



Appeal Decision

Inquiry held on 22 – 31 January 2019

Site visits made on 16/17 April and 17 June

by Phillip J G Ware BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th July 2019

Appeal Ref: APP/M0933/W/18/3204360

Kirkby Moor Wind Farm, Kirkby Moor and Lowick High Common, Grizebeck

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Zephyr Investments Limited against the decision of South Lakeland District Council (the Council).
- The application Ref SL/2017/0687, dated 31 July 2017, was refused by notice dated 20 December 2017.
- The application sought planning permission for 15 wind turbines and associated works (amended to 12 wind turbines as confirmed by the Council by letter dated 4 March 1993) without complying with condition attached to planning permission Ref 5/90/2312 (PNW/5166/21/73), dated 11 March 1992.
- The condition in dispute is No 6 which states that:
The turbines hereby approved shall be removed from the site on the expiration of 25 years from the date of the turbines being first brought into use or within 1 year of the turbines being decommissioned or becoming disused for any reason, whichever is the sooner.

Procedural matters

1. The three main parties - the appellants, the Council and Kirkby Moor Protectors¹ (KMP) - agreed a schedule and map of locations for my unaccompanied visits to the site and in the wider area². As I explained at the Inquiry the dates of the visits would be weather dependant, as some of the agreed locations were at some height and distance from the site. The dates of my visits³ are set out above.
2. A Statement of Common Ground (SOCG) was agreed between the Council and the appellants in December 2018. KMP were not involved with the SOCG.
3. A s106 Planning Obligation⁴ (between the appellants, Beaufort Wind Limited, P A Bostock, Lord C V Cecil and Holker Estates) was submitted in draft before the Inquiry and discussed by all parties. It included a Decommissioning Method

¹ A Rule 6 party

² Agreed Site View Plan P16-0036_300B

³ After several unsuccessful attempts due to the weather

⁴ Document 34

Statement (DMS) and a Habitat Management Plan (HMP). The final version (dated 19 March 2019) was submitted after the close of the Inquiry, and all parties have had the opportunity to comment on the final document. I have taken the contents of the Obligation and associated documents into account.

4. After the Inquiry the Council's Local Plan Development Management Policies (DMDPD) were formally adopted at full Council⁵. On the adoption of the DMDPD the saved policies of the former South Lakeland Local Plan have been superseded⁶.

Decision

5. The application seeks permission to vary the temporary time condition to allow the retention of the turbines until 31 March 2027, followed by a further year to carry out decommissioning works.
6. The appeal is allowed and planning permission is granted for 15 wind turbines and associated works (amended to 12 wind turbines as confirmed by the Council in a letter dated 4 March 1993) at Kirkby Moor Wind Farm, Kirkby Moor and Lowick High Common, Grizebeck in accordance with the terms of the application, Ref SL/2017/0687, dated 31 July 2017, subject to the conditions set out in the schedule to this decision.

Application for costs

7. At the Inquiry an application for partial costs (two options) was made by Zephyr Investments Limited against South Lakeland District Council. The application is the subject of a separate Decision.

Main issues

8. There are four main issues in this case:
 - The effect on the character and appearance of the area, including the setting and character of the Lake District National Park (LDNP) and the World Heritage Site (WHS)
 - The effect on designated heritage assets
 - The extent of any benefit accruing from the decommissioning and restoration schemes
 - The extent of any benefit arising from renewable energy generation

Reasons

Location and relevant planning history

9. The appeal site is located on the plateau which forms part of a wide northeast to southwest ridge which runs down the Furness Peninsular between Cartmel Sands and the Duddon Estuary. The turbines and related apparatus are on a broad rounded plateau. The appeal site forms part of a Site of Special Scientific Interest (SSSI) and is Access Land under the Countryside and Rights of Way Act.

⁵ 28 March 2019

⁶ Explanatory letter from the Council (11 April 2019)

10. To the west of the site is a substantial and active quarry, with permission to operate until 2042. It has recently been granted consent to expand its operations in the direction of the wind farm.
11. The windfarm was originally granted planning permission by the Secretary of State in 1992⁷, based on policy which was current at that time, which was in summary to proceed as quickly as possible with renewable energy projects. The condition which is the subject of this appeal requires the removal of the turbines within 25 years of the date they were first brought into use (which was August 1993). There was no condition requiring any other elements of the development⁸ to be removed or any restoration works to be undertaken.
12. The original approved scheme was for 15 two-blade turbines (40.5m to tip). The Council approved an amendment to this scheme to provide 12 three-blade turbines (42.4m to tip) – this was the scheme as constructed.
13. In 2015 an application was refused for 6 replacement turbines in the area of the appeal site. These would have had a tip height of up to 115m. This decision was not appealed.
14. The application which originated this appeal was supported by an Environmental Statement⁹ and proposed a revised date for the cessation of power generation by March 2027, and an end date for decommissioning in March 2028. The decommissioning scheme included a number of elements in addition to the removal of the turbines and transformers¹⁰. The application was recommended favourably by Council officers.
15. The Council refused the application on the basis that the benefits arising from the proposal, including continuing renewable energy generation and the decommissioning programme, did not outweigh the continuing adverse effects on the landscape and on the setting and character of the LDNP/WHS and on the local economy.
16. It is worth noting that, contrary to its initial position, the Council did not pursue the argument that the 1992 permission has expired and/or that the turbines have ceased working and should be removed.

Planning policy context

17. At the time of the Council's decision and the Inquiry, the development plan comprised the South Lakeland Local Plan Core Strategy (CS) (2010) and the South Lakeland Local Plan. As explained above, the latter has been replaced by the DMDPD (2019).
18. The most relevant CS policies¹¹ are:

CS1.1: This deals with a range of matters including the need to increase the proportion of energy derived from renewables, the need to protect the countryside and landscape, and to safeguard historic buildings¹².

⁷ Doc 5.1

⁸ For example, turbine foundations, transformer housings, underground cabling and access tracks

⁹ Docs 10.5 – 10.10

¹⁰ SOCS paragraph 2.3 and s106 obligation Doc 34

¹¹ Other relevant CS policies are listed in the SOCG paragraph 4.3

¹² The parties differed as to the weight which should be accorded to the policy in the light of the approach in the Framework.

CS7.7: This deals with opportunities provided by energy and the low carbon economy. It supports the principle of appropriately located wind energy schemes where the protection of the environment is assured and designated areas are safeguarded¹³.

CS8.2: This deals with the protection and enhancement of landscape and settlement character¹⁴. Reference is made to local distinctiveness and National Parks.

CS8.4: This states that all proposals should protect, enhance and restore biodiversity and geodiversity.

CS8.6: This supports the safeguarding and, where possible, enhancing of historic assets, including their characteristic settings and any attributes that contribute to a sense of local distinctiveness¹⁵.

19. The most relevant policies in the former South Lakeland Local Plan were agreed to have been¹⁶:

C7: National Sites. This has been replaced by DMDPD policy DM1, which makes reference to response to locational context, the provision of infrastructure needs in a sustainable manner and the protection of existing biodiversity assets.

C15 Listed buildings and their settings. This has been replaced by DMDPD policy DM3 which provides, amongst other matters, that all heritage assets and their settings will be safeguarded.

The appellant also argued that former policy C26, wind energy, was one of the most relevant policies, but the Council initially considered that it was not relevant in that it was not consistent with the National Planning Policy Framework (now the 2019 version) (the Framework). The position of the authority changed during the course of the appeal but, in any event, this policy (along with C31) has been superseded by DM1, DM2, and DM21. The latter encourages renewable energy development where, amongst other matters, it minimises landscape impact, respects the historic environment, avoids impact on nature conservation interests, includes measures to remove the technology, and will not have cumulative adverse impacts.

20. In addition, the Cumbria Wind Energy Supplementary Planning Document (2007) (SPD) is agreed to provide guidance on wind energy developments. It makes no mention of applications (such as the current proposal) to extend the life of existing schemes, but there is no reason to doubt the applicability of its approach to the current case. The appeal site is within a Landscape Character Type (LCT) with a medium/high capacity for turbine development. This is one of only two LCTs with this high level of capacity in Cumbria.

¹³ The Council agrees that CS policies 7.7 and CS8.2 continue to carry weight, but in the light of their adoption before the 2012 Framework this is limited

¹⁴ Although relevant, the appellant argued that the absence of any balance in the policy puts it at odds with the Framework. The Council did not refer to this policy. I agree that it has limited weight.

¹⁵ The parties agreed that limited weight should be applied to this policy (and CS1.1 and CS7.7) due to discrepancies with national policy and statutory test. I do not disagree.

¹⁶ Other relevant former South Lakeland Local Plan policies were listed in the SOCG paragraph 4.5

21. The SOCG¹⁷ sets out various other documents which are agreed to comprise material considerations¹⁸. These include national policy documents and the Inspector's report leading to the Secretary of State's decision in 1992 which led to the establishment of the windfarm.

The nature of the proposal

22. Before proceeding to the agreed main issues in this case, it is necessary to deal with another matter, which took up a significant amount of Inquiry time. That relates to the nature of the proposal in the light of Footnote 49 to paragraph 154 of the current Framework.
23. As set out above, this is a proposal under s73 for the removal and variation of the 25-year limited period condition imposed by the Secretary of State. The intention is to extend power generation to March 2027, followed by a period of decommissioning to March 2028.
24. It is worth repeating the elements of national policy which are relevant to the nature of the proposal:

Amongst other matters Framework paragraph 154 provides that when determining planning applications for renewable development, local planning authorities should approve the application if its impacts are (or can be made) acceptable (there is then a reference to footnote 49).

Footnote 49 provides that "Except for applications for the repowering of existing wind turbines, a proposed wind energy development involving one or more turbines should not be considered acceptable unless it is in an area identified as suitable for wind energy development in the development plan; and, following consultation, it can be demonstrated that the planning impacts identified by the affected local community have been fully addressed and the proposal has their backing." (My underlining.)

25. So, aside from 'repowering' applications, wind farms need to be in an area identified as suitable and should have the backing of the local community. In this case there are no such suitable areas identified in the development plan, and there is very substantial local opposition (and support) such that it could not be said that the proposal has the backing of the local community.
26. The matter between the parties is whether this proposal is an application for repowering existing turbines. The Framework does not define the meaning of 'repowering'.
27. The appellant's position is that whilst approval of this s73 appeal would create a new permission, the development would remain the existing wind farm as approved in 1992 (including the subsequent amendment). Therefore, in policy terms, it is argued that the proposed extension of life is a 'repowering' application for the purposes of Footnote 49, and the appellant does not have to demonstrate that it is in an area identified for wind energy development, nor that the planning impacts identified by the affected local community have been fully addressed and the proposal has their backing¹⁹.

¹⁷ SOCG Section 5

¹⁸ SOCG Paragraph 5.1

¹⁹ As summarised in SOCG paragraphs 9.1 – 9.4

28. The Council's position²⁰ is that this is not a repowering scheme but a proposal for a new windfarm on the site. This is on the basis that the original planning permission has now expired and with reference to the Collins English Dictionary definition of 'repower' as "to rebuild or replace the power source or engine of a vehicle, power plant etc". The replacement of the turbines with significantly larger structures, as proposed on the site in 2015, would constitute repowering. However the Council's position is that the continuation of the life of the existing smaller turbines is not repowering. As such, it is argued that the starting point of the assessment should be the natural unaltered condition of the site. The appellant must therefore demonstrate compliance with Footnote 49 in relation to identification in the development plan and the issues raised by local communities²¹.
29. As mentioned above, there is no definition of 'repowering' in the Framework or in any other national policy or guidance to which I was referred. I therefore have to consider the relevance of Footnote 49 on the basis of the evidence and submissions put to me.
30. The Scottish Government's Onshore Wind Policy Statement²², although obviously not applicable in England, adopts a relatively wide approach to the question of repowering. However it also refers to measures designed to extend the life of components and turbines – in this case, despite comments by the appellant regarding the physical measures which may occur during an extended period so as to extend the life of the turbines, there are no physical measures before me.
31. The appellant argued persuasively that within the wind industry 'repowering' is an umbrella term covering replacement, replanting and extension of life, and this position was not evidentially contested. I am also conscious that there is nothing in the scheme before me which suggests that repowering necessarily means the physical replacement or the enlargement of turbines.
32. In addition, this is an area where (as the Council confirmed) the authority does not intend to identify any suitable areas for renewable or low-carbon energy for at least five years. The implication is that no wind farm developer wishing to extend the life of an existing scheme will be able to comply with the Footnote – it seems to me that it is unlikely that this is the intention of the Footnote.
33. Overall, in the absence of national guidance as to the meaning of the term, I consider that the proposal comprises repowering and that, accordingly, the proposal is not required to be in an area identified as suitable for wind energy development in the development plan or demonstrate that the planning impacts identified by the affected local community have been fully addressed and the proposal has their backing. However I should stress that this interpretation of Footnote 49 does not reduce the weight to be given to development plan policies, nor does it mean that the varied views of local people can be or should be ignored.

The character and appearance of the area, including the LDNP and WHS

²⁰ Supported by KMP

²¹ As summarised in SOCG paragraphs 9.5 – 9.6

²² CD 3.17

34. At the national level, the appeal site is within the South Cumbria Low Fells National Character Area 19, which is a very broad area stretching from the Duddon Estuary in the west, through fells and ridges, to more gentle farmland in the east. In the central section, including the area around the appeal site, the area is characterised by undulating fells and ridges. Turning to a more local appraisal, the site is within LCT 9i 'Intermediate moorland', and Sub Type 9d 'Ridges (Furness)'. The key characteristics of this area are distinct ridges with extensive areas of true heathland moorland. It is open access land and is part of an SSSI – but as this is a conservation designation I will deal with it separately.
35. The landscape in which the appeal site is located is notable for its openness and large-scale natural features, and the unenclosed moorland gives a feeling of wildness. The wind farm is a significant man-made element within this largely natural landscape, which has an impact both when one is on the moor and in the surrounding area.
36. The appellant's Landscape and Visual Impact Assessment (LVIA) was produced using a standard methodology and, with one exception, there is no significant challenge to it either in term of methodology or results – including the visualisations. The exception is that KMP noted that the LVIA did not consider key viewpoints within the site itself, and stated that this was a serious defect. Whilst I understand the appellant's position on this matter, given the public accessibility of the site I can well understand KMP's concern. However, even if I were to accept this as a deficiency, it is not of any great consequence as I have viewed the effect of the turbines from a wide range of viewpoints within the site itself.
37. The difference between the Council and the appellants relates to the interpretation of the impacts within the agreed area where there are significant effects on landscape character. This is a relatively localised area near the site itself and up to 5 kms away. The wider effects would be perceptible not only from the 'Ridges' Landscape Character Sub Type, but within the Intertidal Flats, Coastal Mosses; and Foothills²³. There would also be a significant indirect effect on the landscape character in a small area of the LDNP.
38. I visited all the areas and every location agreed by the main parties, and travelled extensively within the 5km area and beyond. The turbines are obviously visible from a large number of locations but, given the wide landscape and their relatively limited (in today's terms) height and number, my assessment is that the landscape is more than capable of continuing to assimilate the windfarm without significant harm to its essential character.
39. I am also mindful that the Secretary of State, in granting planning permission for the original development, noted that the site was not in a nationally designated area but accepted that the turbines would be visible from many places in and around Kirkby Moor. However it was stated that such harm as may have been caused by the visual impact of the windfarm was outweighed by the national need for sustainable energy sources.
40. In coming to that view I am conscious that the Cumbria Wind Energy Supplementary Planning Document (2007) (SPD) provides guidance on wind energy developments. There is no reason (as the Council suggested) to accord

²³ Full listing of landscape types at SOCG Section 6.3

it limited weight in the light of the approach of Footnote 49 of the Framework – it is a landscape capacity assessment and as such is unrelated to the Footnote. In any case the Council confirmed at the Inquiry that the SPD remains current and that it forms part of the evidence base for the emerging plan. Although the SPD is of a certain age, there is nothing to suggest that this assessment was wrong or that matters have significantly changed since it was produced.

41. The SPD shows the appeal site as being within an area categorised as having a Medium/High capacity for wind energy development. It is noteworthy that this assessment was undertaken with the Kirkby Moor windfarm in place. It provides that, in addition to Kirkby Moor, there was additional capacity for further turbines. The Council noted that the SPD assumes turbines of a significantly greater height and argued that this capacity could not be transferred to smaller structures. This seems to fly in the face of logic - if the area has the capacity for further, taller, turbines it is hard to disagree with the appellants' position that the SPD supports the current proposal.
42. The SOCG records that there would be no significant cumulative effects arising from the proposal in relation to other operational, consented and in the planning process wind farms. I have no detailed evidence leading me to disagree with this position.
43. Finally, as a further material consideration, I am aware that there is no objection to the proposal from the Lake District National Park Authority (to which I will return below) or Natural England.
44. I will now turn to the argument advanced by the Council that the area is a valued landscape in terms of paragraph 170(a) of the Framework. Amongst other matters this provides that "Planning policies and decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan)".
45. The Council argued that Kirkby Moor is a valued landscape in terms of this paragraph in national policy, and this assessment must have affected the way in which the authority considered the overall planning balance. However the paragraph clearly refers to statutory status or identification in the development plan. Although the site is close to the LDNP and the WHS, these designated areas do not include a buffer and the site is therefore outside the area covered by any statutory status. Nor is the site identified in the development plan. Although clearly appreciated by local people and visitors, this does not mean that it is a valued landscape in terms of national policy.
46. I now turn to the LDNP and the WHS. The nearest turbine is around 850 metres from the boundary of the LDNP. The Lake District was added to the UNESCO World Heritage List in 2017. It is noteworthy that the nomination documents for the designation were prepared with the Kirkby Moor windfarm in place and that its existence was therefore part of the baseline²⁴. I also note that the nomination documents refer to the potential of the area within and outside the designated area for wind turbine development²⁵. Furthermore the nomination documents do not list any viewpoints into or out of the designated

²⁴ Doc 7.3 page 546

²⁵ Doc 7.3 page 551

area in the vicinity of the turbines, although I agree that there is no significant difference between the quality of the landscape at the appeal site and in the LDNP.

47. It is agreed that there would be significant indirect effects on the landscape in part of the National Park, within a radius of up to 5 kms from the site²⁶. I visited the potentially affected area within the NP, and a wider area therein, and consider that the retention of the turbines would not detract to any significant degree from the understanding and enjoyment of the special qualities of the LDNP.
48. In coming to that view, I note that the LDNP Authority did not object to the proposal. It was suggested by KMP that the response of the authority exceeded its remit – especially in view of the consideration given to the SSSI outside the park area. Whilst the authority may not have been required to comment on the Habitat Management Plan and other matters, I do not see any reason why it should not have done so. In any event, despite the speculation at the Inquiry, it is not possible to identify the background to the LDNP's position. The only thing which is clear is that they have not objected to the proposal, and this is a significant material consideration.
49. I have also considered the effect on visual amenity of the residents of the 24 properties which are located within 1km of the turbines. As agreed by the parties, there are 16 where views of the turbines can be gained – I visited or obtained a view of all of these. My judgement is that no property would experience such an overbearing effect on visual amenity that the dwelling would become an unattractive place in which to live. Further afield, there would be a very limited degree of visibility and the turbines are very distant in views in the landscape. The effect on properties in scattered settlements and on isolated homes would be very limited indeed.
50. I have considered the evidence of local people as to the effect on the enjoyment of rights of way, both in visual and aural terms. Some said that the presence of the turbines deterred the use of the footpaths and the open access land. Others said it did not or even that it enhanced their enjoyment. No technical analysis was put forward to support the Council's position that policy dealing with rights of way was breached. Based on my visit and consideration of the policy in the absence of technical evidence, I do not find that the enjoyment of rights of way would be significantly affected by the proposal.
51. Overall, I consider that, at most, the proposal would cause limited harm to the character and appearance of the area and that the landscape is more than capable of assimilating the windfarm for a further period without significant harm to its essential character. The proposal would accord with policies CS1.1, CS7.7 and CS8.2 in that it would protect the countryside and landscape. It respects its locational context in line with DMDPD policies.

The effect on designated heritage assets

52. The reason for refusal did not specify the designated heritage assets which might be affected by the proposal²⁷. However these were subsequently identified and agreed by the parties. I visited all such identified assets. I will

²⁶ Full listing of landscape types at SOCG Section 6.3

²⁷ There was no reference to non-designated assets

deal with each of these in turn (in no particular order), before assessing the overall approach of the parties and reaching a conclusion.

53. St Cuthbert's Church, Beckside (Grade II*) lies to the southwest of the appeal site. Its interest stems from the medieval fabric of the building – in both architectural and historic terms. It is located in a settlement in an otherwise entirely rural area, and the heritage asset can be best understood and appreciated from various open areas within the settlement. From those locations the turbines (which were turning on the day of my visit²⁸) introduce a moving element in distant views beyond the church - which would otherwise be an almost entirely static landscape. To a very limited extent this detracts from the church, which would otherwise be the tallest manmade structure in the area. However, given the distance involved, any perceived conflict with or harm to the significance of the setting of the asset is very minor.
54. The church of St John the Evangelist, Netherhouses (Grade II) is to the southeast of the site. The special interest of the building lies in its architectural detailing, in particular the timber bellcote and spirelet and its historic association as a chapel of ease. In the latter context the rural setting adds to its significance as a destination for a dispersed rural congregation. From the churchyard, the turbines are distantly visible to the northwest. However due to the distance involved they do not significantly detract from the significance of the setting or the historic and isolated value of the asset, which would be subject to only minor harm to significance.
55. The Sir John Barrow Monument, Hoad Hill (Grade II*) lies around 5 kms to the south east of the site. It is an unusual structure, designed as a faux lighthouse atop the hill, commemorating the naval administrator and traveller. Its significance stems from its architectural concept and historic associations with Ulverston. Due to the latter, the eye tends to be drawn towards Ulverston, although there is nothing to prevent the observer looking to the northwest, in which direction the wind turbines can be seen on a clear day. Overall, the historic significance of the asset would be unaffected, as would what seem to me to be the most important views from the monument. However, in views to and from the appeal site and the distant Lake District, there would be minor harm to the aesthetic significance of the asset.
56. Kirkby Hall (Grade I) is a 15th century manor house due west of the appeal site. It has historic associations with certain local families – these would be unaffected by the continued presence of the turbines. Although I was not able to approach particularly close to the building, which is set back from the road, I could see some of the external features of interest which, apparently together with internal features, give the property architectural significance. It is set in a modern working farm and between it and the windfarm is the substantial quarry to which reference has already been made. From the tree-lined avenue and doubtless the house itself, the eye is drawn to the quarry, and the windfarm is a negligible element in the setting of the asset. I conclude that the significance of the asset would not be affected.
57. On the appeal site itself are a round mound and a cairn on the slopes of Gill House Beck. These Bronze Age remains have historic and archaeological interest, and the setting on the slope of the Beck is a typical location. The

²⁸ This applies to all the heritage assets

archaeological and historic interest of the assets would be retained as would its important relationship with the Beck – which is the main aspect of its setting²⁹. The relationship between the two elements is very slightly affected by the turbines, but this causes no harm to significance. In coming to this view I note that the Council initially raised no issue in relation to this feature until late in the appeal process, before which it had been stated to be unaffected. It could scarcely have been overlooked as it had been assessed in the appellant's earlier documents, is evident on the ground, and is shown on the Ordnance Survey extract.

58. Angerton Farmhouse and Barn (Grade II) lie a considerable distance to the west of the site. They were identified by the Council as assets which could be affected by the proposal, although the authority noted that 'close inspection of the property was not carried out due to access difficulties' and the Council's evidence was that the impact on setting was neutral - though reference was made to the retained authentic fabric and its aesthetic value. I visited the area and obtained clear views of the asset, from which it appears that the majority of the 17th century farmhouse has collapsed leaving only a gable attached to the wall of the 19th century barn – the rest of the farmhouse has been demolished and the site cleared. Even allowing for the fact that the remaining structure is Listed, its interest is substantially reduced. There would be no effect on the significance of the asset.
59. National policy is that where a proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. I will return to this balancing exercise below. However there was a difference between the parties as to whether there was merit in introducing a sliding scale within this 'less than substantial' category. The appellant undertook this exercise, whereas the Council did not. Certainly, given the range of harm covered by this category, I found it useful to understand the appellant's position more clearly, but this is an approach not required by policy.
60. As set out above there is 'less than substantial harm' (in the terminology of the Framework) to three designated heritage assets. However, as I will discuss below, the proposed extension of life of the windfarm would provide a very substantial public benefit in terms of the continuation of sustainable energy generation from the site along with a much enhanced decommissioning proposal and a new restoration scheme. This very substantially outweighs the harm (for a further limited period) occasioned to the assets, which would be safeguarded in terms of the relevant policies dealing with heritage³⁰.

The extent of any benefit arising from the decommissioning and restoration schemes

61. The extent of the benefit arising from the DMS and the HMP occupied a reasonable amount of Inquiry time and evidence. However the position can be stated relatively briefly.
62. The plateau of which the appeal site forms part is largely managed heather moorland (dwarf shrub heath). Much of the appeal site, which extends well beyond the turbine area itself, is part of the Kirkby Moor SSSI in recognition of

²⁹ The SOCG states that there are no effects on below ground archaeology

³⁰ CS1.1; CS8.6; DM3; DM21

its upland heath habitat as heather moorland. It was designated as a SSSI in the early 1990s, when the windfarm was in place. It is a resource limited to northern Europe and is a scarce habitat within South Cumbria – Kirkby Moor is the largest area of this habitat in the region. The SSSI as a whole is designated as “unfavourable recovering” by Natural England. KMP’s position is that the site is unique and that this is the only windfarm on intact heather moorland in England, and that the site is of particular consequence due to its location between two estuaries.

63. Comparison can be made between the DMS and the HMP and the position if the Secretary of State’s condition were complied with. This condition simply requires the removal of the turbines and no removal of other structures, other work or remediation.
64. Whilst it is true that the landowner or other party could choose to undertake further works, there is nothing to require them to do so. KMP suggested that the remaining “ancillary equipment can be removed by other mechanisms” and the landscape restored, but did not put forward any mechanism which would lead to this outcome.
65. Weight can be attached in the overall balance to a restoration proposal in an SSSI. KMP asserted that the extent of the decommissioning and restoration is a “tiny element” in the context of the overall SSSI. In terms of geographical area this may well be true. However the removal of all the structures and the intended mitigation measures is of considerable importance in the local area. The restoration of around 1.25 ha of priority habitat would be of undoubted benefit.
66. The mitigation measures are a component of the overall scheme and would result in a significant positive effect. I have no evidence to counter this and conclude that it would help move the SSSI from its current “unfavourable-recovering” position to a more favourable status.
67. In coming to that view, I am aware that Natural England has confirmed that it has no objection to the proposal and that it welcomes the HMP.
68. Some members of the public have suggested that the appellant was acting inappropriately by offering more mitigation than was required by the original permission. I do not accept that this is in any way inappropriate. The Secretary of State’s original permission was a child of its time, and its conditions were of that era. In the current climate it is proper and necessary that the current appeal be considered in the light of modern practice.
69. Overall, the current proposal would result in a significantly better outcome for the SSSI (albeit partly some years hence) and this is a significant benefit arising from the DMS and the HMP. The proposal complies with policies DM1 and DM21 in relation to biodiversity and nature conservation.

The extent of any benefit arising from renewable energy generation

70. The Council and the appellant agree³¹ that this appeal is not an appropriate forum for debating national energy policy, and that the proposal would contribute to the national objective of promoting renewable energy technologies. I agree with that position. KMP’s view was that the energy

³¹ SOCG paragraph 6.6

contribution from the scheme “does not really matter in the context of harm”. However relevant parts of national and European energy policy³² are clearly material considerations to be taken into the planning balance.

71. Some local residents and others noted that the turbines are old technology in wind energy terms, and that their power generation is comparatively limited. Reference was also made to the turbines not turning for periods of time.
72. The clear evidence before me is that the windfarm, though doubtless dated and potentially comparatively inefficient, continues to generate power. Clearly if the windfarm were proposed afresh today it would be a very different animal, but the fact is that the windfarm is in place and continues to contribute to the national objective of promoting renewable energy. This is in the context, based on the evidence before me, that there is likely to be a shortfall of up to 3% against the 2020 renewable share target.
73. With that background, even a time limited and comparatively small proposal such as this makes some contribution to renewable energy objectives. It was agreed that the windfarm provides energy to power around 2,700 homes.
74. Overall, the continuation of the generating capacity of the windfarm is a significant benefit arising from the proposal and is in line with national and local policy³³.

Other material considerations

75. Part of the Council’s reason for refusal alleged that the continuation of the life of the windfarm would have an adverse impact on the local economy. However this was not pursued to any extent in evidence or submissions, aside from limited anecdotal statements. I give this very little weight.
76. Noise issues were raised by a number of residents and others who spoke at the Inquiry. The appellant submitted a rebuttal document in this respect, and no technical evidence has been produced to counter their position. In addition an ETSU_R_97 compliant noise condition is currently proposed, which is a considerable benefit of the scheme as opposed to the original permission.
77. Some local residents gave evidence concerning the community led initiative (the Southern Boundary Partnership) related to the possible future extension of the National Park. This was not a matter advanced by the Council in evidence. It was clear from residents’ evidence that this concept is at a very early stage, and bearing in mind that the most recent extensions to the designated area were adopted as recently as 2015, it appears that the Partnership’s idea will take some time to bear fruit. In any event, I heard that the proposed extension would include other wind farms and turbines. I do not consider that the proposed extension of life of the windfarm would be pivotal to the success of the initiative (as was asserted for KMP).
78. KMP took a full part in the Inquiry and produced evidence from a number of witnesses, most of whom live within a 5km radius of the site. Most of those representing KMP have been resident for a considerable period of time and have supported the group in its long-standing opposition to the windfarm. Many of the residents who opposed the proposal stated that the turbines

³² Set out in SOCG Appendix 1

³³ Policies CS1.1; CS7.7; DM21

should have been a temporary intrusion – albeit one lasting for 25 years – and that they should be removed. I have also considered the two letters submitted by the local MP.

79. Conversely, both in writing and at the Inquiry, a significant number of local residents and others wrote and spoke in support of the proposal. In that I include a very large petition in favour of the proposal. The support was for a range of reasons, largely related to renewable energy generation and the view that the turbines are an established part of the landscape.

Conditions and planning obligation

80. The conditions appended to this decision were agreed by the parties at the Inquiry.
81. Condition 1 provides that permission to generate electricity shall expire in March 2027 and that above ground infrastructure shall be removed within one year afterwards. This is essentially the proposal before me and is also the subject of the planning obligation.
82. Condition 2 deals in detail with noise issues and the procedure to be adopted in the event of noise complaint. It is ETSU_R_97 compliant. This is in the interests of the amenity of residents and others in the area. This condition is accompanied by a set of guidance notes. Overall, the condition and notes are in what is currently regarded as a standard form, and no objection has been raised to any detail.
83. Condition 3 limits the hours during which decommissioning may take place. Again, this is in the interests of the amenity of others in the area.
84. The s106 Obligation requires that the DMS and HMP be carried out.
85. The DMS provides a 12-month decommissioning and reinstatement period, including flexibility to allow for ecological constraints such as hibernation and nesting periods. The intention is that most of the physical decommissioning would take around two months. The decommissioning works, based at a temporary compound in the slate quarry, include the removal of the turbines, bases, transformer housings, the capping of cables, the reinstatement of soils and the restoration of the area around the turbines. This represents a significant improvement to the requirement of the Secretary of State's condition.
86. The HMP sets out the proposals for habitat management and restoration during the extended life of the windfarm and the subsequent decommissioning phase. In particular it deals with an area of around 1ha of dry dwarf shrub heath – currently an area of degraded heather moorland. Hydrological restoration would be achieved by the installation of pipes to reconnect the mires on the Old Kirkby Slate Road. Following decommissioning the habitat around each turbine site would be fenced to exclude grazing livestock, so as to allow the restoration of the heathland. This is a new and beneficial element going beyond the original condition, and is a significant benefit.
87. All the provisions are directly related to the proposal and are necessary to make the development acceptable in planning terms. Therefore, I consider that the Obligation meets the policy in paragraph 56 of the Framework and the

tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010. I have therefore taken it into account and given it significant weight.

Planning balance and conclusion

88. Read as a whole, the development plan promotes renewable energy in appropriate locations as a means of mitigating climate change. This is most succinctly set out in DMDPD policy DM21, which encourages renewable energy development where landscape impact is minimised, the historic environment is respected and impact on nature conservation interests is avoided. Other policies adopt essentially the same approach.
89. In this case, as set out above, there would be some limited harm to the character and appearance of the area, but the landscape is more than capable of assimilating the windfarm for a further period without significant harm. Three designated heritage assets would experience less than substantial harm, but this is outweighed in the heritage and planning balance by the public benefits.
90. The appeal proposal is for a relatively short extension of life of the windfarm linked to the subsidy regime. The time limited nature of the proposal is a material consideration when assessing landscape effects and the effect on the setting of heritage assets. This aspect appears to have been a consideration for the National Park Authority and Natural England. The Council did not deal with the issue of reversibility in evidence, although the authority accepted at the Inquiry that it was an important consideration. I agree with that position.
91. There would be a significant benefit arising from the DMS and the HMP in terms of biodiversity and nature conservation. In addition, the continued life of the windfarm accords with policy at all levels which encourage continuing renewable energy generation.
92. I am very conscious of the strongly held views, on both sides of the argument, especially the views of the relevant Parish Councils. A considerable volume of representations has been received and these are important material considerations. They are one of the matters which I have taken into account in the planning balance.
93. Overall, the continuation of the life of this windfarm for a further limited period would provide benefits in terms of the production of renewable energy and would include decommissioning and restoration advantages. These matters outweigh the limited harm which the proposal would cause for the remainder of the life of the installation.
94. For the reasons given above I conclude that the appeal should be allowed.

P. J. G. Ware

Inspector

Schedule of conditions
APP/M0933/W/18/3204360

Condition 1:

Permission to generate electricity shall expire on 31 March 2027. Each of the turbines and their associated above ground infrastructure, excluding access tracks shall be removed from the site by no later than 31 March 2028, or within one year of all of the turbines becoming disused for any reason, whichever is the sooner.

Condition 2:

The rating levels of the noise immission from the wind turbines, (including the application of any tonal penalty) when determined in accordance with the attached Guidance Notes, shall not exceed the values for the relevant integer wind speed set out in Tables 1 and 2 attached to these conditions and:

(a) Within three (3) months of the date of this permission the wind farm operator shall submit to the Local Planning Authority for written approval a list of proposed qualified acousticians who may undertake compliance measurements in accordance with this condition. Amendments to the list of approved consultants shall only be made with the prior written approval of the Local Planning Authority.

(b) Within twenty one (21) days from receipt of a written request from the Local Planning Authority and following the receipt of a complaint alleging noise disturbance at a dwelling, the windfarm operator shall, at its own expense, employ a consultant approved in writing by the Local Planning Authority, to assess the level of noise immission from the windfarm at the complainant's property in accordance with the procedures described in the attached Guidance Notes. The written request from the Local Planning Authority shall set out at least a date, time and location that the complaint relates to and identify meteorological conditions they consider relevant to the cause of complaint. Within fourteen (14) days of receipt of the written request of the Local Planning Authority made under this paragraph (b), the windfarm operator shall provide the information logged in accordance with paragraph (h) to the Local Planning Authority in the format set out in Guidance Note 1(e), for the period that the complainant alleges the noise disturbance occurred.

(c) Where a dwelling to which a complaint is related is not listed in the tables attached to these conditions, the windfarm operator shall submit in writing to the Local Planning Authority for written approval, proposed noise limits selected from those listed in the tables to be adopted at the complainant's dwelling for compliance checking purposes. The proposed noise limits are to be those limits selected from the tables specified for a listed location which the qualified acoustician considers as being likely to experience the most similar background noise environment to that experienced at the complainant's dwelling. The submission of the proposed noise limits to the Local Planning Authority shall include a written justification of the choice of the representative background noise environment provided by the qualified acoustician. The representative background noise environment and proposed noise limits shall be submitted in writing within thirty five (35) days of the initial notification to the windfarm operator of the complaint. These are to be submitted to the Local Planning Authority for their written approval. The rating level of noise immission resulting from the combined effects of the wind turbines when determined in accordance with the attached Guidance Notes shall not exceed the noise limits approved in writing by the Local Planning Authority for the complainant's dwelling.

(d) Prior to the commencement of any measurements by the qualified acoustician to be undertaken in accordance with these conditions, the windfarm operator shall submit in writing to the Local Planning Authority for written approval the proposed measurement location identified in accordance with the Guidance Notes where

measurements for compliance checking purposes shall be undertaken. Measurements to assess compliance with the noise limits set out in the tables attached to these conditions or approved by the Local Planning Authority pursuant to paragraph (c) of this condition shall be undertaken at the measurement location approved in writing by the Local Planning Authority.

(e) Prior to the written submission of the qualified acoustician's assessment of the rating level of noise

immission in accordance with paragraph (f), the windfarm operator shall submit in writing to the Local Planning Authority for written approval a proposed assessment protocol setting out the following:

i. 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 immission;

ii. A reasoned assessment as to whether the noise giving rise to the complaint contains or is likely to contain a tonal component. The proposed range of conditions shall be those which prevailed during times when the complainant alleges there was disturbance owing to noise, having regard to the written request of the Local Planning Authority and any conditions the authority identify under paragraph (b), and such others as the qualified acoustician considers likely to result in a breach of the noise limits. The assessment of the rating level of noise immission shall be undertaken in accordance with the assessment protocol approved in writing by the Local Planning Authority.

(f) The wind farm operator shall provide to the Local Planning Authority the qualified acoustician's written assessment of the rating level of noise immission undertaken in accordance with the Guidance Notes within two months of the date of the written request of the Local Planning Authority made under paragraph (b) unless the time limit is extended in writing by the Local Planning Authority. The assessment shall include all data collected for the purposes of undertaking the compliance measurements, such data to be provided in the format set out in 1(e) of the Guidance Notes. The instrumentation used to undertake the measurements shall be calibrated in accordance with Guidance Note 1(a) and certificates of calibration shall be submitted to the Local Planning Authority with the qualified acoustician's assessment of the rating level of noise immission.

(g) Where a further assessment of the rating level of noise immission from the wind farm is required pursuant to paragraph 4(c) of the attached Guidance Notes, the wind farm operator shall submit in writing a copy of the further assessment within twenty one (21) days of submission of the qualified acoustician's assessment pursuant to paragraph (f) above unless the time limit has been extended in writing by the Local Planning Authority.

(h) The wind farm operator shall continuously log power production, nacelle wind speed, at each wind turbine all in accordance with Guidance Note 1(d) as well as the wind speed measured or calculated at hub height. Rainfall shall be measured during any noise measurement regime at a representative location. These data shall be retained for a period of not less than twenty four (24) months. The wind farm operator shall provide this information in writing in the format set out in Guidance Note 1(e) to the Local Planning Authority on its request, within fourteen (14) days of receipt in writing of such a request.

For the purposes of this condition, a 'dwelling' is a building which is lawfully used as a habitation and which exists or had planning permission at the date of this consent.

Table 1 - Between 23:00 and 07:00: Noise level (dB LA90, 10-minute).

Location (Easting, Northing)	Wind speed (ms) as standardised to 10m height											
	1	2	3	4	5	6	7	8	9	10	11	12
Friar's Ground (324125, 482704)	43	43	43	43	43	43	43	43	43	44	44	44
Croglin Farm (324066, 483491)	43	43	43	43	43	43	43	43	43	43	43	43
Beanthwaite (324894, 484667)	43	43	43	43	43	43	43	43	43	43	43	43
Parkgate (327047, 484325)	43	43	43	43	43	43	43	43	43	43	43	43
Groffa Crag (327078, 483714)	43	43	43	43	43	43	43	43	43	43	43	43
Moor House (326792, 482695)	43	43	43	43	43	43	43	43	43	43	43	43
Rathvale (325683, 481007)	43	43	43	43	43	43	43	43.4	46.1	47.9	47.9	47.9
Heather Cottage (326733, 484662)	43	43	43	43	43	43	43	43	43	43	43	43
High Ghyll (324379, 482478)	43	43	43	43	43	43	43	43	43	44	44	44

Table 2 - Between 07:00 and 23:00: Noise level (dB LA90, 10-minute)

Location (Easting, Northing)	Wind speed (ms) as standardised to 10m height											
	1	2	3	4	5	6	7	8	9	10	11	12
Friar's Ground (324125, 482704)	35	35	35	35	35	35.2	37.1	39.4	41.9	44.7	47.6	47.6
Croglin Farm (324066, 483491)	35	35	35	35	35	35.4	36.8	38.4	40.4	42.7	45.4	45.4
Beanthwaite (324894, 484667)	35	35	35	35	36	37.6	39.3	41	42.9	44.8	46.7	46.7
Parkgate (327047, 484325)	35	35	35	35	35	35	35	36	36.8	37.6	38.2	38.2
Groffa Crag (327078, 483714)	35	35	35	35	35	35	35	36.4	38.7	41.8	45.8	45.8
Moor House (326792, 482695)	35	35	35	35	35	35	35.3	36.8	38.6	40.8	43.4	43.4
Rathvale (325683, 481007)	35	35	35	36.8	38.9	41.3	43.8	46.3	48.8	51.3	53.5	53.5
Heather Cottage (326733, 484662)	35	35	35	35	35.3	37.1	38.7	40	41	41.8	42.4	42.4
High Ghyll (324379, 482478)	35	35	35	35	35	35.2	37.1	39.4	41.9	44.7	47.6	47.6

Note to Tables 1 and 2: The geographical coordinate references are provided for the purpose of identifying the general location of dwellings to which a given set of noise limits applies.

Condition 3:

Decommissioning work shall only take place between the hours of 07:00 – 19:00 hours on Monday to Friday inclusive, 07:00 – 13:00 hours on Saturdays with no decommissioning work on a Sunday, Bank or Public Holiday. Outwith these hours, works at the site shall be limited to emergency works and dust suppression. The Local Planning Authority shall be informed in writing of emergency works within three working days of occurrence.

The recommendations to control noise listed in the assessment provided with the application shall be employed.

Guidance Notes for Noise Conditions

These notes are to be read with and form part of condition 2. They further explain the condition and specify the methods to be deployed in the assessment of complaints about noise immission from the wind farm. The rating level of noise at each integer wind speed is the arithmetic sum of the wind farm noise level as determined from the best-fit curve described in Note 2 of these Guidance Notes and any tonal penalty applied in accordance with Note 3. Reference to ETSU-R-97 refers to the publication entitled *The Assessment and Rating of Noise from Wind Farms* (1997) published by the Energy Technology Support Unit (ETSU) for the Department of Trade and Industry (DTI). Reference to 'A Good Practice Guide to the Application of ETSU-R-97 for the Assessment and Rating of Wind Turbine Noise' refers to the Institute of Acoustics document published in May 2013.

Note 1

(a) Values of the L_{A90} ten-minute noise statistic should be measured at the complainant's property at the approved location, using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This should be calibrated in accordance with the procedure specified in BS 4142: 2014 (or the equivalent UK adopted standard in force at the time of the measurements). Measurements shall be undertaken in such a manner to enable a tonal penalty to be applied in accordance with Guidance Note 3.

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

be undertaken at the approved alternative representative measurement location approved in writing by the Local Planning Authority.

(c) The L_{A90} ten-minute measurements should be synchronised with measurements of the ten minute arithmetic average wind speed and with operational data logged in accordance with Guidance Note 1(d), including the power generation data from the turbine control systems of the wind farm.

(d) To enable compliance with the conditions to be evaluated, the wind farm operator shall continuously log arithmetic mean wind speed in metres per second (m/s), and arithmetic mean wind direction in degrees from north and rainfall data in each successive ten minute period by direct measurement at the permanent meteorological monitoring location and also the rainfall location identified and as approved in writing by the Local Planning Authority. The mean wind speed data shall be measured or calculated at turbine hub height then 'standardised' to a reference height of ten metres as described in ETSU-R-97 at page 120, using a reference roughness length of 0.05 metres. The standardised wind speed measurements shall be correlated with the noise measurements for comparison with Tables 1 and 2 in the condition. It is this procedure, which is determined as valid in accordance with Note 2(b), such correlation to be undertaken in the manner described in Note 2(c). All ten minute periods shall commence on the hour and in ten minute increments thereafter, synchronised with Greenwich Mean Time.

(e) Data provided to the Local Planning Authority in accordance with paragraphs (f) (g) and (h) of the noise condition and as described in this note shall be provided in comma separated values in electronic format unless otherwise agreed in writing with the Local Planning Authority.

(f) A data logging rain gauge shall be installed in the course of the assessment of the levels of noise immission. The gauge shall record over successive 10-minute periods synchronised with the periods of data recorded in accordance with note 1(d).

Note 2

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

(b) Valid data points are those measured in the conditions set out in the assessment protocol approved by the Local Planning Authority under paragraph (e) of the noise condition or arising under the specified meteorological conditions leading to complaint but excluding any periods of rainfall identified in the condition.

(c) Values of the L_{A90} ten-minute noise measurements and corresponding values of the ten minute, standardised wind speed for those data points considered valid in accordance with Note 2 paragraph (b) shall be plotted on an XY chart with noise level on the Y-axis and wind speed on the X-axis. A least squares or logarithmic, best fitting curve of an order deemed appropriate by the qualified acoustician (but which may not be higher than a third order) should be fitted to the data points to define the wind farm noise level at each integer wind speed.

Note 3

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

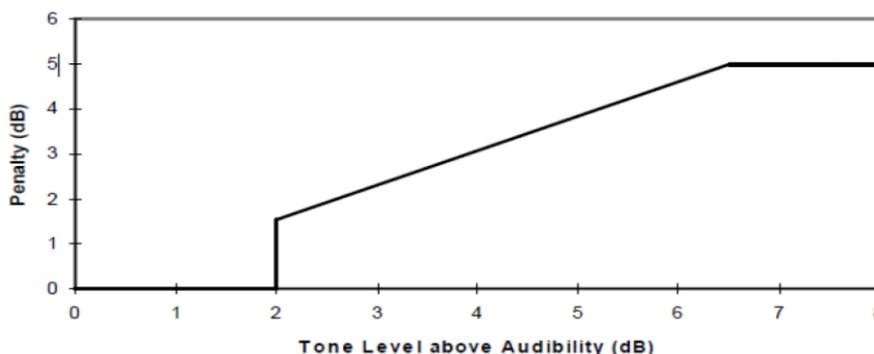
(b) For each ten minute interval for which L_{A90} ten minute data have been determined as valid in accordance with Note 2, a tonal assessment shall be performed on noise immission during two minutes of each ten minute period. The two minute periods should be spaced at ten minute intervals provided that uninterrupted uncorrupted data are available ('the standard procedure'). Where uncorrupted data are not available, the first available uninterrupted clean two minute period out of the affected overall ten minute period shall be selected. Any such deviations from standard procedure shall be reported.

(c) For each of the two minute samples the tone level above audibility (L_{ta}), shall be calculated by comparison with the audibility criterion given in Section 2.1 on pages 104 -109 of ETSU-R-97.

(d) The tone level above audibility (L_{ta}) shall be plotted against wind speed for each of the two minute samples. For samples for which the tones were below the audibility criterion or no tone was identified, a value of zero audibility shall be recorded.

(e) A least squares 'best fit' linear regression shall then be performed to establish the average tone level above audibility for each integer wind speed derived from the value of the 'best fit' line fitted to values within ± 0.5 m/s of each integer wind speed. If there is no apparent trend with wind speed then a simple arithmetic mean shall be used. This process shall be repeated for each integer wind speed for which there is an assessment of overall levels in Note 2.

(f) The tonal penalty is derived from the margin above audibility of the tone according to the figure below:



Note 4

(a) If a tonal penalty is to be applied in accordance with Note 3, the rating level of the turbine noise at each wind speed is the arithmetic sum of the measured noise level as determined from the best fit curve described in Note 2 and the penalty for tonal noise as derived in accordance with Note 3 above at each integer wind speed

within the range set out in the approved assessment protocol under paragraph (e) of the noise condition.

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

(c) In the event that the rating level is above the limit(s) set out in the tables attached to the noise condition or the noise limits for a complainant's dwelling approved in accordance with paragraph (c) of the noise condition, the qualified acoustician shall undertake a further assessment of the rating level to correct for background noise so that the rated level relates to wind turbine noise immission only.

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

(e) Repeating the steps in Guidance Note 2, with the wind farm switched off, and determining the background noise (L_3) at each integer wind speed within the range requested by the Local Planning Authority in its written request under paragraph (c) and the approved protocol under paragraph (d) of the noise condition.

(f) The wind farm noise (L_1) at this speed shall then be calculated as follows where L_2 is the measured level with turbines running but without the addition of any tonal penalty:

$$L_1 = 10 \log_{10} [10^{0.1 L_2} - 10^{0.1 L_3}]$$

(g) The rating level shall be re-calculated by adding arithmetically the tonal penalty (if any is applied in accordance with Note 3) to the derived wind farm noise L_1 at that integer wind speed.

(h) If the rating level after adjustment for background noise contribution and adjustment for tonal penalty (if required) at any integer wind speed lies at or below the values set out in the tables attached to the conditions or at or below the noise limits approved by the Local Planning Authority for a complainant's dwelling in accordance with paragraph (c) of the noise condition then no further action is necessary. If the rating level at any integer wind speed exceeds the values set out in the tables attached to the conditions or the noise limits approved by the Local Planning Authority for a complainant's dwelling in accordance with paragraph (c) of the noise condition then the development fails to comply with the conditions.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr T Leader of Counsel

He called

Mr J Etchells MA BPhil CMLI	Director, Jon Etchells Consulting Limited
Mr C O'Flaherty BSc MSc MRICS	Heritage planning consultant and senior lecturer
Mr S Wood BA(Hons) BTP MRTPI	Regional Planning and Building Control Manager, Urban Vision

FOR THE APPELLANT:

Mr D Hardy

He called	
Dr J Huckle BSc(Hons) Msc MCIEEM CEnv	Director, Huckle Ecology Limited
Mr B Denny BA(Hons) DIPLA FLI CENV MIEMA	Regional Director (Environment) Pegasus Group
Ms L Garcia BA(Hons) MCIfA	Associate Heritage Consultant, Pegasus Group
Mr C Calvert BSc(Hons) MA MRTPI	Executive Director (Planning) Pegasus Group

FOR KIRKBY MOOR PROTECTORS (KMP):

Mr G Sinclair who also gave evidence

He called	
Mr G Sinclair	Director, Environment Information Services
Ms L Wall BSc(Hons) MA MRTPI	Friends of the Lake District
Mr D Savage	Local resident
Cllr C Pickthall	(In a personal capacity)
Cllr A Hall MBE	SLDC Councillor
Cllr H Graves	Parish Councillor
Mr J Hudson	Local resident
Ms G Scott	Local resident
Mr I Hubbard	Local resident
Ms L Cooper	Local resident
Mrs V Johnstone	Local resident
Cllr J Airey	SLDC and CC Councillor
Cllr M McPherson	Parish Councillor
Cllr M Mitchell	Parish Councillor
Cllr I Winstanley	Parish Councillor
Cllr M Brereton	SLDC and CC Councillor
Cllr I Jones	Parish Councillor
Cllr G Sanderson	Parish Councillor
Mrs D Rutherford	Local resident
Ms A Carmichael	Local resident
Ms R Thomas	Local resident

INTERESTED PERSONS:

Mrs A McKown	Resident of Rochdale
Dr K Rawles	Local resident
Mr W Shaw	Local resident
Dr R Towler	Local resident

Mr D Binks	Team Leader, Mountain Rescue Team
Ms A Stirzaker	Local resident
Mr R Long	Local resident
Ms D Munro	Local resident
Mr Gilbert	Local resident
Mr Howlett	Ulverston Green Party (submitted petition)
Mr M Keegan	Local resident
Ms R Bagshaw	Holker Estates

INQUIRY DOCUMENTS

1	List of persons present at the Inquiry
2	Council's repowering documentation: PNE repowering German windfarms MHCLG response to draft NPPF consultation Renewable and low carbon energy guidance Three steps to turbine repowering California Energy Commission – scoping level study
3	KMP additional documents: Parish Council data and map Hampsthwaite decision APP/E2734/W/18/3200922 Kirkby Moor decision COM/3160859 Natural England standards
4	Bundle of letters of representation handed in at the Inquiry
5	Scout Moor decision APP/B23/55/V/15/3139740
6	Statement by Dr Rawles
7	Letter (24/12/18) from John Woodcock MP
8	Appeal decision at 293 Bradgate Road APP/X2410/W/18/3204941
9	Statement by Mr Shaw
10	Kirkby Moor Community Benefit Fund April 2013 – March 2014
11	Letter (25 January 2019) from John Woodcock MP
12	Council's schedule of development plan policies and weight
13	Dr Towler's statement
14	Summary of Ms Stirzaker's statement
15	Winash wind farm report
16	Mr R Long's statement
17	Mr P Howlett's statement
18	Mr S Filmore's statement
19	Mrs J Filmore's statement
20	Broughton Community Plan 2016
21	GLVIA Box 5.1
22	Keswick to Barrow walk details
23	Mr Gilbert's statement
24	Cover sheet to petition in favour of the proposal
25	Mr Howlett's statement
26	Mr Long's statement
27	Ms Stirzaker's statement
28	Ms Stirzaker's supplementary statement
29	Dr Towler's statement
30	Statement from Duddon and Furness Mountain rescue team
31	Closing submissions by KMP
32	Closing submissions by the Council

33	Closing submissions by the appellant, 'repowering' document, submissions on cultural heritage
34	Planning Obligation (19 March 2019)

CORE DOCUMENTS ('K' prefix indicates KMP document)

1. Adopted development plan and emerging development plan	
1.1	South Lakeland Local Plan Core Strategy (2010) (relevant policies only)
1.2	Saved policies of the South Lakeland Local Plan (2006) (relevant policies only)
1.3	Cumbria Wind Energy Supplementary Planning Document (2007)
1.4	South Lakeland Local Plan Part 3-Submission Development Management Policies DPD (submitted for examination February 2018) (relevant policies only)
1.5	Letter of 28 June 2018, from the Inspector Mr Philip Lewis, to SLDC in relation to the emerging Development Management Policies DPD
K1.6	Local Plan 2018 text
2. National planning policy	
2.1	DCLG: National Planning Policy Framework (March 2012)
2.2	MHCLG: Draft Revised National Planning Policy Framework (March 2018)
2.3	MHCLG: National Planning Policy Framework (July 2018)
2.4	DCLG: National Planning Practice Guidance (June 2015 - Online resource) Planning for Renewable and Low Carbon Energy (relevant extracts only)
2.5	DECC: Overarching National Policy Statement for Energy EN-1 (July 2011)
2.6	DECC: National Policy Statement for Renewable Energy Infrastructure EN-3 (July 2011)
2.7	Written Ministerial Statement (HCWS42) relating to Local Planning and Wind Energy Development, issued by the Secretary of State for Communities and Local Government (Greg Clark) (June 2015)
2.8	Letter from MHCLG dated 22 nd November 2018
3. Renewable energy and climate change documents	
3.1	DECC: UK Renewable Energy Roadmap (July 2011)
3.2	DECC: UK Renewable Energy Roadmap Update (December 2012)
3.3	DECC: Onshore Wind, Direct and Wider Economic Impacts (May 2012)
3.4	DECC: UK Renewable Energy Roadmap Update (November 2013)
3.5	DECC: Digest of UK Energy Statistics (DUKES) (2018)
3.6	European Commission 'Renewable Energy Progress Report' (February 2017)
3.7	DECC: Secretary of State speech on new direction for UK Energy Policy, November 2015
3.8	Committee on Climate Change, 9 th Annual Assessment, January 2017
3.9	DECC: letter on EU 2020 Renewables Target 29 October 2015
3.10	Community Engagement for Onshore Wind Developments: Best Practice Guidance, Department of Energy and Climate Change (October 2014)
3.11	Clean Growth Strategy, HM Government (as updated April 2018)
3.12	The UK Renewable Energy Strategy, HM Government (2009)
3.13	House of Commons - Energy and Climate Change Committee, 2020 renewable heat and transport targets, Second Report of Session 2016–17, September 2016
3.14	Reducing UK emissions – 2018 Progress Report to Parliament, Committee on Climate Change, June 2018
3.15	UK Statement at the Paris Agreement Signing Ceremony - "The Paris Agreement proves that the transition to a climate-neutral and climate-resilient world is happening.", Published 25 April 2016
3.16	"Global Warming of 1.5 °C, an IPCC special report on the impacts of global warming of 1.5 °C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty", IPCC, October

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3.17	'Onshore Wind Policy Statement' for Scotland (Dec 2017)
3.18	Renewable UK response to National Planning Policy Framework (NPPF), May 2018
4. Legislation and caselaw	
4.1	Suffolk Coastal District Council v Hopkins Homes Ltd UKSC 2016/0076 and Richborough Estates Partnership LLP v Cheshire East Borough Council UKSC 2016/0078
4.2	Barwood Strategic Land II LLP v (1) East Staffordshire Borough Council (2) SSCLG [2017] EWCA Civ 893
4.3	Palmer v Herefordshire Council and Another [2016] EWCA Civ 1061
4.4	Forest of Dean DC v SSCLG and Gladman Developments Ltd [2016] EWHC 421
4.5	R (Leckhampton Green Land Action Group Ltd) v Tewkesbury BC [2017] EWHC 198
4.6	R (on the application of Holder) v Gedling Borough Council [2018] EWCA Civ 214
4.7	Williams vs Powys CC & Bagley [2017] EWCA Civ 427
4.8	Catesby Estates Ltd Vs Peter Steer & Historic England [2018] EWCA Civ 1697
4.9	National Park and Access to the Countryside Act 1949
4.10	Planning (Listed Building and Conservation Areas) Act 1990 (Section 66)
4.11	The Town and Country Planning (Development Management Procedure) (England) Order 2015
4.12	Wildlife and Countryside Act 1981
4.13	Countryside and Rights of Way Act 2000
4.14	The Community Infrastructure Levy Regulations 2010 (Relevant Extracts)
4.15	R v Coventry City Council ex p. Arrowcroft Group plc [2001] PLCR 7
4.16	Regina (Wet Fishing Works Ltd) v Taunton Dene Borough Council [2017] EWHC 1837 (Admin)
4.17	Finney v Welsh Ministers [2018] EWHC 3037 (Admin)
5. Appeal decisions	
5.1	Kirkby Moor (5/90/2312)
5.2	Carland Cross (APP/D0840/A/09/2103026)
5.3	New Rides Farm (APP/V2255/W/15/3014371)
5.4	Withernwick II (APP/E2001/W/15/3133812)
5.5	Mean Moor and Harlock Hill (APP/M0933/A/13/2203115)
5.6	Earls Hall Farm, Clacton-on-Sea (APP/P1560/A/08/2088548)
5.7	Enifer Downs (APP/X2220/A/08/2071880)
5.8	Burnthouse Wind Farm (APP/YR09/0392/F)
5.9	Beech Tree Farm (APP/K1128/A/08/2072150)
5.10	Burnham-on-Sea, Somerset (APP/V3310/A/06/2031158)
5.11	Sixpenny Wood (APP/E2001/A/09/2101851)
5.12	Chelveston Renewable Energy Park (APP/G2815/A/11/2160077)
5.13	Cleek Hall (APP/N2739/A/12/2172629)
5.14	REFERENCE NOT IN USE
5.15	Watford Lodge (APP/Y2810/A/11/2153242)
5.16	Nun Wood (APP/Y0435/A/10/2140401; APP/K0235/A/11/2149434; APP/H2835/A/11/2149437)
5.17	Starbold wind farm (APP/J3720/A/13/2193579)
5.18	Holme-on-Spalding Moor (known as River Valley Wind Farm) (APP/E2001/A/13/2207817)
6. Landscape character and visual effects	
6.1	Reference not in use
6.2	The Countryside Agency: Landscape Character Assessment: Guidance for England and Scotland (2002)
6.3	Visual Representation of Development Proposals (Landscape Institute Advice Note 02/17)

6.4	Scottish Natural Heritage: Visual Representation of Wind Farms – Good Practice Guidance Version 2.2 (February 2017)
6.5	Scottish Natural Heritage: Siting and Designing Windfarms in the Landscape, Version 3 (February 2017)
6.6	Scottish Natural Heritage: Guidance Assessing the Cumulative Impact of Onshore Wind Energy Developments, Version 3 (March 2012)
6.7	National Character Area Profile: 19: South Cumbria Low Fells, Natural England
6.8	Cumbria Landscape Character Guidance and Toolkit (March 2011)
6.9	Reference not in use
6.10	A Guide to Using the Cumbria Historic Landscape Characterisation Database for Cumbria’s Planning Authorities, Cumbria County Council (2009)
6.11	A Landscape Strategy for Lancashire – Landscape Character Assessment, Environmental Resources Management (2000)
6.12	Lake District National Park Landscape Character Assessment and Guidelines (2008)
6.13	Cumulative Impacts of Vertical Infrastructure, Cumbria County Council (2014)
6.14	Management Plan for the Lake District National Park (2015-2020)
7. Cultural heritage	
7.1	Historic England: Historic Environment Good Practice Advice Planning Note 3: The Setting of Heritage Assets (2015)
7.2	Historic England: Historic Environment Good Practice Advice Planning Note 3: The Setting of Heritage Assets (2 nd Edition 2017)
7.3	Lake District World Heritage Site Nomination Dossier, Volume 1
7.4	Historic England: Historic Environment Good Practice Advice in Planning Note 2: Managing Significance in Decision-Taking in the historic Environment (2015)
7.5	Historic England: Conservation Principles, Policies and Guidance For the sustainable management of the historic environment (2008)
7.6	Historic England: Conservation Principles For the sustainable management of the historic environment (consultation draft 2017)
7.7	Piloting an approach to heritage assessment and information requirements - ‘Heritage assessment and information requirements’ – Draft Guidance for Consultation, Lake District National Park Authority, July 2017
K7.8	WHC decision
K7.9	WHC Operational Guidelines
8. Ecology	
8.1	Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater and Coastal, 2nd edition. Winchester: Chartered Institute of Ecology and Environmental Management, CIEEM (2018)
8.2	Research and guidance on restoration and decommissioning of onshore wind farms, Scottish Natural Heritage, SNH(2013)
8.3	REFERENCE NOT IN USE
8.4	Technical Appendix 7.6 Kirkby Slate Quarry Expansion Habitat Management Plan, Atmos Consulting (2016)
8.5	The Works on Common Land (Exemptions) (England) Order 2007, The Planning Inspectorate (2007)
8.6	Kirkby Moos SSSI Citation
8.7	Kirkby Moor SSSI – Views about Management
8.8	DEFRA – Net Gain – Consultation Proposals – December 2018
K8.9	KM SSSI Further docs
K8.10	A Green Future
9. Local economy and tourism	
9.1	Wind Farms and Tourism Trends in Scotland, BIGGAR Economics (July 2016)
9.2	The Economic Impact on Wind Farms on Scottish Tourism (MOFFAT Centre et al), (March 2008)
10. Application documents	

10.1	Planning application forms including site ownership and agricultural holdings certificates
10.2	Planning Statement (July 2017)
10.3	Consultation Report (July 2017)
10.4	Flood Risk Assessment (June 2017)
10.5	Environmental Statement: NTS (July 2017)
10.6	Environmental Statement: Vol 1 Written Statement (July 2017)
10.7	Environmental Statement: Vol 2 Figures (July 2017)
10.8	Environmental Statement: Vol 3 Visualisations (July 2017)
10.9	Environmental Statement: Vol 4a Appendices part 1 (July 2017)
10.10	Environmental Statement: Vol 4b Appendices part 2 (July 2017)
10.11	Officer report to committee
10.12	Letter from Squire Patton Boggs dated 30 th November 2017
10.13	Letter from Pegasus Group to South Lakeland District Council dated 1 st December 2017
10.14	Officer update to committee (5 th December 2017)
10.15	Minutes of committee meeting (5 th December 2017)
10.16	Decision Notice (20 th December 2017)
10.17	Cumbria CC Historic Environment Officer Scoping Opinion 04 th August 2016
10.18	SLDC Scoping Opinion 13 th September 2016
10.19	Historic England Consultation ES response 14 th August 2017
10.20	Cumbria CC Historic Environment Officer Consultation responses 16 th August 2017
10.21	SLDC Conservation Officer Consultation response 6 th September 2017
10.22	Letter from Pegasus Group to Mairi Lock, Lake District National Park Authority, dated 28 th September 2017, with enclosure 'Pegasus Group Heritage Assessment Addendum – The English Lake District World Heritage Site', September 2017
10.23	Letter from the Chairman of the High Furness Commoners Association in support of the application, dated 20 th November 2017
10.24	Consultation response from the Council's Environmental Protection Officer, 1 st November 2017
11. Appeal documents	
11.1	Appellant's Statement of Case
11.2	SLDC Statement of Case
11.3	Kirkby Moor Protectors (KMP) Statement of Case
12. Other KMP documents	
K12.01	KM Repowering NTS photo extracts
K12.02	KM IR 1991 and SoS decision 1992
K12.03	Whinash report (extracts)
K12.04	National Park Southern Boundary Extension (various)
K12.05	Valued landscapes
K12.06	Broughton Community Plan (extracts)
K12.07	NWEM 18 Dec 2018 Mountain Rescue
K12.08	Rhydcwmerau
K12.09	Planning 14 Dec 2018