extremely large in the Scottish Borders context (slightly exceeding any other consented turbines in the area) and are likely to make some of the surrounding hills look smaller and less dramatic. They would diminish the Maiden Paps and Bonchester Hill as focal points when both are seen together. The various other schemes present the potential for major change in landscape character over a significant part of the land between Hawick and the border ridge. Of these, the cumulative effect with Birneyknowe Wind Farm proposal is potentially the most significant.

18. Based on my site inspections and study of the documentation, I find that in terms of receptors the proposal would be visible to varying degrees from roads in the adjoining valleys. There would be views of the whole wind farm over a stretch of about 2 kilometres of the B6399 Newcastleton to Hawick road for traffic approaching on the south side, and intermittent views of parts of the proposal for traffic approaching on the north side. Viewpoint 3: B6399 South of Langburnshiels (shown in the Environmental Statement) gives a sample view and I note that, as some objectors have pointed out, the view from a short distance south includes Rubers Law. On the A7 tourist route there are views available from stretches of the road to north of Hawick from distances of some 10 kilometres and over. However, these are limited to blade tips and reduced by the presence of intervening woodland.

19. There would also be visibility from locations within some smaller scale upland fringe and river valley landscapes to the north-east, including from the Teviot Valley Special Landscape Area (a local designation which comes to within some 6 kilometres of the site). Those locations include the summits of Bonchester Hill, Rubers Law and Minto Hill, although in each case the proposal would occupy a narrow angle of view within an extensive panorama providing long views in all directions, and at distances between 7.1 and 14 kilometres.

20. As to the effect of the proposal on the apparent scale and prominence in the landscape of those hills and the Maiden Paps, I observed that there are few locations where the turbines would be seen together with those hills. From Rubers Law, the Maiden Paps would be seen to the right of the proposed turbines adversely affecting their perceived scale and prominence; however, since Bonchester Hill would be seen some 40 degrees to the east of the turbines, there would be little effect on its apparent scale and prominence. Similar comments can be made for the view from Bonchester Hill. From lower locations in the Rule Water valley where the proposal would be visible, those hills are generally screened by the landform or not prominent. Consequently, the effect of the proposal on those focal features would be limited.

21. The Borders Abbeys Way is a long distance circular walking route linking Melrose, Hawick and other towns, which would offer occasional views of the appeal proposal. For example, near Black Law walkers would view the proposal over a short stretch of path from a distance of 13.3 kilometres. At lower elevations, views from a few locations would be available mainly to occupants of vehicles on minor roads. Overall, views from within Teviot Valley Special Landscape Area would be limited and localised, and I am satisfied that the character of this area would not be changed.

22. Some objectors argue that the combination on one site of different turbine heights, types and possibly rotation speeds would be visually unsettling. Neither SNH nor the council's landscape architect express concern on this aspect of the scheme. It is not unusual for wind farms, especially if extended, to comprise different turbines, and I am not aware that when built that aspect has been particularly contentious, nor has anyone brought such cases to my attention.

23. Drawing all these points together, I find that the landscape and visual effects of the proposal would not be sufficiently adverse to justify refusal.

### **Impact on archaeological assets and historic landscape**

24. The council's Archaeology Officer does not object to the proposal. However, referring to various prehistoric sites and related landscape features visible from Penchrise Pen, he comments that high visibility of turbines from Penchrise Pen fort and earthwork (which are both Scheduled Ancient Monuments) would be distracting and tend to dominate that landscape. It would introduce large scale industrial elements on the fringes of a historic landscape (Slitrig Valley and Penchrise Pen) which is generally agrarian, with small scale structures, and developed over millennia. The impact on the setting of undesignated probable prehistoric settlements at Ringlees Knowe and Wilson's Shoulder is also of concern. The officer accepts that the understanding and appreciation of key setting

relationships between sites will remain, but is concerned at the visual effect on the landscape experience. He recommends that measures could be required by condition to enhance the understanding and appreciation of the historic assets in their landscape context. Whilst he considers that the proposal is on the margins of acceptability in its own right, the cumulative impact of this proposal together with Birneyknowe and other proposed wind farms, if built, would be unacceptable.

25. Although the proposal does not raise issues of national significance such that it would object, Historic Environment Scotland expresses concern about moderate adverse impacts of the proposal on the settings of Penchrise Pen fort and earthwork (both scheduled ancient monuments), as acknowledged in the Environmental Statement. However, given that the wind farm would be an element within wide panoramic views, it accepts that adverse impacts on the setting of Bonchester Hill fort and Rubers Law fort and Roman signal station would be minor. It does not consider that any mitigation is practical. It does, however, remain concerned about growing cumulative impacts from other wind farm proposals on the setting of scheduled monuments in this area.

26. Intervisibility between Penchrise Pen fort and prehistoric settlement sites along the Slitrig and Allan Waters and the hilltop forts at Bonchester Hill and Rubers Law is important for understanding their significance, but this would not be affected. The proposed array would occupy a roughly 20 degree arc of the view at a distance of some 4.5 kilometres, and seen mostly against the backdrop of other hills. I agree with Historic Environment Scotland that the effect on the Penchrise monuments would be moderately adverse. Impacts on other assets would be less.

27. Were other wind farms in the locality to be approved and built, especially Birneyknowe, the council's archaeology officer considers the cumulative impact level would potentially rise to major, and Historic Environment Scotland has expressed particular concern in this respect. However, since none of the wind farms giving rise to those concerns has been consented or built, I accord this matter reduced weight.

28. Policy EP8: Archaeology of the local development plan states that development proposals will not be permitted where they would destroy or adversely affect the appearance, fabric or setting of scheduled monuments unless two criteria are satisfied. Taking the first part of the policy, the appeal proposal would not lead to the destruction of scheduled monuments and there would be no effect on the appearance or fabric of monuments. There would, however, be moderate adverse effects on the setting of some monuments and lesser effects on the setting of others. The proposal would not therefore be in full accord with the policy.

29. The policy allows exceptions where substantial benefits would clearly outweigh the national value of the sites (criterion one). The development would offer the benefits described in the relevant section below. Balancing the degree of effect with the level of benefits, I consider that this criterion is met. The second criterion requires that there are no reasonable alternative means of meeting the development need. In this respect there is a national policy imperative to develop wind energy and this can only be done where the wind energy resource is found, as it is here. Beyond that, it is clearly not appropriate seek to direct wind farms to locations elsewhere simply because other locations exist. I am therefore satisfied that, as the criteria are met, the proposal does not offend this policy.

30. The appellants draw attention to the approach to dealing with scheduled ancient monuments in Policy EP8 as compared with that in Scottish Planning Policy (at paragraph 145). The test used in the latter is whether a proposed development would have an adverse effect on the integrity of the setting of a monument. I agree that the nature of the predicted effects would not damage the integrity of the settings of the monuments in question. As the council's Archaeology Officer puts it, the understanding and appreciation of key setting relationships between sites would remain. There would not therefore be a conflict with national policy.

### **Cumulative visual impacts with other existing, consented and proposed wind farms**

31. I note that the council's reasons for refusal do not refer to cumulative effects, although other parties do.

32. The 2013 landscape report identifies an extensive tract of land in the Lammermuir and Moorfoot Hills along the boundary with East Lothian where cumulative impacts with other wind farms should limit development. However, the appeal site does not lie within that area.

33. The nearest operational windfarm to the appeal site is at Langhope Rigg. This lies some 19.5 kilometres to the north-west and has 10 turbines measuring 121.3 metres to blade tip. From the locality of the appeal site it has limited visibility and, at that distance, little cumulative impact.

34. At Windy Edge, 9.2 kilometres to south-west of the proposal, a wind farm has been consented with 9 turbines between 110 metres and 125 metres in height. It would be located on the southern slopes of Greatmoor Hill. Intervening landform would considerably reduce its effects cumulatively with the appeal proposal.

35. I have been informed of several wind farm proposals without consent which could have cumulative effects with the appeal proposal. At the time of writing, a proposed development at Birneyknowe is the subject of a planning application under section 36 of the Electricity Act. This would comprise 15 turbines (132 metres to blade tip) with a combined generating capacity of up to 60 megawatts, and would be located some 3.4 kilometres north of the Pines Burn site (as measured between the closest turbine locations) on lower-lying, less hilly terrain. Birneyknowe Wind Farm is opposed by the Scottish Borders Council. A report on this proposal is in preparation and will be considered by the Scottish Ministers in due course. The turbines would be visible in many of the same viewpoints as Pines Burn Wind Farm, often in the same direction of view. Consequently, this would widen the angle of views of turbine development, thereby increasing the visual impact on receptors, including sensitive receptors such as some of the hilltop viewpoints and some residential properties, as well as some of the archaeological assets mentioned below.

36. An application for 7 turbines up to 132 metres in height has been submitted at Barrel Law. At some 15 kilometres to the north-west, this would have little cumulative effect with the appeal proposal.

37. In addition to the above, the Environmental Statement considered cumulative impact with three sites at Wauchope and Newcastleton where a scoping opinion was issued by the Energy Consents Unit in March 2016 based on 90 turbines up to 132 metres in height. These sites lie within 3 to 15.5 kilometres of Pines Burn. They also would be seen from many of the same viewpoints and in the same general direction as Pines Burn, in some cases considerably widening the field of view in which wind farms could be seen, and with commensurate cumulative visual impact on receptors, including on some of the archaeological assets. In the above cases, there would also be a wide range of potential impacts from sequential visibility and potential change in landscape character.

38. With respect to the schemes referred to in the last two paragraphs, the more steps a scheme is from implementation, the less weight I can give it.

39. Bearing all the above in mind, and particularly the last point, I am not persuaded that the proposal should be rejected on the grounds of cumulative visual impact.

### **Residential amenity**

40. Whilst planning law is not intended to protect the view from individual properties, it is generally accepted that it would not be in the public interest for a development to create unacceptable living conditions at a dwelling. Various tests have been applied in these circumstances, but my attention has been drawn, in particular, to that accepted by the Scottish Ministers with regard to their decision on a section 36 application at Afton Wind Farm in East Ayrshire in 2014. Here the Ministers considered whether the development would result in “overbearing visual effects on residential amenity to a degree that any property might be considered an unattractive place in which to live.” With this test in mind, I have looked at those dwellings within two kilometres of the appeal site, other than those which would have limited or no visibility of the turbines.

41. The closest residential property is Lurgiescleuch, which lies just over 800 metres to east of the nearest turbine. I understand that the house is owned and occupied by members of the Feakins family, who own the land on which the development would be constructed and would therefore benefit financially from the development. Visibility from the house would be limited to oblique views from two small windows at the rear and would be filtered through mature woodland.

42. The other affected dwellings lie to the south of the proposal within the Langburnshiels cluster. Wyndburgh Cottage is a two-storey house which stands 1.3 kilometres from the nearest turbine. It would have unobstructed northerly views from the kitchen/diner, which has a large floor to ceiling window, and from the master bedroom, which has a tall very narrow window. From these the array would be very prominent. Each of those rooms also has a window facing in a different direction. Main views from the lounge would be unaffected. The garden ground has views to the north through west to the south, the northerly of which would have prominent views of the turbine array through an arc of about 15 degrees.

43. Immediately south-east of Wyndburgh Cottage is a site with planning permission in principle for a dwelling. A plan accompanying the permission indicates a 1½ storey dwelling oriented north-east/south-west with a note for there to be extensive amenity planting in the



grounds. A reserved matters application has recently been submitted to the council but not, at the time of writing, determined. This locates the primary living spaces and their outlook to the south side of the dwelling from where longer distance views down the valley would be available. Views of the turbines, which lie to the north, would thereby be minimised. Views of the turbines would be available from the garden ground, although this would also have open views in other directions.

44. Slitrig Cottage is a single storey property to the north of the B6399. It would have direct views from two bedroom windows on the north-east elevation and oblique views from the kitchen and lounge on the north-west elevation, although the primary (south-west) aspect from the lounge would be unaffected. The garden ground and patio have wide views in three directions, the northerly of which would give prominent views of the turbine array.

45. Langburnshiels Farmhouse is a large property some 1.3 kilometres from the nearest turbine. Turbines would appear very prominent from the conservatory but main views from the kitchen and lounge would be unaffected. The garden lies to the north-west of the property from where unrestricted views of the proposal to the north would be possible, although views to the west would not be affected.

46. Coopers Cleuch and The Steading are single storey dwellings linked around a courtyard. They also stand some 1.3 kilometres from the nearest turbine. Although landform limits visibility to partial views, the properties would have filtered views of the southern turbines.

47. Shankendshiels is a house to the south of B6399 some 1.4 kilometres from the nearest turbine. Landform would limit views to the southern turbines and these would be filtered by vegetation. The analysis undertaken for the appellants indicates that main views from the conservatory and lounge would be unaffected and this has not been challenged.

48. Having studied the appellants' assessment and visited the locations and locality of these properties, I am satisfied that the appeal proposal would not result in a situation where the above test would be failed at any of those properties.

## Tourism

49. The appellants cite research commissioned by the Scottish Borders Council in 2013, which found that onshore wind energy contributed at least £10.8 million gross value added to the Scottish Borders economy and supported 115 jobs. It also reported that there is no evidence that wind farms have any significant effect on tourism, and that, over the period since 2008, tourism-related employment has increased significantly despite a rise in the number of wind farms within the district. They also refer to the report by Biggar Economics "Wind Farms and Tourism Trends in Scotland", 2016 as reflecting a similar picture.

50. Objectors refer to reports by the John Muir Trust, Association for the Protection of Rural Scotland and the Mountaineering Council of Scotland which assert a contrary view and challenge the Biggar Economics report. I have insufficient information to come to a firm view on that. However, I have not been informed that the study for the Scottish Borders Council has been challenged. Given that this looks at the specific circumstances in the

Scottish Borders and was commissioned by the council itself, it must carry increased weight. I am not therefore persuaded that the proposal would have any significant adverse effect on tourism generally in this part of the Borders.

51. More specifically, the Environmental Study assesses the proposal from important tourist routes and areas, including the B6399 and A7 roads, Core Paths, rights of way, the Borders Abbeys Way, hill walking routes and summits, Cragbank Wood Nature Reserve and Hawick Golf Course. It concludes that such significant visual effects as are predicted would be limited and my site visits confirm this.

52. Objectors have pointed out that the B6399 road is a tourist route to Hermitage Castle, a semi-ruined 13<sup>th</sup> century property in the care of Historic Environment Scotland, some 11 kilometres south of the appeal site. Visitors would experience views of the wind farm if approaching or leaving the castle on the north side whilst en route but not in the vicinity of the castle. I am not persuaded that such views would affect the attraction of this property to visitors.

53. Ruberslaw Wild Woods Camping facility attracts visitors who have a particular appreciation of the local scenery. The business contributes directly and indirectly to the local economy. As the facility lies on the northern slopes of Rubers Law and because of the location of woodland belts, the camping areas and routes within the estate would be largely, though not entirely, screened from the proposed development. Nevertheless, visitors climbing the Law would obtain open views as described above. Views from this locality would be at a distance of over 9 kilometres.

54. Mr Bailey, the proprietor of Ruberslaw Wild Woods Camping claims that the Biggar Economics report has been shown to be seriously flawed in methodology and conclusions, but with no further details. He takes issue with aspects of the Rubers Law viewpoint analysis in the Environmental Statement, particularly the use of terms like “slight” and “not significant”. However, these are standard technical terms with defined meanings which are used by landscape architects in such studies, rather than having their everyday meanings. (I appreciate that this can lead to confusion for the general reader.) I note that neither the landscape architect for Scottish Borders Council nor Scottish Natural Heritage disputed the Environmental Statement analysis in relation to Rubers Law.

55. Mr Bailey refers to the Zone of Theoretical Visibility figures. These do not take account of screening by buildings or vegetation, so actual visibility would be less than shown on those maps and would be reduced by vegetation. The CLVIA figures he mentions show cumulative effect with other wind farms, not built or consented, which will have greater effect than for the appeal proposal alone. Overall, I am not convinced that the proposal would have a significant (in the everyday sense) adverse effect on the business.

### **Falcon breeding businesses**

56. Jeffrey Armstrong started operating a falcon breeding business at Hawthornside in 2013. The birds are bred for export to the Middle East, mostly for racing rather than hunting. He sells the birds for between £600 and £15,000 each. Last year he bred and exported around 60 birds. He employs three part-time workers. He plans to expand the business and has planning permission for more breeding chambers. He could be

employing 6-10 permanent staff within the next 5 years. The presence of his business has attracted two similar businesses to set up nearby (at Highend and Weensmuir Farm). These businesses make a considerable contribution to the fragile rural economy. Starting from the above figures, he calculates current turnover figures and projected future turnovers for the three businesses.

57. He states that the area around Hawthornside is ideal for training falcons. There are broad sweeps of open landscape with rough pasture where the birds can be seen for quite long distances. The climate is perfect for the purpose.

58. Mr Armstrong explains that falcons, especially the younger ones which he trains for export, have an instinct to perch on the highest available structure. They would therefore be attracted to the turbine towers. Young birds are not as manoeuvrable as the older ones and would not understand the danger of rotating turbine blades. He states that the birds will sometimes fly beyond a few miles from the project and that, using telemetry, he has occasionally tracked his birds flying over the Pines Burn site. He alleges that the appellants have failed to take into account the large number of falcons being hacked in the skies over and around the appeal site. He regards the wind farm proposal as a threat to the existence of his and the other two businesses. He states that sites suitable for breeding and training of falcons are rare, which is why this area has become a hub for such commercial enterprises.

59. Mr Armstrong states that falcons normally operate up to 6.4 kilometres (4 miles) from base when being hacked. This is contested by the appellants, who argue that hacked birds are likely to conduct the majority of their flight activity within 2 kilometres, which they state is the normal core range of wild birds foraging from their nest sites, although I note that larger maximum foraging ranges are cited in one of their reference documents. The appellants also point to Scottish Natural Heritage advice that 98% of peregrines in the vicinity of wind turbines can be expected to avoid collision with the blades.

60. The ornithology study commissioned by the appellants included target species vantage points surveys over two breeding seasons and one wintering season between September 2014 and August 2016, each season covering a 6 month period. This totalled 353 hours of surveying. The target species included peregrine falcon. The surveys recorded one flight by a peregrine falcon over the application site on 24 November 2014, which was at potential collision height in relation to the proposed turbines. The appellants point out that, by contrast, the ornithology study for the Birneyknowe Wind Farm proposal observed several falcons. The Birneyknowe application site abuts Hawthornside. Mr Armstrong has objected to that proposed development also.

61. The closest proposed turbine to Hawthornside is just over 6 kilometres; from Weensmuir Farm some 6.5 kilometres; from Highend just under 5 kilometres. Therefore, even on the basis of the hacking range as claimed by the objectors, the wind farm would be towards the edge of that range. The business at Hawthornside was in operation throughout the period of the ornithology survey work and yet only one falcon was observed within the appeal site, and that was near the beginning of that period. Whether it was from Hawthornside is unknown. There is no hard evidence to support Mr Armstrong's contention that the appellants have failed to take into account large numbers of falcons being hacked in the skies over and around the appeal site. Whilst I accept that the loss of any bird in

training would be a cost to the businesses, that risk can only be small, and it has not been demonstrated that the proposal would threaten the viability of those businesses.

## Roads

62. The Scottish Borders Council's Roads Planning Service and some objectors have expressed concern over potential problems with regard to road access during construction and thereafter. Some objectors make particular mention of the route via Ashybank to the A6088 and a potential three-point turn in Bonchester Bridge for abnormal loads during construction. However, the supplementary environmental information indicates that the likely route would not include those locations. It also mentions the possibility of two-part blades to minimise the need for temporary upgrade works on the road network. The Roads Planning Service has considered these matters. It points out that works requiring planning or conservation area permission may be needed to facilitate some vehicle manoeuvres, and that those permissions cannot be taken for granted. Nevertheless, the service has not objected, subject to conditions on matters including a Traffic Management Plan and road repairs. Nor has the council refused the application on this ground. I have no technical basis to disagree.

## Benefits

63. The appellants have commissioned a study which estimates that the scheme would bring benefits from the creation of a number of jobs in construction, then maintenance and eventually decommissioning: around 87 man-years in Scotland, including 19 man-years in the Scottish Borders, during construction. There is likely to be some potential increase in business for local enterprises. The construction phase has the potential to inject £5.0 million into the Scottish economy, £1.2 million of which would be into the Scottish Borders economy. In the operational phase, the equivalent figures would be £626,000 and £277,000. Annual business rates would be paid. I give these figures due weight as estimates.

64. The appellants maintain that all this would be important given consistently above-average unemployment rates and high multiple deprivation levels in the locality. Its analysis is based on the findings of a 2016 study carried out by the Scottish Borders Community Planning Partnership (quotations from which are regarded by some objectors as lacking balance, contentious and insulting).

65. However, the main benefit of the proposal would arise from the generation of renewable energy and the contribution to carbon emission reduction targets (described above); and thereby, from making a contribution to the Scottish Government's objectives for energy and a low carbon economy (outlined below). I note also that the proposal would be developed without any public support mechanisms, having come forward after the withdrawal of the Renewable Obligation Certificate system.

66. A shared ownership scheme and a community benefit fund are proposed, but these are not material considerations in the planning process.

## Policies on renewable energy

67. In Policy ED9: Renewable Energy Development of the Scottish Borders Local Development Plan 2016, the council expresses general support for renewable energy development including large scale wind farms. It adopts the principles of Scottish Planning Policy 2014, including on Spatial Frameworks. From the information before me, it seems likely that the proposed site would fall within Group 3: Areas with Potential for Wind Farm Development of that Framework. The council's policy states that proposals will be approved provided there are no relevant unacceptable significant adverse impacts or effects that cannot be satisfactorily mitigated. I have concluded above that the residual effects are not unacceptable. It is not therefore necessary for me to balance the wider benefits of the proposal against the adverse effects. I therefore find that the proposal accords with the policy.

68. The policy acknowledges that the council's Supplementary Planning Guidance on Wind Energy 2011 (non-statutory) is out of date as it does not properly reflect Scottish Planning Policy 2014. It goes on to state that, within 12 months of the adoption of the plan, statutory Supplementary Guidance on wind energy, including an onshore spatial framework, will be prepared to replace the 2011 document. However, as this has not yet happened, I rely on my conclusion in the above paragraph.

69. In December 2017, the Scottish Government published the Scottish Energy Strategy and the Onshore Wind Policy Statement. These documents introduce new targets for 2030 of the equivalent of 50% of the energy for Scotland's heat, transport and electricity consumption to be supplied from renewable sources, and an increase by 30% in the productivity of energy use across the Scottish economy. This may require that renewable electricity generation rises to over 140% of Scotland's electricity consumption. By 2050, targets will require the near complete decarbonisation of the energy system, with renewable energy meeting a significant share of needs. It is stated that onshore wind must continue to play a vital role in meeting energy and climate change goals; its contribution must grow. Scottish Ministers consider that capturing the industrial opportunity presented by growing onshore wind sector is a top priority. The move towards larger, more powerful turbines is acknowledged. In assessing schemes, the need to strike the right balance between environmental impacts, local support, benefits and where possible economic benefits deriving from community ownership remains as before, as does the need for schemes to be compatible with Scotland's magnificent landscapes.

70. The appellants consider that the strategy and policy statement increase the government's support for onshore wind development. The Scottish Borders Council maintain that the two documents have no material bearing on this appeal as government policy remains one of qualified support and a balanced approach, citing an appeal decision in East Ayrshire to support that position. I read the documents as maintaining the policy impetus for new onshore wind development, including an acknowledgement of the move to larger turbines, but based on the same balanced approach as described in Scottish Planning Policy.

71. Both Hobkirk and Southdean Community Councils have made detailed comments on the new policy documents. Some of the points they raise are addressed elsewhere in this notice. With respect to others, I consider that arguments to the effect that targets exceed

those set by international bodies and that there is no need for more wind farms run contrary to Scottish Government policy. Its targets are intended to be ambitious and not to cap provision. Nor does the government's policy approach allow for comparison of the suitability of sites, as promoted by the community councils; each proposal is to be assessed on its own merits as it comes forward. I am satisfied that the examination in the strategy document of energy scenarios with widely different outcomes does not detract from the national targets for increasing renewable energy production. The Onshore Wind Policy Statement expresses the government's keenness to pursue opportunities for wind farms in national forest estates, among other places, but this does not represent increased policy support for such locations. Hobkirk Community Council draws attention to encouragement in the policy statement for developers to collaborate over nearby proposals. However, the appellants consider that there is no justification for collaboration over a co-ordinated approach in this case. As this is a voluntary matter, it does not affect my deliberations.

### **Other matters**

72. A campaign group has recently published a feasibility study for a Scottish Borders National Park, potentially extending from the border with England as far as Melrose. I have been informed that this topic will be raised in the Main Issues Report for the next Scottish Borders Local Development Plan. This is an interesting possible development but, given its very early stage, I can attach little weight to it. The same applies to discussion of a southern extension to the Borders Railway.

73. Several objectors assert that to approve the proposed wind farm would establish a precedent for further wind farms in this part of the Borders. But it is an established planning principle that each development must be assessed on its own merits.

74. Objections against the principle of wind energy in general or of permitting any more wind farms are contrary to Scottish Government and Scottish Borders Council policies. One objector disputes separate noise disturbance levels for properties with a financial interest in the development, but I have no power to change government guidance on such matters.

### **Planning conditions**

75. The suggested condition 4 seeks to transfer consent for micro-siting of elements of the proposal to an Ecological Clerk of Works. However, permission must rest with the planning authority, albeit this can be in consultation with the Ecological Clerk of Works. I have amended the condition accordingly.

76. The suggested wording for condition 15 includes the option of omni-directional red aviation lighting to be installed on the perimeter turbines for the benefit of military aircraft. However, assessments by various parties have been made on the basis that the reduction in height of some turbines will eliminate the need for visible lighting at elevation, as this would increase visual impact at night, including on dark skies. I have therefore removed that reference and confined the requirement to that suggested by the Ministry of Defence for infra-red lighting, which would be outside the visible spectrum.

77. The Scottish Borders Council has suggested a condition which would require the appellants to seek authorisation should they wish to transfer the consent to another company, their reason being to safeguard the obligations of the consent if transferred to another company. Section 44(1) of the Act states that planning permission “shall (except in so far as the permission otherwise provides) enure for the benefit of the land and of all persons for the time being interested in it.” I have been offered no compelling reason for removal of the normal effect of a planning permission and am therefore deleting that part of the condition. However, since certain conditions require communication between the council and the appellant/developer, it would be reasonable to retain the requirement to notify the planning authority should the beneficiary of the consent change.

## Conclusions

78. In summary, I find that the proposal would accord with Policies ED8 and ED9 of the current local development plan. It would have localised and limited impacts on landscape and visual amenity and on archaeological assets. Cumulative visual impacts would not be sufficient to reject the proposal. There would be impacts on the amenity of nearby residential properties, but not to an extent which would breach the test which has been applied by Scottish Ministers in a similar case. Evidence of significant adverse effects on tourism generally in this part of the Borders or specific tourism businesses is not persuasive. Nor has it been demonstrated that the viability of falcon breeding businesses would be threatened. Other potential impacts could be appropriately managed through planning conditions and other control regimes. The proposal would have some economic benefits. It is supported by national policies for wind energy. Finally, but importantly, it would generate renewable energy and contribute to carbon emission reduction targets, thereby supporting the Scottish Government’s objectives for renewable energy and a low carbon economy.

79. I therefore conclude, for the reasons set out above, that the proposed development accords overall with the relevant provisions of the development plan and that there are no material considerations which would still justify refusing to grant planning permission.

80. In arriving at my findings and conclusion, I have assessed all the relevant environmental information, including that contained in the appellants’ Environmental Statement and Supplementary Environmental Information.

81. The appellants have submitted a claim for expenses against the Scottish Borders Council. That is a separate matter which will be the subject of an expenses decision notice in due course.

*Malcolm Mahony*

Reporter

## Conditions

### Commencement and Conformity

1. The consent is for a period of 25 years from the date of Final Commissioning. Written confirmation of the date of First Commissioning shall be submitted to the Planning Authority no later than one calendar month after that date.

*Reason: To define the duration of the consent.*

2. The development hereby permitted shall not be carried out otherwise than in complete accordance with the application, drawings, Environmental Statement and Supplementary Environmental Information (as supplemented or amended by any further or additional environmental information) and other documentation lodged in support of the application and approved by the Planning Authority.

*Reason: To ensure that the development is carried out in accordance with the approved details.*

3. Should the consent be assigned, the Company shall notify the Planning Authority in writing of the name of the assignee, the principal named contact and contact details within 14 days of the assignment.

*Reason: To ensure efficient communication over the obligations of the consent if transferred to another company.*

### **Micro-Siting**

4. All wind turbines, buildings, masts, areas of hardstanding and tracks shall be constructed in the location shown on Drawing Reference Figure 3.1a. Wind turbines, buildings, masts, areas of hardstanding and tracks may be adjusted by micro-siting within the site. However, unless otherwise approved in advance in writing by the Planning Authority (in consultation with SEPA and Scottish Natural Heritage), micro-siting is subject to the following restrictions:

- a. No wind turbine foundation shall be positioned higher, when measured in metres Above Ordinance Datum (Newlyn), than the position shown on Figure 3.1a unless a scheme of details, including wirelines showing the alternative positioning of the turbine have been submitted to and approved in writing by the Planning Authority (in consultation with Scottish Natural Heritage and SEPA) and thereafter no development shall take place except in strict accordance with the approved details;
- b. No wind turbine, building, mast, access track or hardstanding shall be moved more than 50 metres from the position shown on the approved plan (Figure 3.1a);
- c. No micro-siting shall take place within areas of peat of greater depth than the original location;
- d. No micro-siting shall take place within areas hosting Ground Water Dependent Terrestrial Ecosystems;
- e. No micro-siting shall take turbines closer to watercourses or residential properties not financially involved with the development;
- f. All micro-siting permissible under this condition must be approved in advance in writing by the planning authority, in consultation with the Environmental Clerk of Works (ECoW). No later than one month after the date of First Commissioning, an updated site plan must be submitted to the Planning Authority showing the final position of all wind turbines, masts, areas of hardstanding, tracks and associated infrastructure forming part of the development. The plan should also specify areas where micro-siting has taken place and, for each instance, be accompanied by copies of the Planning Authority's approval, as applicable.

*Reason: To control environmental impacts, while taking account of local ground conditions, and to restrict micro-siting to a reasonable distance to ensure that any movement of turbines or infrastructure does not give rise to significant change to the layout and appearance of the development.*



### **Design and Operation of Turbines**

5. No development shall commence until full details of the specific wind turbines to be installed (including, but not limited to, the power rating and sound power levels, the size, type, external finish and colour, which should be non-reflective pale grey semi-matt) and all associated apparatus have been submitted to and approved in writing by the Planning Authority. The development is to be constructed and operated in accordance with the approved details and maintained in the approved colour, free from external rust, staining or discolouration, until such time as the wind farm is decommissioned, unless otherwise agreed in writing by the Planning Authority.

*Reason: To ensure that the turbines are compatible with the locality in terms of their appearance and noise output, to protect residential and visual amenities.*

### **Substation and Ancillary Development**

6. No development shall commence until final details of the siting, external appearance, dimensions and external materials of the substation building, associated compounds, any construction compound boundary fencing, external lighting and parking areas have been submitted to and approved in writing by the Planning Authority. The substation building, associated compounds, fencing, external lighting and parking areas shall be constructed in accordance with the approved details.

*Reason: To ensure that the environmental impacts of the sub-station and ancillary development forming part of the development conform to the impacts assessed in the Environmental Statement and in the interests of the visual amenity of the area.*

### **Signage**

7. Notwithstanding the provisions of the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 none of the wind turbines, buildings other structures, means of enclosure or plant shall display any name, logos, sign, lettering or other advertisement (other than health and safety signage) without the prior written approval of the Planning Authority.

*Reason: To safeguard visual amenities.*

### **Turbine Failure/Removal:**

8. In the event of any wind turbine failing to produce electricity supplied to the local grid for a continuous period of 12 months, not due to it being under repair or replacement, then it will be deemed to have ceased to be required and, unless otherwise agreed in writing with the Planning Authority, the wind turbine foundation to a depth of 1.2 metres below ground level, the wind turbine and its ancillary equipment shall be dismantled and removed from the site and the site restored to a condition to be agreed by the Planning Authority. The restoration of the land shall be completed within 6 months of the removal of the turbine, or any such longer period agreed by the Planning Authority.

*Reason: To safeguard against the landscape and visual environmental impacts associated with the retention of any turbines that are deemed no longer to be operationally required.*

### **Construction Hours**

9. Construction work which is audible from any noise-sensitive receptor shall only take place on the site between the hours of 07.00 to 18.00 on Monday to Friday inclusive and 08.00 to 14.00 on Saturdays, with no construction work taking place on a Sunday or on national public holidays. Outwith these specified hours, development on the site shall be limited to concrete pours, turbine erection, maintenance, emergency works, dust

suppression and the testing of plant and equipment, unless otherwise approved in advance in writing by the Planning Authority. HGV movements to and from the site (excluding abnormal loads) during construction of the wind farm shall be limited to 07.00 to 18.00 Monday to Friday and 08.00 to 14.00 on Saturdays, with no HGV movements to or from site taking place on a Sunday or on national public holidays.

*Reason: To safeguard residential amenity.*

## **Noise**

10. No development shall commence until a Construction Method Statement has been submitted to and approved in writing by the Planning Authority. The development is then to be carried out in accordance with the agreed Statement.

*Reason: To safeguard residential amenity.*

11. The rating level of noise emissions from the combined effects of the wind turbines forming part of the development (including the application of any tonal penalty) shall not exceed the values for the relevant integer wind speed set out in, or derived from, the tables attached to this condition at any dwelling which is lawfully existing or has planning permission at the date of this consent. The turbines shall be designed to permit individually controlled operation or shut down at specified wind speeds and directions in order to facilitate compliance with noise criteria and:

- a. The Company shall continuously log power production, wind speed and wind direction. These data shall be retained for a period of not less than 24 months. The Company shall provide this information to the Planning Authority within 14 days of receipt in writing of a request to do so;
- b. There shall be no First Commissioning of the Development until the Company has received written approval from the Planning Authority of a list of proposed independent consultants who may undertake compliance measurements in accordance with this condition. Amendments to the list of approved consultants shall be made only with the prior written approval of the Planning Authority;
- c. Within 21 days from receipt of a written request from the Planning Authority following a complaint to it from an occupant of a dwelling alleging noise disturbance at that dwelling, the Company shall, at its expense, employ a consultant approved by the Planning Authority to assess the level of noise emissions from the wind farm at the complainant's property. The written request from the Planning Authority shall set out at least the date, time and location to which the complaint relates and any identified atmospheric conditions, including wind direction, and include a statement as to whether, in the opinion of the Planning Authority, the noise giving rise to the complaint contains or is likely to contain a tonal component;
- d. The assessment of the rating level of noise emissions shall be undertaken in accordance with an assessment protocol that shall previously have been submitted to and approved in writing by the Planning Authority. The protocol shall include the proposed measurement location(s) where measurements for compliance checking purposes shall be undertaken, whether noise giving rise to the complaint contains or is likely to contain a tonal component, and also the range of meteorological and operational conditions (which shall include the range of wind speeds, wind directions, power generation and times of day) to determine the assessment of rating level of noise emissions. The proposed range of conditions shall be those which prevailed during times when the complainant alleges there was disturbance due to noise, having regard to the written request of the Planning Authority under paragraph c

above, and such others as the independent consultant considers likely to result in a breach of the noise limits;

e. Where the property to which a complaint is related is not listed in the tables attached to this condition, the Company shall submit to the Planning Authority for written approval proposed noise limits selected from those listed in the tables to be adopted at the complainant's property for compliance checking purposes. The proposed noise limits are to be those limits selected from the tables specified for a listed location which the independent consultant considers as being likely to experience the most similar background noise environment to that experienced at the complainant's property. The rating level of noise emissions resulting from the combined effects of the wind turbines shall not exceed the noise limits approved in writing by the Planning Authority for the complainant's property;

f. The Company shall provide to the Planning Authority the independent consultant's assessment of the rating level of noise emissions within 2 months of the date of the written request of the Planning Authority for compliance measurements to be made under paragraph e, unless the time limit is extended in writing by the Planning Authority. Certificates of calibration of the instrumentation used to undertake the measurements shall be submitted to the Planning Authority with the independent consultant's assessment of the rating level of noise emissions;

g. Where a further assessment of the rating level of noise emissions from the wind farm is required, the Company shall submit a copy of the further assessment within 21 days of submission of the independent consultant's assessment pursuant to paragraph d above unless the time limit has been extended in writing by the Planning Authority.

**Table 1 – Between 07:00 and 23:00 – Noise limits expressed in dB LA90,10 minute as a function of the standardised wind speed (m/s) at 10 metre height as determined within the site averaged over 10 minute periods.**

| <i>Location including coordinates)</i> | <i>Standardised wind speed at 10 metre height (m/s) within the site averaged over 10-minute periods</i> |            |              |          |          |          |          |          |          |           |           |           |
|--|---|------------|--------------|----------|----------|----------|----------|----------|----------|-----------|-----------|-----------|
|  |   |            | <b>&lt;3</b> | <b>4</b> | <b>5</b> | <b>6</b> | <b>7</b> | <b>8</b> | <b>9</b> | <b>10</b> | <b>11</b> | <b>12</b> |
| Lurgiescleuch                          | 35519<br>7  | 60683<br>7 | 45.<br>0     | 45.<br>0 | 45.<br>0 | 45.<br>0 | 45.<br>0 | 45.<br>0 | 45.<br>0 | 45.<br>0  | 45.<br>0  | 45.<br>0  |
| Langburnshiels                         | 353411  | 60413<br>8 | 35.<br>0     | 35.<br>0 | 35.<br>0 | 35.<br>0 | 38.<br>2 | 41.<br>4 | 43.<br>7 | 44.<br>7  | 44.<br>7  | 44.<br>7  |
| Slitrig Cottage                        | 353576  | 60403<br>2 | 35.<br>0     | 35.<br>0 | 35.<br>0 | 35.<br>0 | 38.<br>2 | 41.<br>4 | 43.<br>7 | 44.<br>7  | 44.<br>7  | 44.<br>7  |
| Wyndburgh Cottage                      | 353622  | 60400<br>8 | 35.<br>0     | 35.<br>0 | 35.<br>0 | 35.<br>0 | 38.<br>2 | 41.<br>4 | 43.<br>7 | 44.<br>7  | 44.<br>7  | 44.<br>7  |
| Shankendshiel                          | 353323  | 60401<br>7 | 35.<br>0     | 35.<br>0 | 35.<br>0 | 35.<br>0 | 38.<br>2 | 41.<br>4 | 43.<br>7 | 44.<br>7  | 44.<br>7  | 44.<br>7  |
| Home Covert                            | 356235  | 60830<br>2 | 35.<br>0     | 35.<br>0 | 35.<br>0 | 35.<br>0 | 35.<br>0 | 35.<br>0 | 35.<br>0 | 35.<br>0  | 35.<br>0  | 35.<br>0  |
| Harwood                                | 356519  | 60831<br>1 | 35.<br>0     | 35.<br>0 | 35.<br>0 | 35.<br>0 | 35.<br>0 | 35.<br>0 | 35.<br>0 | 35.<br>0  | 35.<br>0  | 35.<br>0  |
| Signal Box                             | 352550  | 60555<br>2 | 35.<br>0     | 35.<br>0 | 35.<br>1 | 37.<br>2 | 39.<br>4 | 41.<br>1 | 41.<br>9 | 41.<br>9  | 41.<br>9  | 41.<br>9  |

|                  |        |        |      |      |      |      |      |      |      |      |      |      |
|------------------|--------|--------|------|------|------|------|------|------|------|------|------|------|
| Shankend Station | 352400 | 605719 | 35.0 | 35.0 | 35.1 | 37.2 | 39.4 | 41.1 | 41.9 | 41.9 | 41.9 | 41.9 |
| Shankend Farm    | 352323 | 605963 | 35.0 | 35.0 | 35.1 | 37.2 | 39.4 | 41.1 | 41.9 | 41.9 | 41.9 | 41.9 |

**Table 2 – Between 23:00 and 07:00 – Noise limits expressed in dB LA90,10-minute as a function of the standardised wind speed (m/s) at 10 metre height as determined within the site averaged over 10 minute periods.**

| Location including coordinates) | Standardised wind speed at 10 metre height (m/s) within the site averaged over 10-minute periods |        |      |      |      |      |      |      |      |      |      |      |
|---------------------------------|--|--------|------|------|------|------|------|------|------|------|------|------|
|                                 |  |        | <3   | 4    | 5    | 6    | 7    | 8    | 9    | 10   | 11   | 12   |
| Lurgiescleuch                   | 35519  | 606837 | 45.0 | 45.0 | 45.0 | 45.0 | 45.0 | 45.0 | 45.0 | 45.0 | 45.0 | 45.0 |
| Langburnshiels                  | 353411   | 604138 | 43.0 | 43.0 | 43.0 | 43.0 | 43.0 | 43.0 | 43.9 | 46.5 | 47.2 | 47.2 |
| Slitrig Cottage                 | 353576   | 604032 | 43.0 | 43.0 | 43.0 | 43.0 | 43.0 | 43.0 | 43.9 | 46.5 | 47.2 | 47.2 |
| Wyndburgh Cottage               | 353622   | 604008 | 43.0 | 43.0 | 43.0 | 43.0 | 43.0 | 43.0 | 43.9 | 46.5 | 47.2 | 47.2 |
| Shankendshiel                   | 353323   | 604017 | 43.0 | 43.0 | 43.0 | 43.0 | 43.0 | 43.0 | 43.9 | 46.5 | 47.2 | 47.2 |
| Home Covert                     | 356235   | 608302 | 35.0 | 35.0 | 35.0 | 35.0 | 35.0 | 35.0 | 35.0 | 35.0 | 35.0 | 35.0 |
| Harwood                         | 356519   | 608311 | 35.0 | 35.0 | 35.0 | 35.0 | 35.0 | 35.0 | 35.0 | 35.0 | 35.0 | 35.0 |
| Signal Box                      | 352550   | 605552 | 43.0 | 43.0 | 43.0 | 43.0 | 43.0 | 43.0 | 43.0 | 43.5 | 43.5 | 43.5 |
| Shankend Station                | 352400   | 605719 | 43.0 | 43.0 | 43.0 | 43.0 | 43.0 | 43.0 | 43.0 | 43.5 | 43.5 | 43.5 |
| Shankend Farm                   | 352323   | 605963 | 43.0 | 43.0 | 43.0 | 43.0 | 43.0 | 43.0 | 43.0 | 43.5 | 43.5 | 43.5 |

*Reason: To protect nearby residents from undue noise and disturbance and to ensure that noise limits are not exceeded and to enable prompt investigation of complaints.*

### Shadow Flicker

12. No development shall commence until a written scheme has been submitted to and approved in writing by the Planning Authority setting out a protocol for the assessment of shadow flicker in the event of any complaint to the Planning Authority from the owner or occupier of a dwelling which lawfully exists or for which planning permission has been granted at the date of this permission. The written scheme shall include mitigation measures to alleviate any shadow flicker attributable to the development. Operation of the turbines shall take place in accordance with the approved protocol unless the Planning Authority gives its prior written approval to any variations.

*Reason: To offset impacts of shadow flicker on residential amenity.*

### **Television interference**

13. No development shall commence until a Television Reception Mitigation Plan has been submitted to and approved in writing by the Planning Authority. The Television Reception Mitigation Plan shall provide for a baseline television reception survey to be carried out prior to the installation of any turbine forming part of the development, the results of which shall be submitted to the Planning Authority. The approved Television Reception Mitigation Plan shall thereafter be implemented in full. Any claim by any individual person regarding television picture loss or interference at their house, business premises or other building, made during the period from installation of any turbine forming part of the development to the date falling twelve months after the date of Final Commissioning, shall be investigated by a qualified engineer appointed by the developer/operator and the results shall be submitted to the Planning Authority. Should any impairment to the television signal be attributable to the development, the developer/operator shall remedy such impairment so that the standard of reception at the affected property is equivalent to the baseline television reception.

*Reason: To ensure local television services are sustained during the construction and operation of this development.*

### **Air Traffic Safety**

14. No development shall commence until the developer has provided written confirmation to the Planning Authority and the Ministry of Defence of the:

- a. Anticipated date of commencement of each stage of construction;
- b. The maximum height above ground level of construction equipment, each turbine and any anemometry mast and
- c. The position of each turbine (in latitude and longitude).

The developer shall provide the Planning Authority and Ministry of Defence with details of any changes to this information as soon as reasonably practicable.

*Reason: In the interests of aviation safety.*

15. Prior to the erection of the first wind turbine a scheme of aviation lighting for the wind farm shall be submitted to and approved in writing by the Planning Authority in consultation with the Ministry of Defence. This lighting shall be installed at the highest practical point on the perimeter turbines, and shall be infrared warning lighting with an optimised flash pattern of 60 flashes per minute of 200ms to 500ms duration. The turbines shall be erected with the approved lighting installed and the lighting shall remain operational throughout the duration of the consent.

*Reason: In the interests of safety for military aviation.*

### **Threat Radar**

16. No development shall commence until a Radar Mitigation Scheme setting out measures to be undertaken to address the impact of the wind farm upon military testing and training, in particular, the operation of threat radar type equipment at the remote threat radar sites at Larriston Fell and Wigg Knowe and the military testing and training activities that utilise the radars, has been submitted to and approved in writing by the Planning Authority in consultation with the Ministry of Defence. No turbines shall become operational until those measures within the Radar Mitigation Scheme have been fully implemented and evidence of this has been submitted to and approved in writing by the Planning Authority, in

consultation with the Ministry of Defence The development is then to be operated fully in accordance with the approved Radar Mitigation Scheme for the operational life of the wind farm or during the time that the remote threat radar sites at Larriston Fell and Wigg Knowe are retained by the Ministry of Defence for the purposes of military testing and training.

*Reason: To secure mitigation of impacts on the threat radar type equipment at the remote threat radar sites at Larriston Fell and Wigg Knowe and the military testing and training activities that utilise the radars.*

### **Road Safety**

17. No development shall commence until a Traffic Management Plan (TMP) has been submitted to and approved in writing by the Planning Authority. The TMP to include:

- a. The detailed delivery route and vehicle numbers for all cars, HGV deliveries and abnormal loads associated with the development and measures to ensure that the specified routes are adhered to, including monitoring procedures;
- b. Details of all ancillary works required to the public road network to facilitate deliveries, including all signage and lining arrangements, a programme and timescales for implementation and reinstatement proposals after the development is complete and a programme and timescales for completion;
- c. Road condition survey of the 'C' Class road from Hawthornside to the B6399 carried out prior to the development commencing and details of any upgrading (passing places and strengthening) and a regime for routine maintenance during construction of the development. Any remedial works required as a result of damage/deterioration by construction traffic (to be highlighted in a post-construction road condition survey) to be rectified at the expense of the developer after the development has been completed in accordance with an agreed timescale;
- d. Details of tree or hedge removal along the route for the abnormal loads and a scheme for replacement planting and a timescale for its implementation and completion;
- e. Swept path analysis drawings for agreed areas of concern along the route for the abnormal loads and remedial measures;
- f. Areas of the abnormal load route where the removal of street furniture, including lighting, is required and all temporary lighting measures required for the duration of the abnormal load movements;
- g. A detailed engineering drawing of the proposed access and visibility splays from the B6399;
- h. Name and contact details of a nominated person to whom any road safety issues can be referred.

The approved TMP thereafter to be implemented in full, unless otherwise agreed in advance in writing by the Planning Authority and all work within the public road boundary to be undertaken by a contractor first approved by the Council.

*Reason: To ensure all construction traffic access the site in a safe manner and that any upgrading works or repairs to public roads are carried out timeously to the Council's specifications, in the interests of road safety.*

### **Access Tracks**

18. No development shall commence until details of the position, length, width, materials and drainage of the new and upgraded tracks within the site have been submitted to and approved in writing by the Planning Authority. The tracks then to be installed in accordance

with the approved details. Newly formed hard surfaces should be attenuated to existing greenfield runoff rates.

*Reason: To safeguard areas of ecological interest, watercourses and visual amenities and to ensure there is no increased flood risk to downstream receptors within Hobkirk and Bonchester Bridge.*

19. No development shall commence until details of all watercourse crossings, culverts and alterations to existing crossings (position and design) have been submitted to and approved in writing by the Planning Authority, in consultation with SEPA. These should be designed to convey the 1 in 200 year flow. The development then to be completed in accordance with the approved details.

*Reason: To ensure that all construction operations are carried out in a manner that minimises their impact on the water environment and thereby minimising residual impacts on the River Tweed Special Area of Conservation.*

### **Public Access**

20. No development shall commence until a scheme for enhancing public access within the site upon completion of the development has been submitted to and approved in writing by the Planning Authority. This is to include tracks used for construction or service vehicles and creating a new link path between Turbines T4 and T7 suitable for use by walkers, cyclists and horse riders, unless otherwise agreed in writing by the Planning Authority. Where any access tracks pass through or nearby the development area, sign boards to be erected detailing information on routes that are accessible and those routes that are temporarily closed due to construction.

*Reason: To enhance public access and to assist with the safe management of the site.*

### **Private Water Supplies**

21. No development shall commence until a Private Water Supplies Risk Assessment has been submitted to and approved in writing by the Planning Authority, detailing all mitigation measures to be delivered to secure the quality, quantity and continuity of water supplies to properties which are served by private water supplies at the date of this consent and which may be affected by the development. The Risk Assessment shall include water quality sampling methods and shall specify abstraction points. The approved method statement shall thereafter be implemented in full.

*Reason: To maintain a secure and adequate quality water supply to all properties with private water supplies that may be affected by the development.*

### **Borrow Pits**

22. No development shall commence until a site specific scheme for the working and restoration of each borrow pit forming part of the development has been submitted to and approved in writing by the Planning Authority in consultation with SEPA. The scheme shall include:

- a. A detailed working method statement based on site survey information and ground investigations;
- b. Details of the handling of any overburden (including peat, soil and rock);
- c. Drainage, including measures to prevent surrounding areas of peatland, water dependant sensitive habitats and Ground Water Dependant Terrestrial Ecosystems (GWDTE) from drying out;
- d. A programme of implementation of the works described in the scheme; and

e. Full details of the reinstatement, restoration and aftercare of the borrow pit(s) at the end of the construction period, to include topographic surveys of pre-construction profiles, and details of topographical surveys to be undertaken of the restored borrow pit profiles.

The approved scheme shall thereafter be implemented in full.

*Reason: To ensure that excavation of materials from the borrow pit(s) is carried out in a manner that minimises the impact on road safety, amenity and the environment, and that the mitigation measures contained in the Environmental Statement accompanying the application, or as otherwise agreed, are fully implemented. To secure the restoration of borrow pit(s) at the end of the construction period.*

23. Blasting shall only take place on the site between the hours of 10.00 to 16.00 on Monday to Friday inclusive and 10.00 to 12.00 on Saturdays, with no blasting taking place on a Sunday or on national public holidays, unless otherwise approved in advance in writing by the Planning Authority. Ground vibration from blasting shall not exceed a peak particle velocity of 6mm/second at agreed blasting monitoring locations. The measurement shall be the maximum of three mutually perpendicular directions taken at the ground surface.

*Reason: To ensure that blasting activity is carried out within defined timescales to control impact on amenity.*

### **Archaeology**

24. No development shall commence until the applicant has implemented a programme of archaeological mitigation in accordance with an approved Written Scheme of Investigation (WSI) that has first been submitted to and approved in writing by the Planning Authority.

*Reason: The site is within an area where ground works may interfere with, or result in, the destruction of, archaeological remains and it is therefore desirable mitigate the loss and potential loss of known and unknown archaeological features.*

25. No development shall commence until a detailed scheme of cultural heritage enhancement has been submitted to and approved in writing by the Planning Authority. The approved scheme then to be implemented in full before the development hereby approved becomes operational.

*Reason: To improve the understanding, appreciation and experience of heritage assets where their settings and historic landscape contexts are affected by the development.*

### **Ecology**

26. No SUDS ponds or settlement lagoons shall be placed on areas deemed to be Ground Water Dependent Terrestrial Ecosystems.

*Reasons: To avoid impacts on wetland ecology.*

27. No development shall commence until an Ecological Clerk of Works (ECoW) has been appointed to carry out pre-construction ecological surveys, to inform a Construction Environmental Management Plan (CEMP) and to oversee compliance with the Construction Environment Management Plan, Species Protection Plan, Ecological Monitoring Plan and Decommissioning, Restoration and Aftercare Plan ("the ECoW works"). The terms of the appointment shall be submitted for the approval in writing by the Planning Authority in consultation with SEPA and SNH. The terms shall include the requirement to:

a. Impose a duty to monitor compliance with the ecological and hydrological commitments provided in the Environmental Statement and other information lodged



in support of the application, the Construction Environmental Management Plan and other plans; and

b. Require the ECoW to report to the Company's nominated construction project manager, the Planning Authority and SEPA any incidences of non-compliance with the ECoW works.

*Reason: To secure effective monitoring of and compliance with the environmental mitigation and management measures associated with the development.*

28. No development shall commence until a Construction Environment Management Plan (CEMP) has been submitted to and approved in writing by the Planning Authority, in consultation with SEPA. The CEMP shall include:

- a. Risk assessment of potentially damaging construction activities;
- b. Identification of "biodiversity protection zones";
- c. Method Statements to avoid or reduce impacts during construction, to include the location and timing of sensitive works to avoid harm to biodiversity features, the times during construction when specialist ecologists need to be present on site to oversee works, include the use of protective fences, exclusion barriers and warning signs;
- d. A Drainage Management Plan;
- e. A Site Waste Management Plan;
- f. An Accident Management Plan;
- g. Responsible persons and lines of communication;
- h. The role and responsibilities on site of an Ecological Clerk of Works (ECoW).

The approved CEMP shall be implemented throughout the construction period and operational phase as appropriate, strictly in accordance with the approved details, unless otherwise agreed in writing by the Planning Authority in consultation with SEPA.

*Reason: To ensure that all construction operations are carried out in a manner that minimises their impact on the water environment and thereby minimising residual impacts on the River Tweed SAC and that mitigation measures contained in the Environmental Statement accompanying the application, or as otherwise agreed, are fully implemented.*

29. No development shall commence until a Species Protection Plan, including measures for bats, otters, badgers, red squirrels, breeding birds (including goshawk and crossbill), reptiles and amphibia as appropriate, has been submitted to and approved in writing by the Planning Authority. This to be informed by pre-commencement surveys carried out no more than 8 months prior to construction works commencing. Any works shall thereafter shall be carried out in accordance with the approved scheme.

*Reason: To ensure that the species affected by the development are afforded suitable protection from the construction, operation and decommissioning of the development.*

30. No development shall commence until a Habitat Management Plan, including measures to compensate for habitat loss and enhance existing habitats including blanket bog, wet modified bog, acid grassland, marshy grassland, calcareous grassland, dry dwarf shrub heath and woodland habitats, has been submitted to and approved in writing by the Planning Authority. Any works shall thereafter be carried out in accordance with the approved scheme.

*Reason: To mitigate the loss of habitats as a result of the development.*

31. No development shall commence until an ecological monitoring programme, including monitoring for breeding waders in years 1, 3, 5, 10 and 15 following construction, has been submitted to and approved in writing by the Planning Authority. This should also include proportionate post-construction monitoring of protected mammals (bats, otters, badgers and red squirrels as appropriate) and habitats. Any works shall thereafter be carried out in accordance with the approved scheme.

*Reason: To ensure suitable procedures are in place to monitor the impacts of the development on ecological interests.*

32. No development shall commence until a monitoring and mitigation plan for goshawk has been submitted to and approved in writing by the Planning Authority, in consultation with SNH, RSPB and the Lothian & Borders Raptor Study Group. This should include mitigation proposals including curtailment of wind turbine operations in the event that there is a significant adverse effect on goshawk (Border Hills NHZ population) and further mitigation to be implemented as appropriate. Any works shall thereafter be carried out in accordance with the approved scheme.

*Reason: To ensure that the species affected by the development are afforded suitable protection from the construction, operation and decommissioning of the development.*

### **Replanting of Forestry**

33. No development shall commence until a forestry and woodland planting scheme to compensate for the removal of woodland areas and forestry within the site (“the Replanting Scheme”) has been submitted to and approved in writing by the Planning Authority, in consultation with Forestry Commission Scotland.

The Replanting Scheme must comply with the requirements set out in the UK Forestry Standard (Forestry Commission, 2011. ISBN 978-0-85538-830-0) and the guidelines to which it refers, or such replacement standard as may be in place at the time of submission of the Replanting Scheme for approval. The Replanting Scheme must include:

- a. Details of the location of the area to be planted;
- b. Details of land owners and occupiers of the land to be planted;
- c. The nature, design and specification of the proposed woodland to be planted;
- d. Details of all consents required for delivery of the Replanting Scheme and timescales within which each will be obtained;
- e. The phasing and associated timescales for implementing the Replanting Scheme;
- f. Proposals for the maintenance and establishment of the Replanting Scheme, including annual checks, replacement planting, fencing, ground preparation and drainage; and
- g. Proposals for reporting to the Planning Authority on compliance with timescales for obtaining the necessary consents and thereafter implementation of the Replanting Scheme.

Unless otherwise agreed in writing by the Planning Authority, the development shall not be commissioned to supply electricity on a commercial basis unless all relevant consents necessary for implementation of the approved Replanting Scheme in accordance with the phasing and timescales set out therein have been obtained.

In the event that there is no reasonable prospect of the relevant consents necessary for implementation of the approved Replanting Scheme being obtained, then the developer

shall submit an amended Replanting Scheme to the Planning Authority for approval in consultation with Forestry Commission Scotland. Unless otherwise agreed in writing by the Planning Authority, the development shall not be commissioned to supply electricity on a commercial basis unless all relevant consents necessary for implementation of the approved amended Replanting Scheme in accordance with the phasing and timescales set out therein have been obtained.

The approved Replanting Scheme (or, as the case may be, an approved amended Replanting Scheme) shall be implemented in full, unless otherwise agreed in writing by the Planning Authority after consultation with Forestry Commission Scotland.

*Reason: To secure replanting to mitigate against effects of deforestation arising from the development.*

### **Decommissioning and Financial Guarantee**

34. The Development will be decommissioned and will cease to generate electricity by no later than the date falling twenty five years from the date of Final Commissioning. The total period for restoration of the site in accordance with this condition shall not exceed three years from the date of Final Decommissioning without prior written approval of the Planning Authority. No development shall commence until a Decommissioning, Restoration and Aftercare Plan has been submitted to and approved in writing by the Planning Authority in consultation with SEPA and Scottish Natural Heritage. The Plan shall detail measures for the decommissioning of the development, restoration and aftercare of the site and will include proposals for the removal of the above ground elements of the development, the treatment of ground surfaces, the management and timing of the works and environmental management provisions.

No later than 3 years prior to decommissioning of the development the Decommissioning, Restoration and Aftercare Plan to be revised and submitted to and approved in writing by the Planning Authority in consultation with SNH and SEPA. The revised Decommissioning, Restoration and Aftercare Plan will provide updated and detailed proposals for the removal of above ground elements of the development, the treatment of ground surfaces, the management and timing of the works and environment management provisions.

The development shall be decommissioned, site restored and aftercare thereafter undertaken in accordance with the approved Plan, unless otherwise agreed in writing in advance with the Planning Authority in consultation with SNH and SEPA. Any decommissioning works shall be carried out in accordance with the approved Plan.

*Reason: To ensure the decommissioning and removal of the development in an appropriate and environmentally acceptable manner and the restoration and aftercare of the site, in the interests of safety, amenity and environmental protection.*

35. No development shall commence until the developer/operator has delivered a bond or other form of financial guarantee in terms acceptable to the Planning Authority which secures the cost of performance of all decommissioning, restoration and aftercare obligations contained in condition 34. The financial guarantee shall thereafter be maintained in favour of the Planning Authority until the date of completion of all restoration and aftercare obligations. The value of the financial guarantee shall be determined by a suitably qualified independent professional as being sufficient to meet the costs of all decommissioning, restoration and aftercare obligations contained in condition 34. The value

of the financial guarantee shall be reviewed by a suitably qualified independent professional no less than every five years and increased or decreased to take account of any variation in costs of compliance with restoration and aftercare obligations and best practice prevailing at the time of each review.

*Reason: to ensure that there are sufficient funds to secure performance of the decommissioning, restoration and aftercare conditions attached to this deemed planning permission in the event of default by the developer/operator.*

## Drawing numbers

### Environmental Statement

|             |  |
|-------------|--|
| Figure 1.1  | Application site                         |
| Figure 3.2  | Typical Turbine Elevation (130 metres)   |
| Figure 3.4  | Typical Turbine Foundations              |
| Figure 3.5  | Typical Access Track Cross-Sections      |
| Figure 3.6  | Typical Internal Watercourse Crossing    |
| Figure 3.7  | Typical Establishment Compound           |
| Figure 3.8  | Typical Construction Compound            |
| Figure 3.9  | Typical Crane Standing                   |
| Figure 3.10 | Typical Cable Trench Design              |
| Figure 3.11 | Typical Sub-station Elevations           |
| Figure 3.12 | Typical Sub-station Floor and Roof Plans |

### Further Environmental Information

|             |                                   |
|-------------|-----------------------------------|
| Figure 3.1a | Site Plan                         |
| Figure 6.1  | Site Access and Visibility Splays |
| Figure 6.2  | Site Access Design                |

## Advisory notes

- The length of the permission:** This planning permission will lapse on the expiration of a period of three years from the date of this decision notice, unless the development has been started within that period (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).
- Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).
- Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended)).
- Display of notice:** A notice must be displayed on or near the site while work is being carried out. The planning authority can provide more information about the form of that notice and where to display it (See section 27C of the Town and Country Planning

(Scotland) Act 1997 Act (as amended) and Schedule 7 to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013).