



# **Report to the Secretaries of State for Trade and Industry; and for Environment, Food and Rural Affairs**

The Planning Inspectorate  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN  
☎ GTN 1371 8000

**by David M H Rose BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State for Trade and  
Industry, with the agreement of the Secretary of State for  
Environment, Food and Rural Affairs**

Date: 3 February 2006

## **Whinash Wind Farm**

**Concurrent Public Inquiries opened on 19 April 2005**

**ELECTRICITY ACT 1989 (SECTION 36 AND SCHEDULE 8)**

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 90)**

**LAW OF PROPERTY ACT 1925 (SECTION 194)**

**INCLOSURE ACT 1845**

**COMMONS ACT 1876**

**Applications by Chalmerston Wind Power Limited for:-**

- (i) consent to construct and operate a 67.5MW wind turbine generating station under Section 36 of the Electricity Act 1989; and**
- (ii) consent to construct 24 wind turbines, access tracks, temporary hardstandings, 2 meteorological masts and an electricity substation, on common land, under the provisions of Section 194 of the Law of Property Act 1925**

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## A: INTRODUCTION

### Summary of Recommendations:-

**I recommend that consent be refused for both applications.**

### The Applications and the Scope of the Inquiries

1.1 The concurrent Inquiries into the proposed Whinash Wind Farm considered:-

- *an application by Chalmerston Wind Power Limited, dated 29 September 2003, to the Secretary of State for Trade and Industry for consent under Section 36 of the Electricity Act 1989 for the construction and operation of a 67.5MW wind turbine generating station at Whinash, Bretherdale and Roundthwaite Commons, Borrowdale, near Tebay: and a direction under Section 90(2) of the Town and Country Planning Act 1990 that planning permission for such development be deemed to be granted (the Section 36 application) [File ref: GDBC/001/00135C];<sup>1</sup>*
- *an application by Chalmerston Wind Power Limited, dated 12 March 2004, to the Secretary of State for Environment, Food and Rural Affairs for consent to construct 24 wind turbines, access tracks, temporary hardstandings, 2 meteorological masts and an electricity substation, all on common land, under the provisions of Section 194 of the Law of Property Act 1925 at Roundthwaite and Bretherdale Commons in the Parish of Tebay, District of Eden and County of Cumbria (the Section 194 application) [File ref; CLI 96].*

1.2 I opened the Inquiries on 19 April 2005 at the Shap Wells Hotel, Cumbria and closed them on 17 June 2005, having sat on 27 days. I also sat on the evening of 18 May 2005 to hear representations on the Section 194 application. Accompanied site visits were made on 9 May, 16 June (which was abandoned due to adverse weather), 20 and 21 June and 17 August 2005. Unaccompanied site visits after the close of the Inquiry, including visits to wind farms at Cairn Uish and Cefn Croes, were carried out over another 6 days. I walked extensively within the site, its immediate surroundings and I visited most of the principal viewpoints referred to in the evidence, with omissions being on the basis that I had already seen representative views. I held pre-Inquiry meetings on 30 November 2004 and 31 January 2005.<sup>2</sup>

1.3 The **Section 36 application** proposes:-

- the erection of 27 wind turbine generators, each between 2.5 - 3.0MW, with a hub height of 70 metres and a turbine radius of 45 metres, giving an overall height to blade tip of 115 metres;
- the construction of approximately 16.7 kilometres of new access tracks and hardstandings; and the erection of 2 x 70 metre meteorological masts;
- the installation of underground 33kV electrical cabling circuits and associated underground cable route construction works; (including underground cabling between the substation and existing overhead 132kV line which lies 100 metres to the west of the A6;
- the construction of a 33kV/132kV substation and associated works (including switch room and transformer);
- ancillary development including temporary construction compound and hardstanding areas.

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<sup>1</sup> CD2 Letter of application dated 29 September 2003

<sup>2</sup> General Inquiry Documents X1 & X3

- 1.4 The majority of the application site, on which the proposed turbines and substation would be constructed, lies within Eden district adjacent to, but outside, the Lake District National Park. An underground cable would connect the development to an existing pylon and overhead line within the National Park. It is intended that the wind farm would operate for a maximum of 25 years.
- 1.5 The application was accompanied by an *Environmental Statement*. Later *Supplementary Environmental Information* was provided on a voluntary basis for the purposes of reviewing and updating the information.
- 1.6 The application was accompanied by a site location plan and a site layout plan (*Figures 1 and 3 in the Environmental Statement*). The site layout is now *Figure 27 of the Supplementary Environmental Information*; and *Figure 28* of the same document shows details of the meteorological masts. A typical turbine and typical substation are shown in *Figures 4 and 7 of the Environmental Statement*.<sup>3</sup> The application attracted a large number of representations to the Department of Trade and Industry.
- 1.7 A **Planning Obligation by Unilateral Undertaking**, given by the Applicant and the owners of the site to Eden District Council, is dated 23 June 2005.<sup>4</sup> Its main provisions are summarised in *Appendix C* attached to this report. A **Deed of Covenant**, dated 24 March 2005, commits the Applicant to establishing a charitable trust (The Whinash Wind Farm Community Trust) which will be funded by income generated by the sale of electricity from the site to a maximum of £67,500/year (subject to the application of the Retail Price Index).<sup>5</sup>
- 1.8 The **Section 194 application** proposes works on 3 separately registered areas of common land namely:-
- Common Land Unit CL108 – Bretherdale Bank (extending to 203.75 hectares);
  - Common Land Unit CL100 – Bretherdale Common (extending to 202.59 hectares);
  - Common Land Unit CL41 – Roundthwaite Common (extending to 382.83 hectares).<sup>6</sup>
- 1.9 Three of the proposed turbines (5, 6 and 7) lie outside the above common land units which are the subject of registrations under the Commons Registrations Act 1965. That portion of the site which forms part of Roundthwaite Common (CL41) is presently subject to Section 193 of the Law of Property Act 1925 (public rights of access for air and exercise) by virtue of a revocable declaration by deed. Similar rights do not apply to either Bretherdale Common or to Bretherdale Bank which have rights of common for grazing. The Countryside and Rights of Way Act 2000 has extended rights of public access to all common land not already subject to such rights.<sup>7</sup>
- 1.10 The relevant site layout plan is, like the Section 36 application, *Figure 27 in the Supplementary Environmental Information*. The total area of the affected commons is 789.17 hectares and the area disturbed by the development would be in the order of 9 hectares, representing some 1.14% of the available commons. Temporary fencing

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<sup>3</sup> CD3 Environmental Statement: Volume 3 (Figures 1, 3, 4 & 7)  
CD4 Supplementary Environmental Information Volume 2 (Figures 27 & 28)

<sup>4</sup> X/8/(3)

<sup>5</sup> X8(4)

<sup>6</sup> CD3 Environmental Statement: Volume 3 (Figure 25)

CD234 Certified extracts and plan from the Register of Common Land

<sup>7</sup> X2 Statement of Common Ground (Section 7)

would be required for the construction compound for a period up to one year and around the individual turbines for a maximum of one month.<sup>8</sup>

1.11 The **Statement of Matters**, served by the Secretary of State for Trade and Industry on 27 October 2004, identified the following matters that were likely to be relevant to the consideration of the proposed development:-

- (1) *the extent to which the proposed development is consistent with the objectives of policies DP2, DP3, SD8, RU2, ER2, ER5 and ER13 of the Regional Planning Guidance for the North West (RPG 13 – March 2003);<sup>9</sup>*
- (2) *the extent to which the proposed development is consistent with the objectives of policies 2, 5, 11, 12, 17, 18, 54 and 56 of the Cumbria and Lake District Joint Structure Plan 1991 - 2006 (November 1995);<sup>10</sup>*
- (3) *the extent to which the proposed development is consistent with the objectives of policies G1 and G2 of the Supplementary Planning Guidance “Wind Energy Development in Cumbria” (July 1997);<sup>11</sup>*
- (4) *the extent to which the proposed development is consistent with the objectives of policies ST1, ST8, ST9, E31, E32, E33, R39, R40 and R42 of the Cumbria and Lake District Joint Structure Plan 2001 - 2016 (Deposit Plan – May 2003);<sup>12</sup>*
- (5) *the extent to which the proposed development is consistent with the objectives of policies NE1, NE4, NE5, NE13, S5 and RE1 of the Lake District National Park Local Plan (May 1998);<sup>13</sup>*
- (6) *the extent to which the proposed development is consistent with the objectives of policy NR2 of the Eden Local Plan (December 1996);<sup>14</sup>*
- (7) *the extent to which the proposed development is consistent with the objectives of HMG's policy on energy as set out in the Energy White Paper entitled “Our energy future – creating a low carbon economy” (Cm 5761 February 2003);<sup>15</sup>*
- (8) *the justification for the site and what other sites were considered and the reasons why they were discounted;*
- (9) *the visual impact of the proposed development;*
- (10) *the impact of the proposed development on the recreational value of the site;*
- (11) *noise, including low frequency noise, generated from the operation of the proposed development;*
- (12) *the implications of the proposed development for areas of nature conservation interest and on fauna;*
- (13) *the implications of the proposed development on hydrology and hydrogeology both during the construction and operation;*

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<sup>8</sup> CWP/0/1

<sup>9</sup> CD23 Regional Planning Guidance for the North West (RPG13)

<sup>10</sup> CD25 Cumbria and Lake District Joint Structure Plan 1991 - 2006

<sup>11</sup> CD29 Wind Energy Development in Cumbria

<sup>12</sup> CD26 Cumbria and Lake District Joint Structure Plan 2001 - 2016 (Deposit Plan, May 2003)

<sup>13</sup> CD30 Lake District National Park Local Plan 1998

<sup>14</sup> CD27 Eden Local Plan 1996

<sup>15</sup> CD170 Energy White Paper: Our energy future - creating a low carbon economy

- (14) *the implications of the proposed development on groundwater, aquifers and local water supplies particularly taking into account the impact on domestic water supplies in Bretherdale and local farms;*
- (15) *the impact on users of Public Footpaths and Bridleways which cross or pass nearby the site;*
- (16) *the impact on Commoners; and*
- (17) *the decommissioning and long term management and restoration of the site.*

In addition, the following matter was identified as relevant to the consideration by the Secretary of State for Environment, Food and Rural Affairs of the application made under Section 194 of the Law of Property Act 1925:

- (18) *whether, having regard to the 'benefit of the neighbourhood' and the 'private interests' in the land, it is appropriate that consent should be given.*

1.12 In reporting the cases for the parties, and in my conclusions, I group the matters under the following headings as follows:

- The Policy Framework (*Matters 1 - 7*)
- The Justification for the Site (*Matter 8*)
- Visual/Landscape Impact (*Matter 9*)
- The Impact on Recreation, Footpaths and Bridleways (*Matters 10 & 15*)
- Noise Impact (*Matter 11*)
- The Effect on Nature Conservation and Fauna (*Matter 12*)
- The Effect on Hydrology, Hydrogeology and Water Supplies (*Matters 13 & 14*)
- Decommissioning and Long Term Management and Restoration of the Site (*Matter 17*)
- The Section 194 Application (*Matters 16 & 18*)

## **The Site and its Surroundings**

1.13 The Whinash Wind Farm site is undulating open moorland, 2 kilometres south of Shap summit. The M6 motorway (between Junctions 38 and 39) and the West Coast mainline railway lie to the east; as does the Westmorland (Tebay) motorway service area (north of Junction 38). The north-western tip of the site crosses the A6 into the Lake District National Park. The turbines, substation, meteorological masts and access from the A6 would be located outside the National Park; but connection to the grid would be made to an existing electricity pylon within the Park boundary. The nearest turbines (T1 and T2) to the National Park boundary would be in the order of 220 metres away. South-eastward, beyond the motorway, lies the Yorkshire Dales National Park; the nearest turbine (T24) would come within about 3.75 kilometres of the boundary.

1.14 The application site extends some 6 kilometres along a north-west to south-east axis, broadly following the line of the Whinash ridge, and ranges in width from 500 metres to 2 kilometres. It is primarily orientated to the north-east with comparatively gentle slopes falling towards Greenholme and Roundthwaite and the scattered hamlet of Bretherdale; and more dramatic slopes south-westward into Borrowdale. Elevation varies between 330 metres and 485 metres (above Ordnance datum). Three public rights of way cross the site, with Breasthigh Road crossing the mid-section to connect

Borrowdale with Bretherdale.<sup>16</sup> Access rights to the land came into force in May 2005 under the Countryside and Rights of Way Act 2000. The vegetation is predominantly acid grassland, rushy pasture and blanket bog, grazed mainly by sheep. Drainage is along a series of tributaries of the Bretherdale Beck, Birk Beck, and Roundthwaite Beck into the River Lune. It is proposed that the turbines would broadly follow the ridge above Borrowdale with secondary arrays running north-eastward.

- 1.15 The southern side of Borrowdale is flanked by steep, partly afforested, slopes leading up to the Whinfell Ridge at similar elevation to the application site. Its sharp fall eastward into the Lune valley is mirrored by the rise eastward of the Howgill Fells. North and north-east of the site, beyond the deeply cut Bretherdale valley, part of which is conifer plantation, the landscape becomes more open and extensive in the direction of the Orton Fells. A moorland landscape and a backdrop of higher Lakeland fells extends generally to the north-west and west.
- 1.16 A telecommunications mast stands on the Whinfell ridge and other masts are visible to the north of the site atop the disused Shap Pink Quarry and in the vicinity of Shap Blue Quarry. A generally parallel arrangement of high voltage electricity transmission lines and pylons runs from the direction of Shap past the site to the west of the A6 on the edge of and within the Lake District National Park.
- 1.17 A wind farm, comprising 5 turbines, is to be found at Lambrigg on the western side of the M6 immediately north of Junction 37.
- 1.18 The bulk of the application site lies within a Landscape of County Importance which, generally, washes over the area between the Lake District National Park and the Yorkshire Dales National Park. In terms of landscape character, defined by the Countryside Agency, in *Countryside Character Volume 2: North West*, the site lies in the south-eastern corner of 'Character Area 8: Cumbria High Fells'. Key characteristics include:-

*'Spectacular and rugged mountain scenery of open fells with an expansive character and a mosaic of high craggy peaks and screes, heaths, mires, peatland, heather moorland, acid grassland, bracken and remote valleys with fast flowing streams and tarns'.<sup>17</sup>*

The County Council's *Cumbria Landscape Classification* defines it as 'Sub-type 13c – Fells':-

*These fells form extensions to the Lakeland and Pennine systems in the southeast of the County rising to around 700m OD. The former have smooth rounded profiles with deeply incised valleys whilst the latter are more angular and stepped in outline. Generally off the beaten track these fells have a quiet unpretentious quality, although the Howgills cluster has a strong majestic identity. Heavily grazed open grass moorland is predominant with remnant patches of heather, rock outcrops and screes with little or no tree cover combine to create a wild and expansive character. Lower down these give way to semi-improved pasture in large fields enclosed by stone walls with more extensive tree cover. Features include traditional farmsteads strung out along the base of the fells with associated tree clumps, areas of scrub, tarns, gill and fellside woodlands. Discordant elements include some darker blocks of conifers, transmission lines, masts and the M6 motorway (running along the edge of the area). Ecological and geological interest occurs mainly in limestone habitats and on some higher moorlands.*

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<sup>16</sup> X2 Statement of Common Ground (Section 8)

<sup>17</sup> CD69 Countryside Character Volume 2: North West (pages 31 - 36)



*Elsewhere grazing pressure reduces the value. This sub-type is designated as a County Landscape or National Park (Yorkshire Dales).<sup>18</sup>*

- 1.19 The Countryside Agency is proposing to extend the Lake District National Park to include the application site and to extend the Yorkshire Dales National Park to include the Orton Fells, Northern Howgill Fells and part of the Lune valley. This is based on independent evaluation set out in a report referred to as the 'Alison Farmer Report' during the Inquiry.<sup>19</sup> I shall use the same short form.

## **The Format of the Report**

- 1.20 This report continues with a summary of the relevant planning policy framework followed by the gist of the cases for:-

### ***The Section 36 application***

- *Chalmerston Wind Power Limited (the Applicant);*
- *The Consortium of Local Authorities consisting of:- Eden District Council, Cumbria County Council, Lake District National Park Authority, Yorkshire Dales National Park Authority and South Lakeland District Council (the Local Authorities);*
- *The Countryside Agency;*
- *The Friends of Bretherdale comprising:- International Council on Monuments & Sites, UK (ICOMOS-UK); The Council for National Parks; The Yorkshire Dales Society; Friends of the Lake District; Campaign to Protect Rural England - Cumbria Association; The Ramblers' Association - Lake District Area; Cumbria Wildlife Trust; Sir Martin Holdgate; and Mr Martin Dodds;*
- *Friends of Eden, Lakeland and Lunesdale Scenery (FELLS);*
- *No Whinash Windfarm Committee (NWW) (appearances and written representations);*
- *Interested parties and persons (appearances and written representations).*

### ***The Section 194 application***

- *Chalmerston Wind Power Limited (the Applicant);*
- *The Countryside Agency;*
- *The Friends of Bretherdale;*
- *The Open Spaces Society;*
- *Commoners.*

- 1.21 I deal firstly with the Section 36 application and then with the Section 194 application. My reporting follows a similar sequence for each of the parties based on the principal matters identified by the Secretaries of State under a series of grouped topic headings. I report the views of interested groups and individuals on a topic basis for ease of reference. The report ends with my conclusions and recommendations. Appendices contain lists of appearances (*Appendix A*); Inquiry documents (*Appendix B*); a summary of the Planning Obligation by Unilateral Undertaking (*Appendix C*); and recommended planning conditions for the Section 36 application if the Secretary of State decides to grant consent and direct that planning permission shall be deemed to be granted (*Appendix D*).

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<sup>18</sup> CD70 Cumbria Landscape Classification (pages 63 - 79; Sheets 3 & 4)  
CD71 Cumbria Landscape Strategy (page 93)

<sup>19</sup> CD219 Recommended Area of Search for Land Worthy of Designation in the North West of England - Final Report

## The Policy Framework

- 1.22 *The Energy White Paper: Our energy future - creating a low carbon economy* (2003),<sup>20</sup> outlines the role of renewable energy and sets a target for renewable energy sources to be providing 10% of the United Kingdom's electricity by 2010, with the aspiration of 20% by 2020. The relevance of this, and the weight to be attached to it, is contained in the cases for the parties.
- 1.23 In this context *Planning Policy Statement 22: Renewable Energy (PPS22)* encourages the appropriate development of wind power. It lists the key principles to be followed in planning for renewable energy; provides guidance on locational considerations, including national designations (e.g. National Parks); and advises on landscape and visual effects and noise. It is supplemented by *Planning for Renewable Energy: A Companion Guide to PPS22*, which offers practical advice as to how the policies of *PPS22* can be implemented; development control issues; and a *Technical Annex* on detailed issues involved in onshore wind energy projects.<sup>21</sup>
- 1.24 Other Government guidance identified during the Inquiry, includes *Planning Policy Statement 1: Creating Sustainable Communities (PPS1)* (including the *General Principles* document); *Planning Policy Statement 7: Sustainable Development in Rural Areas (PPS7)*; *Planning Policy Guidance 9: Nature Conservation (PPG9)*; and *Planning Policy Guidance 24: Planning and Noise (PPG24)*.<sup>22</sup>
- 1.25 The Development Plan includes the *Regional Spatial Strategy* in the form of *Regional Planning Guidance for the North West (RPG13)* (March 2003).<sup>23</sup> A Partial Review was submitted in August 2003 and revised in August 2004. Public examination took place in November 2004 and the Panel's Report was published in March 2005. However, on 16 August 2005, after the close of the Inquiry, the First Secretary of State formally withdrew the submitted draft Partial Review. Whilst I have reported the cases on the basis of the Partial Review, I do not refer to its policies in my overall conclusions.
- 1.26 The Development Plan also includes the *Cumbria and Lake District Joint Structure Plan* (November 1995); the *Lake District National Park Local Plan* (May 1998) and the *Eden Local Plan* (December 1996).<sup>24</sup> In terms of emerging plans, the *Cumbria and Lake District Joint Structure Plan* (Deposit Plan – May 2003) has been superseded by the *Cumbria and Lake District Joint Structure Plan* (Proposed Changes – June 2004).<sup>25</sup> The corresponding policies are *ST1, ST3, ST4, ST11, E34, E35, E36, E37, R44 and R45*. For completeness, the *Eden District Local Plan Review* (Deposit Draft – January 2002) is not being taken forward to adoption.<sup>26</sup>

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<sup>20</sup> CD170 Energy White Paper: Our energy future - creating a low carbon economy

<sup>21</sup> CD16 Planning Policy Statement 22: Renewable Energy

<sup>22</sup> CD17 Planning for Renewable Energy: A Companion Guide to PPS22

CD8 Planning Policy Statement 1: Delivering Sustainable Development

CD9 Planning Policy Statement 7: Sustainable Development in Rural Areas

CD11 Planning Policy Statement 9: Nature Conservation

CD19 Planning Policy Guidance 24: Planning and Noise

<sup>23</sup> CD23 Regional Planning Guidance for the North West (RPG13)

<sup>24</sup> CD25 Cumbria and Lake District Joint Structure Plan 1991 - 2006

CD30 Lake District National Park Local Plan 1998

CD27 Eden Local Plan 1996

<sup>25</sup> CD26 Cumbria and Lake District Joint Structure Plan 2001 - 2016 (Deposit Plan – May 2003)

CD41 Cumbria and Lake District Joint Structure Plan 2001 - 2016 (Proposed Changes – June 2004)

<sup>26</sup> CD28 Eden District Local Plan 2006 - Deposit Consultation

- 1.27 Two principal themes can be identified, namely wind energy promotion and landscape protection. So far as the former is concerned, *Policy ER13 of the Regional Spatial Strategy (RPG13)* indicates that targets for the supply of renewable energy will be developed (subject to *Policy ER2*); *Policy R44 of the Cumbria and Lake District Joint Structure Plan (Proposed Changes)* supports renewable energy developments outside the Lake District National Park subject to criteria; and the encouraging tones of *Policy NR2 of the Eden Local Plan* are tempered by landscape considerations in Landscapes of County Importance.<sup>27</sup>
- 1.28 Protection of the North West's finest landscapes is at the forefront of *Policy ER2 of the Regional Spatial Strategy*; and *Policies 2 and 12 of the Cumbria and Lake District Joint Structure Plan* seek to conserve the county's scenic beauty and to safeguard the distinctive character of designated County Landscapes. *Policies ST11 and E34, E36 and E37 of the Cumbria and Lake District Joint Structure Plan (Proposed Changes)* contain similar provisions. *Policies NE1, NE4 and NE5 of the Lake District National Park Local Plan* strive to protect the special qualities of the National Park and *Policy RE1* rules out large scale wind energy developments. Finally, *Policy 54 of the Cumbria and Lake District Joint Structure Plan*, and *Policy ST4 of the Proposed Changes* document, acknowledge that a balance has to be struck in assessing major projects and defines criteria to guide assessment.<sup>28</sup>
- 1.29 Supplementary Planning Guidance, *Wind Energy Development in Cumbria*, prepared in consultation with interested bodies and renewable energy companies, draws attention to the need to consider the potential adverse impacts of proposals for wind turbines outside but visible from the Lake District and Yorkshire Dales National Parks (G1); and the likely significant adverse and visual impact in the exposed fells and scarps (G2).<sup>29</sup>
- 1.30 It is also relevant to note that *Technical Paper 6 – Planning for Renewable Energy Development in Cumbria* provides commentary on the *AXIS Report (Renewable Energy Development in Cumbria – Identifying the Potential)*, which informed the development of the renewable energy policies in the *Cumbria and Lake District Joint Structure Plan (Proposed Changes)*.<sup>30</sup> The *AXIS Report* itself identifies the vicinity of the application site as one of the 'Areas of Search for Onshore Wind Farms/Clusters Outside Statutory Landscape Designations', with an indicative potential for 0 - 3 turbines.<sup>31</sup>

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<sup>27</sup> CD23 Regional Planning Guidance for the North West (RPG13)  
CD41 Cumbria and Lake District Joint Structure Plan 2001 - 2016  
CD27 Eden Local Plan 1996

<sup>28</sup> CD23 Regional Planning Guidance for the North West (RPG13)  
CD41 Cumbria and Lake District Joint Structure Plan 2001 - 2016  
CD30 Lake District National Park Local Plan 1998  
CD25 Cumbria and Lake District Joint Structure Plan 1991 - 2006

<sup>29</sup> CD29 Wind Energy Development in Cumbria

<sup>30</sup> CD41 Cumbria and Lake District Joint Structure Plan 2001 - 2016

<sup>31</sup> CD42 Technical Paper 6: Planning for Renewable Energy Development in Cumbria (Fig 3.2 (Site: SL4); paragraph 2.6.1 & Appendix C)

## **B:THE SECTION 36 ELECTRICITY ACT APPLICATION**

### **The Case for Chalmerston Wind Power Limited**

#### **The Policy Framework**

- 2.1 This proposal has been brought forward as a direct response to Government policy on climate change and the need for renewable energy. Although some Objectors sought to challenge Government policy, a local Inquiry is not a suitable forum for such debate.
- 2.2 During the 1990's a series of international conventions committed developed countries to reducing their emissions of carbon dioxide and other greenhouse gases. However, their lack of formal sanctions entrusts the key to reduced emissions to European and domestic targets. The United Kingdom Government, following the example set by the European Union, reinforced the role of renewable energy in the *Energy White Paper* which sets a new direction for energy policy and promotes a 60% reduction in carbon dioxide emissions by about 2050.<sup>32</sup> Recognition is given to the United Kingdom lagging behind Europe in its exploitation of renewable energy, and the need to scale up significantly the installation of renewables to meet the target of supplying 10% of the United Kingdom's electricity by 2010; and 20% by 2020. Onshore wind is a key element.<sup>33</sup> However, the planning system needs to deliver three times as many permissions in the 5 years to 2010 as it has done in the 15 years up to 2005.
- 2.3 The fundamental importance of what is at stake, the magnitude of what still remains to be done and the extent to which targets have still to be met was set out in October 2004 by the Minister for Energy and Commerce when he told the House of Commons:- *'The Prime Minister made it clear that climate change is the world's greatest environmental challenge ..... The UK has set a demanding target for 10% of our electricity generation to be supplied from renewable energy by 2010..... But the plain fact is that without a substantial increase in onshore wind developments, the 10% target is unachievable..... We are not focused on onshore wind farms to the exclusion of other energy sources..... but wind energy currently offers the best, most cost effective and the only true serious potential for expansion in the short to medium term'*.
- 2.4 National policy confirms the urgent need for renewable energy provision and that significant weight should be attached to the wider environmental benefits of renewables, irrespective of scale. Targets are to be regarded as minima and revised upward where they are met; and no proposal in itself should be regarded as an alternative to any other. Projects within National Parks are not expressly excluded and landscape and other interests have to be balanced against the high hurdle of the renewable imperative and the global need. The fundamental test is the degree to which any impacts have been minimised.<sup>34</sup> It should, of course, be noted that here the development that might have a material impact would be located outside the National Park boundary.

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<sup>32</sup> CD170 Energy White Paper: Our energy future - creating a low carbon economy (Foreword)

<sup>33</sup> CD170 Energy White Paper: Our energy future - creating a low carbon economy (paragraphs 4.1 - 4.11; Timeline - page 55);

CD133 House of Lords Science and Technology Committee - Renewable Energy: Practicalities (paragraphs 3.19, 3.64, 4.12 & 4.13)

CD227 National Audit Office - Renewable Energy (Executive Summary – paragraphs 8 & 9)

CD164 The House of Commons Select Committee on Environmental Audit (paragraphs 20 & 21)

<sup>34</sup> CD16 Planning Policy Statement 22: Renewable Energy (Key Principles; paragraphs 3, 11 & 20);

CD9 Planning Policy Statement 7: Sustainable Development in Rural Areas (paragraph 22)

- 2.5 Regional policy, in the *Partial Review of the Regional Spatial Strategy (draft)*, indicates that by 2010 a minimum of 8.5% of the electricity supplied in the North West should come from renewable sources:- amounting to an additional onshore installed capacity of 243MW - compared to existing provision of 41MW.<sup>35</sup> It is inconceivable that the full provision will be delivered by that date which makes the contribution of Whinash, (amounting to around a quarter of the regional target) the more important, especially as the impacts of climate change on the region are already evident and there is every anticipation of future change to the character of the region's uplands.<sup>36</sup>
- 2.6 Although the *Report of the Panel into the Partial Review of the Regional Spatial Strategy (draft)* found *Policy ER15* to be lacking in setting regionally or specific criteria for renewable energy development,<sup>37</sup> there is no substance in the Local Authorities' claim that the development would be premature and hinder, or pre-determine, debate over appropriate criteria. In this regard, Government guidance on prematurity applies strictly to Development Plan Documents, and not Regional Spatial Strategies.<sup>38</sup> Moreover, in terms of 'proportionality' the *Regional Spatial Strategy* applies to the whole of the North West region and schemes such as Whinash are essential to the 2010 target. Even with Whinash, the need for future debate, and public participation, on regional targets and criteria will remain.
- 2.7 The thrust of local policy substantially echoes the higher tiers of policy with a clear recognition of balance.<sup>39</sup> In so far as *Policy ST4 of the Cumbria and Lake District Joint Structure Plan (Proposed Changes)* requires the consideration of 'alternative locations', the *Report of the Panel* concluded that '.....the requirement in *Policy ST4 criterion 3* that *alternative locations must be fully considered and rejected does not square with the fact that a significant number of renewable energy projects will be required if any real progress is to be made towards achieving national, regional and county targets*'.<sup>40</sup> Moreover, in relation to National Parks, the presence of adverse effects is not by itself determinative as such effects can be outweighed by the need for the development.
- 2.8 The application also meets the tests in the Electricity Act 1989 which requires that a licence holder in formulating any relevant proposals shall:-
- *have regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting buildings and other objects of architectural, historic or archaeological interest; and*
  - *do what it reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects.*

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<sup>35</sup> CD24 Partial Review of RPG13 (Policy ER15);

CD230 Partial Review of the RSS for the North West - Report of the Panel (R3.5)

<sup>36</sup> CD24 Partial Review of RPG13 (paragraph 2.16)

<sup>37</sup> CD230 Partial Review of the RSS for the North West - Report of the Panel (paragraph 3.7)

<sup>38</sup> CD8(2) The Planning System: General Principles (paragraphs 6; 17 - 19)

<sup>39</sup> CD25 Cumbria and Lake District Joint Structure Plan 1991 - 2006 (Policy 54)

CD41 Cumbria and Lake District Joint Structure Plan 2001 - 2016 (Proposed Changes – June 2004)

<sup>40</sup> CD183 Cumbria and Lake District Joint Structure Plan - 2001 - 2016 - Report of the Panel (paragraph 6.99)

## The Justification for the Site

- 2.9 The site selection process is set out in *Chapter Two of the Environmental Statement and the Supplementary Environmental Information*.<sup>41</sup> In essence, a sieving process was adopted which excluded sites with an average wind speed below 7 metres per second on the grounds of viability and efficiency.<sup>42</sup> This was based on the acknowledgement in the *AXIS Report* that 'wind turbines located where wind speed is on average 6.5m/s are considered to be on the margins of viability at the present time'.<sup>43</sup> The selection process also ruled out sensitive sites identified by national planning policy (e.g. National Parks) and took account of road access, grid connection, aviation and communications systems, and land availability. Finally, it sought a 600 metre separation from residential properties (as opposed to 500 metres from settlements in the *AXIS Report*) to reflect the growing expectation of increased separation from larger turbines.
- 2.10 The process did not seek to identify 'alternative sites' as there is no finite limit to the quantum of renewables and no suggestion in national policy that one proposal should be considered against, or preferred to, another.<sup>44</sup> As a matter of law there is no requirement for the Applicant to look for alternatives.<sup>45</sup> References to the consideration of alternative sites in *Policy 54 of the Cumbria and Lake District Joint Structure Plan* and *Policy ST4 of the Proposed Changes* document are of general application. And the former only applies to developments in National Parks – here, save for the proposed grid connection, the development would be outside the National Park. Moreover, *Policy R44, in the Proposed Changes document*, is specific to renewable energy projects outside the Lake District National Park but neither it, nor the *Report of the Panel*, make any reference to alternative sites.<sup>46</sup> In any event, none of the parties to the Inquiry has identified any realistic alternative or indeed any relevant area of search; and there is no suggestion that provision in the county is anywhere near approaching its theoretical capacity.<sup>47</sup> The matter of alternatives can be safely put to one side.

## Visual/Landscape Impact

### Introduction

- 2.11 The Applicant accepts that the proposal will give rise to a significant visual effect; but there is nothing so special or unique about the landscape that it cannot accommodate a visible but non-permanent form of development. Added to this, such development will itself bring material benefits to the landscape, generally ignored by Objectors, by

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<sup>41</sup> CD3 Environmental Statement: Volume 1 (paragraphs 2.2.1 - 2.2.6)

CD4 Supplementary Environmental Information Volume 1 (paragraphs 2.3.1 - 2.3.8)

<sup>42</sup> CD41 Cumbria and Lake District Joint Structure Plan 2001 - 2016 (Proposed Changes - June 2004) (Introduction - paragraph 2.5)

<sup>43</sup> CD133 House of Lords Science and Technology Committee - Renewable Energy: Practicalities (paragraph 3.18)

<sup>44</sup> CD16 PPS22: Renewable Energy (paragraph 16)

<sup>45</sup> CWP/0/46 Outline Legal Submissions on behalf of the Applicant:-

*Trusthouse Forte Hotels Ltd v Secretary of State for the Environment [1986]*

*Rhodes v Minister of Housing and Local Government [1963]*

*Prest v Secretary of State for Wales [1986]*

*Vale of Glamorgan BC v Secretary of State for Wales [1986]*

*Phillips v First Secretary of State and others [2003]*

*R. (Mount Cook Land Ltd) v Westminster City Council [2003]*

*J. (a child) v North Warwickshire BC*

<sup>46</sup> CD25 Cumbria and Lake District Joint Structure Plan 1991 - 2006 (Policy 54)

CD41 Cumbria and Lake District Joint Structure Plan 2001 - 2016 (Policies ST4 & R44)

CD183 Cumbria and Lake District Joint Structure Plan 2001 - 2016 - Report of the Panel (paragraph 6.103)

<sup>47</sup> CD42 Technical Paper 6: Planning for Renewable Energy Development in Cumbria (paragraph 14.1)

contributing to reduced greenhouse gas emissions and lessening the adverse effects which would otherwise occur if climate change is allowed to continue. National guidance requires significant weight to be given to the wider environmental benefits of renewable energy projects, which necessarily includes landscape effects.<sup>48</sup> It is common ground that any adverse landscape or visual impact is not sufficient by itself to justify refusal of permission; it is merely a factor to be balanced with the imperative of providing renewable energy.

***Public attitudes to wind farms***

- 2.12 Landscape effects can be perceived as either adverse or beneficial. Some people regard wind turbines to be attractive sculptural elements; others see them as alien industrial features; and many of the latter still react positively and favourably to them as icons or symbols which embody a message of hope that something is actually being done to grapple with climate change.<sup>49</sup> It is only the Applicant who properly acknowledges that such opinions exist, whereas others generally take a negative stance in their assessment.<sup>50</sup>
- 2.13 However, there is clear evidence of widespread support for wind farms, typified by the findings of the National Audit Office in February 2005 that ‘..... *Surveys show that the general public are in favour of renewable energy, with, for example, two thirds of those surveyed in England being happy to have an onshore wind farm in their area. There remains, however, a small but vocal level of opposition posed by a number of national and local interest groups.*’<sup>51</sup> Such findings are not limited to smaller wind farms; and there is substantial support for this proposal.
- 2.14 It is also apparent that the prospect of development is more daunting than its eventual outcome, which increases the initial volume of vocal opposition.<sup>52</sup> In this case the predisposition of people to anticipate a greater impact than will actually occur has been materially, and unfairly, exacerbated by the publicity material on display at the Tebay motorway service area which exaggerated both the number (41 as opposed to 27) and the height of the turbines (over 200 metres as opposed to 115 metres). Although a complaint to the Advertising Standards Authority was upheld in April 2004 the offending advertising material continued to be displayed as late as 11 April 2005; and the Applicant was denied the opportunity to display corrective material.<sup>53</sup> Moreover, this material was on display when the Cumbria Tourist Board undertook its survey, at the same service area, which could have distorted the outcome. Nonetheless, the results were still strongly in favour of wind farms and of Whinash (71% indicated it would make no difference to visits; 28% thought it would be an additional attraction; 79% indicated it would not reduce their enjoyment on visits; and 91% indicated it would not discourage them from visiting the Lake District).<sup>54</sup>

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<sup>48</sup> CD16 Planning Policy Statement 22: Renewable Energy (Key Principle (iv))

<sup>49</sup> CD202 Bundle of Appeal Decisions (Tab 8 paragraph 36)

<sup>50</sup> CWP/2/1 (Section 11)

<sup>51</sup> CWP/0/48 (page 84)

<sup>52</sup> CD227 National Audit Office - Renewable Energy (paragraph 2.10)

<sup>53</sup> CD202 Bundle of Appeal Decisions (Tab 5 paragraph 29)

<sup>54</sup> CD63 Public Attitudes to Windfarms - MORI Scotland

<sup>55</sup> CWP/2/3 (Tab 6); CWP/0/18; NWW/9/1 (paragraph 8)

<sup>56</sup> NWW/10/1 (Appendix 5 - page 22)

***Landscape and visual impact assessment***

- 2.15 The Applicant's landscape and visual assessment methodology follows the approach adopted for a wind farm proposal at Middlemoor, Alnwick which the Countryside Agency had found to be *'thorough and fit for purpose ..... following good practice guidance at the core of the assessment methodology'*.<sup>55</sup> Although the Agency sought to distance itself from this statement, its pointed criticisms of the Applicant's approach, and those made by the Local Authorities, are nonetheless unfounded.
- 2.16 Great play is made by Objectors about the alleged *'remoteness, tranquillity and wildness'* of the area; yet the site is accessible, even by public transport, from the A6 to the west and the A685 to the east; and the tarmac road to the Whinfall base station provides access into the upland landscape. Its claimed tranquillity is interrupted by roads; general signs of human impact (pylons, quarries and masts); noise from the M6 and the railway; and noise of aircraft with particular emphasis on military low flying. Also, from the eastern parts of the site, the M6 can clearly be made out, especially by following the movement of lorries or by focusing on the accumulation of large vehicles parked at the service area north of Tebay. In addition, increased public access, as a consequence of the Countryside and Rights of Way Act 2000, will bring more people to the area. Overall, none of these 'qualities' have a material part to play in the decision making process.
- 2.17 In terms of its visual effects, the wind farm would appear as a large scale feature having a strong visual presence within the local landscape but this would diminish as the scale of the wind farm reduces in proportion to the widening scale of the landscape. Within a range of up to 5 – 7 kilometres the proposed turbines, where they are not masked by topography and/or vegetation, would form a large group of similar elements with a high degree of permeability and a rolling horizontal emphasis. Extending outward, up to 15 kilometres, the turbines would still be discernible as individual elements (in clear weather conditions) but would tend to be read together as a single characteristic feature with movement less noticeable. Beyond this, the turbines would appear as a subordinate element in the landscape. Overall effects would not be adverse.
- 2.18 In terms of the likely landscape effects, the key characteristics of Landscape Type 13c – Fells, and Character Area 8: Cumbria High Fells would remain substantially unaffected and any visual change would have to be judged in the context of other man-made features in the landscape. Moreover, the immediate effects would be experienced on the fringe of an extensive landscape character type where its main attributes are more recognisable much farther to the west. Whilst large in scale, the proposed wind farm would add drama and symbolism in a sometimes bleak landscape, yet strike a complementary relationship with the scale and openness of the landscape.

***National Parks***

- 2.19 The Countryside Agency, and various other bodies, have over the years believed in an inevitability that the Lake District National Park would be extended eastward over the application site. Their routine use of the phrase *'unfinished business'* flies in the face of the position taken by Hobhouse in the first designation of National Parks.<sup>56</sup> Both Dower (who undertook preliminary work leading to the establishment of National Parks in England and Wales) and Hobhouse recognised the selective nature of the process (and the possible need to accommodate development within National Parks):-

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<sup>55</sup> CWP/2/3 (Appendix 15)

<sup>56</sup> CA/2/4 Folio 19.



*'Since, therefore, it is not possible to sterilise great tracts of land ....., it is all the more urgent to ensure that some at least of the extensive areas of beautiful and wild country in England and Wales are specially protected as part of our national heritage .....*'<sup>57</sup>

- 2.20 Hobhouse expressly considered the area between the Lake District National Park and the Yorkshire Dales National Park and concluded that it was not appropriate then to include that area and he gave preference to countryside of *'still higher quality'* in the selection process.<sup>58</sup> Since then various detracting or incongruous features have appeared in the landscape, notably the pylons alongside the A6, the construction of the M6, coniferous planting, and approval of continued working of Shap Pink Quarry.<sup>59</sup> It is also notable that Wainwright (acclaimed for his pictorial walking guides) saw the Lake District proper as lying some 6.5 kilometres to the west of the site:- *'Broadly this 'aesthetic' boundary runs along the eastern watersheds of Lonsleddale, Mosedale and Swindale.'*<sup>60</sup>
- 2.21 As shown in the various Zones of Visual Influence diagrams, the predominant views of the turbines would lie on a north-east/south-west axis passing through the site; with limited impacts on the two National Parks.<sup>61</sup> Assessment against the key characteristics of Character Area 8: Cumbria High Fells shows the seven key characteristics to be wholly or substantially unaffected. Notably, the *'spectacular and rugged mountain scenery .....* and a mosaic of high craggy peaks and screes .....' occurs to the west of the site; and the development, although creating limited breaks for access tracks, would have no material effect on the *'ancient patterns of stone walls .....*'.<sup>62</sup> Similarly the notable characteristics of Landscape Sub-type 13c – Fells would be unaffected by the proposal.<sup>63</sup>
- 2.22 It must also be borne in mind that any consent would be for a fixed period with provisions to decommission the site. A central element of sustainable development is the concept of reversibility. Here the development, even if it were properly to be viewed as damaging, would be substantially reversible. Moreover, it would be visually permeable with wide-spacing between structures; many people would find it aesthetically and sculpturally pleasing and some who dislike turbines, or see this as an inappropriate location, would have the comfort of a development symbolising a determination to generate clean, renewable power; and the development would have no material impact on existing grazing of the land.
- 2.23 The Countryside Agency accepts, by reference to Hobhouse, that one cannot sterilize all areas of beautiful and wild country in England; there must be a limit on the number and extent of National Parks; and thus necessarily a degree of selection is required. The Minister has recently reaffirmed that *'..... boundary changes should rarely be needed and the evidence that the tract of land has become suitable for National Park designation must be compelling.'*<sup>64</sup> Both selection criteria, namely natural beauty and the quality of open air recreation, would only be met where those qualities were nationally significant. Clarification provided at the Inquiry into the New Forest National Park (Designation)

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<sup>57</sup> CD173 Report of the National Parks Committee (Hobhouse) (paragraphs 25, 28, 30, 33, 42 & 117)

<sup>58</sup> CD173 Report of the National Parks Committee (Hobhouse) (paragraph 231)

<sup>59</sup> CA/2/3 (Appendix 5)

<sup>60</sup> CD76 A Pictorial Guide to the Lakeland Fells – Book Two: The Far Eastern Fells; A Wainwright (page 1)

<sup>61</sup> CD3 Environmental Statement: Volume 3 Figures (Figures 14a, 14b & 15)

<sup>62</sup> CD69 Countryside Character Volume 2: North West (page 31 – key characteristics 1 - 7)  
CWP/2/1 (paragraph 8.34)

<sup>63</sup> CD70 Cumbria Landscape Classification (page 63)

CWP/2/1 (paragraph 8.35)

<sup>64</sup> CA/0/2 (Annex 2)

Order 2002 confirmed that *'Not all land within the Park must satisfy both (designation) criteria to the same extent but there should be a high degree of correlation. The significance of this is that some had taken the original wording to mean that one of the criteria need not be met.'*<sup>65</sup>

- 2.24 The case for the Applicant, put simply, is that the landscape, although attractive, does not contain the necessary 'wow' factor and sense of wildness to make it of national significance. In terms of recreational opportunities it is telling that the Countryside Agency's Regional Director should, in 1999, record:- *'There are perhaps 500 square kilometres of land including Borrowdale/Whinell, Orton Fells, Northern Howgills, Mallerstang, Middleton Fell and Leck Fell, all of which were thought to be of sufficiently high landscape quality to merit examination with a view to designation. However, as I hardly have to remind you, landscape quality is not the only criterion on which National Parks are designated. No detailed study of the recreational opportunities offered by these areas, and other relevant factors, was made before the national boundary review was stopped.'*<sup>66</sup> Since then, despite the preparation of the *Alison Farmer Report*, there remains no tangible evidence to demonstrate that this criterion is capable of being satisfied.<sup>67</sup>
- 2.25 The Countryside Agency's position is of unshakeable conviction that the National Park extension will occur:- but there can be no certainty that the Secretary of State will reach the same conclusion. In addition, it is clear that the Agency does not intend to proceed to public consultation on the draft boundary until the outcome of the wind farm proposal is known.<sup>68</sup> Given this uncertainty and the long time-scale of the designation process, little weight should be attached to the proposed extensions. And, in any event, *Policy E34 of the Cumbria and Lake District Joint Structure Plan (Proposed Changes)* applies equal safeguards to both National Parks and their settings.<sup>69</sup>
- 2.26 It is also claimed that if the proposed wind farm is approved the whole of the relevant area would need to be omitted from the proposed National Park extension, and such an omission would negate the purpose of extension. The Local Authorities, on behalf of the Lake District National Park Authority, takes a similar 'prematurity' point. But that ignores the finite life of the proposal and the opportunity to remove it in due course. Common sense suggests that if the area is found to be worthy of designation, the presence of a temporary and reversible development should not hinder its designation. Indeed, in the case of the designation of the New Forest National Park, the Secretary of State took the view that there were advantages in including Fawley Power Station within the designated boundary.<sup>70</sup>
- 2.27 Dower, in 1945, revealed a sectional or elitist element inherent in the National Park concept:- *'..... Many people of all classes are, by taste and temperament, far better satisfied by town than by country as a holiday setting. How very many, and how well most of them know what they want, are sufficiently testified by the size and popularity of Blackpool and Brighton and a hundred other coastal and inland resorts. For all who want to spend their holidays gregariously, and to enjoy the facilities – so well provided by the resorts – of cinemas, music-halls, dance-cafes, bathing pools, pleasure parks, promenades, shopping centres and the like, National Parks are not the place. They had far better keep away.....'*<sup>71</sup> From this, and a

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<sup>65</sup> CA/1/4 (Appendix 1)

<sup>66</sup> CA/1/3 (Appendix 5)

<sup>67</sup> CWP/0/22

CD219 Recommended Area of Search for Land Worthy of Designation in the North West of England - Final Report

<sup>68</sup> CA/0/2 (paragraph 9)

<sup>69</sup> CD41 Cumbria and Lake District Joint Structure Plan 2001 - 2016 (Proposed Changes – June 2004)

<sup>70</sup> CWP/0/36

<sup>71</sup> CD172 National Parks in England and Wales: Report by John Dower (paragraph 29)

more recent commentary,<sup>72</sup> it is apparent that the 'national interest' in National Parks is not universal; whereas the case for renewables is a national and indeed international imperative.

- 2.28 Fairness requires that all, and all parts of the country, play their part in responding to climate change. The *Cumbria and Lake District Joint Structure Plan (Proposed Changes)* notes:- '*Of the range of renewable energy technologies the development of wind energy within the County has been the most emotive given the visual impact and the influence it has on the character of important landscapes and their settings. However, it is currently the technology with the greatest technical and economic viability to meet the proposed targets for Cumbria*'.<sup>73</sup> Further support is derived from the *Examination in Public – Report of the Panel*:- '*.....the Panel do not share the view that large commercial windfarms are of their nature detrimental to the visual quality of all landscapes*'.<sup>74</sup>
- 2.29 It is clear that the Countryside Agency has an urgent concern about climate change and it prides itself on what it terms '*influencing and inspiring solutions through our know how and show how*'.<sup>75</sup> But, its message here, if accepted, would send a clear signal to commercial investors in renewables to eschew the risk associated with wind farms which may be visible from National Parks. The Applicant's case is that there would be no unacceptable impact in landscape and visual terms on the National Parks, their settings or the wider landscape. As such the proposal would meet the statutory test of conserving the National Parks and offering enhancement in respect of the renewables benefit.

#### *The stance of the Countryside Agency*

- 2.30 The Countryside Agency, as an Objector to the proposal and a Promoter of the National Park extension, has failed to maintain the appearance of impartiality and fairness in opposing the proposed development in order to pursue the extension of the Lake District National Park.<sup>76</sup> Moreover, its objection, in November 2003, on the grounds that the site was worthy of National Park designation, preceded formal study and assessment; and its position, at the opening of the Inquiry that '*..... Save in any unforeseen circumstances, the application site will proceed to designation as part of the Lake District National Park*', prejudged formal consideration by its Board members.<sup>77</sup>
- 2.31 The conduct of the Agency also suggests lack of fairness in that notable Objectors to the wind farm were invited to attend a Board seminar and visit to the site in May 2004;<sup>78</sup> a representative of the Friends of the Lake District attended the Board meeting in January 2005, albeit as an observer, when the decision was taken to retrospectively endorse the objection to the Whinash application;<sup>79</sup> and, both aspects of the Agency's interest in the site were represented by a single 'Lead Board Member' who himself held the position of Chair of the Association of National Park Authorities.

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<sup>72</sup> CWP/0/21.

<sup>73</sup> CD41 Cumbria and Lake District Joint Structure Plan 2001 - 2016 (Proposed Changes – June 2004) (paragraph 8.8)

<sup>74</sup> CD183 Cumbria and Lake District Joint Structure Plan - 2001 - 2016 - Report of the Panel (paragraph 6.84)

<sup>75</sup> CD219 Recommended Area of Search for Land Worthy of Designation in the North West of England - Final Report (Appendix 1 - paragraph 4)

<sup>76</sup> CWP/0/46 Outline Legal Submissions on behalf of the Applicant:-  
*Lafarge Redland Aggregates v Scottish Ministers [2000]*

<sup>77</sup> CA/0/1 (paragraph 14)

<sup>78</sup> CA/1/3 (Appendix 6)

<sup>79</sup> CWP/0/31 (Paragraph 1)

2.32 In addition, in appearing at the Inquiry, the Agency has presumed that the tests for a boundary change will be satisfied and that such a change should be given high priority. However, it has ignored the inevitable effect of climate change and the benefit of delivering renewable energy at Whinash; and its stance has been coloured by its own policy on wind energy, notably in giving priority to the landscape and applying buffer zones, which is in conflict with Government guidance.<sup>80</sup>

### ***World Heritage Site proposal***

2.33 The possible inscription of the Lake District National Park as a World Heritage Site has not been given any priority with the Tentative List dating from 1999. It is also notable that the tentative boundary excluded the application site (with the exception of the grid connection).<sup>81</sup> There is no evidence of widespread support and the Northwest Regional Development Agency has expressed some concern as to whether the process '*.....is the most appropriate vehicle for delivering a new strategic strategy for the economic, social and environmental regeneration of the Lake District.....*'. It also found consensus that the World Heritage Site should sit within the Lake District National Park and its buffer zone should be co-terminus with the current Park boundary.<sup>82</sup> Inscription would not bring any additional statutory protection; and the Inspector, in allowing a wind farm at Wharrel's Hill, Bothel, found that possible designation was not a factor that carried especial weight – the situation is no different here.<sup>83</sup>

2.34 Administratively, ICOMOS-UK's objection has not been informed by any qualified knowledge of the scheme; professional landscape judgement is absent; weight has not been given to matters such as climate change and the benefits of the scheme; and the Organisation's decision making process lacked transparency. Consideration of the World Heritage matter adds little, if anything, to the debate.

### **The Impact on Recreation, Footpaths and Bridleways**

2.35 There are relatively few settlements and inhabitants within 8 kilometres of the site, yet there are numerous areas of land designated as 'open country' or registered common land, within a radius of 30 kilometres.<sup>84</sup> There is no evidence that the application site is subject to significant levels of use by walkers and others; and Cumbria County Council has assessed the likely demand for public access rights to this area, in connection with the Countryside and Rights of Way Act 2000, as not being a high demand area.<sup>85</sup>

2.36 Further, it is common ground, with the Local Authorities, that the proposal would not conflict with the overall objectives of the *Cumbria Countryside Access Strategy* to improve public access to the Cumbria countryside.<sup>86</sup> Indeed, the construction of formal tracks across the site would make access easier. Whilst the recreational experience is likely to change, depending on one's perception of wind turbines, the proposal would not in itself curtail any recreational activity. Concerns about the effect of turbines on horses and their riders are not supported by any tangible evidence. It is notable that the North West Regional Assembly, in setting out its response to '*non-planning issues*

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<sup>80</sup> CD33 Wind Energy Development and the Landscape (1991) (page 11)

<sup>81</sup> CD179 World Heritage Sites: The Tentative List of the United Kingdom of Great Britain and Northern Ireland

<sup>82</sup> CD225 An Objective Appraisal of the Impact of WHS Inscription of the Lake District Area of Cumbria (pages (vii) & (i))

<sup>83</sup> CD202 Bundle of Appeal Decisions (Tab 4 – paragraph 36)

<sup>84</sup> EDC/2/3 (Appendix A - JK07); EDC/0/25; CWP/0/34

<sup>85</sup> Statement of Common Ground (paragraphs 7.6 & 7.7)

<sup>86</sup> CD204 Cumbria Countryside Access Strategy (Draft): January 2005

*commonly raised in connection with wind power' states that 'Studies show that wild and domestic animals do not tend to be significantly affected by wind farms .....'<sup>87</sup>.*

## Noise Impact

- 2.37 The Local Authorities, having taken technical advice from Consultants, raise no objections on noise either during construction, operation or decommissioning. No-one, other than the Applicant, has called noise evidence from a professionally qualified noise expert. The extent to which others deal with noise, notably Sir Donald Miller, is based on observation without factual basis or rigorous assessment and a less than clear understanding of technical material.
- 2.38 In short, the Applicant's noise survey follows the guidance of *ETSU-R-97*; a methodology endorsed by *PPS22* and described as '*recommended good practice*' in the *Companion Guide to PPS22*.<sup>88</sup> Acknowledging the close proximity of water courses to the measuring locations, and swollen autumn flows, the lowest 10% of readings were extracted to provide a 'conservative' background noise climate. Unlike Sir Donald's generic comparison, the Applicant's data had been verified by reference to measurements performed over 12 months in similar locations within mid-Wales and to a specific regression analysis for a dwelling positioned close to a water source set out in *ETSU-R-97*.<sup>89</sup> And, in any event, the Objector's point disappeared by his acceptance that a condition restricting noise levels, following the guidance of *ETSU-R-97*, would fully safeguard the living conditions of local residents.
- 2.39 Additionally, in response to the occupants of Bretherdale Foot, the decision not to take measurements adjacent to this property was expressly to avoid the high background noise levels of the adjacent water course:- using those of Low Crag provided a significantly lower noise climate and a more onerous test for the proposal. In all locations the possible shielding effect of topography has been taken into account.<sup>90</sup>
- 2.40 In terms of impulsive or 'thumping' noise, the experience of a German wind farm, with night time noise levels up to 18dB higher than predicted, is well documented.<sup>91</sup> Two factors are relevant:- first, wind data was collected at 10 metres above ground level; and second, wind shear effects were found, caused by stable atmospheric conditions and topography. By contrast the wind data at Whinash has been captured at 50 metres (not 25 metres as claimed) above ground level; and the area has a markedly different landform. The only wind farm in the United Kingdom with similar problems appears to be Askam-in-Furness, where modulation of 8dB was found arising from site geography influencing air flows and turbines becoming disorientated. A Noise Reduction Management System has subsequently been installed to switch off offending turbines; and more modern machinery can be regulated, within given parameters, by computerised software to ensure compliance with noise conditions.<sup>92</sup>
- 2.41 Low frequency noise is known to cause extreme distress to a number of people who are sensitive to its effects and infrasound is of particular concern in relation to annoyance,

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<sup>87</sup> CWP/0/47 (page 90, table row 5); See also CWP/8/2 (photographs SG2A - SG2E)

<sup>88</sup> CD16 Planning Policy Statement 22: Renewable Energy (paragraph 22);  
CD17 Planning for Renewable Energy: A Companion Guide to PPS22 (paragraph 44)

<sup>89</sup> CD111 ETSU-R-97: The Assessment & Rating of Noise from Wind Farms (page 148 & Figure A9); CWP/0/53 (SDM 2.0)

<sup>90</sup> CWP/7/2 (paragraphs 4.6 - 4.8); CWP/7/4 (paragraph 1.5)

<sup>91</sup> SDM/1/1 (paragraphs D4 - D7 & Ref 5); CWP/7/4 paragraphs 1.8 - 1.13)

<sup>92</sup> CWP/7/4 (paragraphs 1.8 - 1.10); CWP/0/51; CWP/0/53 (SDM 3.0 - 4.0; SDM 6.0 - 7.0)

stress and sleep disturbance; but knowledge is incomplete and further research is needed. However, the Applicant's assessment shows that the operation of the wind turbines would be below both German and Danish Low Frequency Noise Criteria for day and night-time; and infrasound noise emissions, either ground-borne or air-borne, would be well below any recognised threshold of perception. In response to such concerns Dr Geoff Leventhall, Consultant in Noise Vibration and Acoustics and author of the *Defra Report on Low Frequency Noise and its effects* says:- 'I can state quite categorically that there is no significant infrasound from current designs of wind turbines'. Similar conclusions are found in the *North West Regional Assembly's Consultation Draft on Renewables; 'Wind Power in the UK'; and the Companion Guide to PPS22*.<sup>93</sup>

- 2.42 Looking at other effects, there is no specific guidance on noise levels for recreational users of the site. However, noise levels on site would be significantly less than those deemed acceptable for mineral workings close to recreation routes; and as wind speeds rise the noise of the turbines would increasingly be masked by the sound of wind passing the ear. Elsewhere, for example in Borrowdale and Bretherdale, turbine noise is likely to be lost to the sound of running water; and noise from the M6 intrudes into the eastern parts of the site. Horse riders are unlikely to be affected (as equine hearing is less sensitive than that of humans); and collaboration is provided by The North West Regional Assembly's consultation document and photographic evidence adduced by the Applicant.<sup>94</sup>

## The Effect on Nature Conservation and Fauna

- 2.43 Ecological surveys were carried out within the site in 2003 and 2004 comprising, among other things:- a Phase 1 habitat survey; a blanket bog assessment, a botanical community survey and an upland condition assessment.<sup>95</sup> On the basis of these findings it was concluded that the study site was a typical example of upland common land, in which human activities have led to the degradation of bog habitats, to the extent where existing vegetation is now dominated by a combination of species-poor degraded bog, featuring many erosion scars, and species-poor acid grassland. The vegetation communities that were found are widespread and common in North West England.
- 2.44 The application site is not designated for its ecological interests under either domestic or European legislation. Although it was claimed that the northern portion was of sufficient importance to justify designation as a local wildlife site, this is at odds with the Applicant's habitat survey. This shows blanket bog as a small component of the overall bog complex which is insufficient in extent to be classified as the European priority habitat 'Active Blanket Bog'.<sup>96</sup> Even if it were regarded to be of importance, national guidance indicates that '*local..... nature conservation designations should not be used in themselves to refuse planning permission for renewable energy developments*'.<sup>97</sup>

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<sup>93</sup> CWP/7/2 (paragraphs 3.18 - 3.28); CWP/7/3 (Appendices 2 & 6); CWP/0/47 (Table 6.1); CWP/0/48 (Section 8) CD127 Low Frequency Noise and Vibrations Measurement at a Modern Wind Farm (paragraph 5.3.1)

<sup>94</sup> CD17 Planning for Renewable Energy: A Companion Guide to PPS22 (paragraphs 45 & 46)

<sup>95</sup> CD4 Supplementary Environmental Information Volume 1 (paragraphs 7.8.1 & 7.8.2) CWP/0/47 (Table 6.10); CWP/7/2 (paragraphs 3.31 & 3.32; 4.9 - 4.13); CWP/8/2 (SG2D - SG2G)

<sup>96</sup> CD3 Environmental Statement: Volume 1 (Chapter Six)

<sup>97</sup> CD4 Supplementary Environmental Information Volume 1 (Chapter Five)

CD4 Supplementary Environmental Information Volume 2 (Figure 49)

CWP/5/3 (Appendix 2)

<sup>97</sup> CD16 Planning Policy Statement 22: Renewable Energy (paragraph 15)

- 2.45 The expert evidence called by the Applicant is that there will be no adverse effect on any ecological interest; and neither English Nature nor the Environment Agency raises objection to the development, subject to safeguards through planning conditions and/or the Planning Obligation.<sup>98</sup>
- 2.46 Indeed, the Applicant's scheme seeks to minimise the direct loss of blanket bog habitat through:- scheme layout by the re-routing of selected site tracks; the greater use of 'floating tracks' where stone tracks are formed on top of the peat;<sup>99</sup> and proposals to 'micro-site' turbines specific to ground conditions within given limits controlled by planning condition. Indirect impacts on habitats would be further mitigated during construction and operation through an agreed 'Construction Method Statement', to be secured by condition. Whilst the *Joint Statement by English Nature and the Environment Agency* refers to the possibility of omitting or relocating Turbine No.1, that view is predicated on the mistaken understanding of the turbine being in an area of deep peat (in excess of 0.5metres). Whilst there is evidence of peat depths greater than 1 metre in this general area, the Applicant's peat probes show depths of 0.2 and 0.3 metres in the immediate vicinity of this turbine base.<sup>100</sup>
- 2.47 Losses of blanket bog arising from the construction works would be mitigated through the Environmental Management Plan, secured by condition and reinforced by the Planning Obligation. Its purpose would be to prevent further deterioration and to enhance where appropriate and possible, existing areas of blanket bog, with a particular focus on the northern part of the site. Funding improvements to the quality of the blanket bog in the adjacent Shap and Birkbeck Fells Site of Special Scientific Interest, which forms part of the Lake District High Fells Special Area of Conservation, would be a further benefit in adding to the achievement of the objectives of the Biodiversity Action Plan for this habitat in Cumbria.<sup>101</sup>
- 2.48 In terms of the effects on birds, the points made by Objectors are largely generic. The document produced by the North West Regional Assembly, referred to in paragraphs 2.36 and 2.41 above, confirms in relation to wind power and birds:- *'The RSPB support the development of well designed and located wind farms ..... The available evidence suggests that appropriately positioned wind farms do not pose a significant hazard for birds. Whilst the occasional 'strike' cannot completely be ruled out, operational experience from existing UK wind farms shows that deaths are very rare, and not of a magnitude to be considered a major issue, provided good practice is observed.'*<sup>102</sup> In any event, adequate safeguards to minimise disturbance during the nesting season could be secured by condition.
- 2.49 Criticisms about the absence of a bat survey and impacts on bats are similarly unfounded as bats tend to follow linear features, such as hedges and tree lines (which are generally absent across the site) and not to feed at a height that would be affected by the turbine blades. With regard to the alleged absence of an invertebrate survey, no specific study was warranted as *'The habitats present on the site are of degraded types that are widespread throughout this part of upland Britain'*.<sup>103</sup> Again, measures necessary to protect any wildlife could be covered by condition.

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<sup>98</sup> 1248/W1 & 1249/W1

<sup>99</sup> CD4 Supplementary Environmental Information Volume 1 (Figures 3.5 & 3.6) & Volume 2 (figures 45 & 46)

<sup>100</sup> 1248/W1 & 1249/W1 (Section 12.1)

CD4 Supplementary Environmental Information Volume 2 (Figure 45)

<sup>101</sup> CWP/5/1 paragraph 3.18.

<sup>102</sup> CWP/0/47 (Table 6.1)

<sup>103</sup> CD3 Environmental Statement: Volume 1 (paragraph 6.5.17)

- 2.50 Concerns, notably by Dr Kaye Little, about the alleged environmental damage caused by the construction of a recently opened wind farm at Cefn Croes are an exaggerated and often speculative characterisation of the construction process at that site; and of no direct relevance to the application site. The sites are materially different and much appears to emanate from the failure to enforce or abide by conditions imposed on that consent rather than any inherent impossibility of constructing a wind farm in an acceptable manner. Knowledge gained has informed and refined the approach for Whinash which also follows proposed methods for the construction of a wind farm at Scout Moor, where much of the land is covered by blanket bog. In that case, the Inspector, having heard similar complaint about Cefn Croes, came to the conclusion that the proposal would not cause any significant harm to moorland ecology.<sup>104</sup>

## **The Effect on Hydrology, Hydrogeology and Water Supplies**

### *Hydrology and Hydrogeology*

- 2.51 The headwaters of a number of small streams rise within the site with some originating from marshy flushes, blanket peat or eroded gullies with peat edges.<sup>105</sup> The surface water management strategy for the site has been designed to avoid any significant interference with the established hydrological system and to prevent the pollution or siltation of watercourses. The key measures would include:-
- the appropriate design and management of the site's storage compound;
  - preventative measures associated with fuel transport and storage;
  - the appropriate design and construction of turbine foundations and associated structures;
  - preventative measures associated with the use and production of concrete;
  - the appropriate design and management of site tracks and any required watercourse crossings; and
  - the appropriate design and management of the underground cables, the grid connection and the electricity substation.<sup>106</sup>
- 2.52 The proposed mitigation measures will be developed further, as necessary, to determine the final design of each aspect of the proposal, but these will follow the basic construction principles outlined in the *Environmental Statement* and the *Supplementary Environmental Information*. This is normal practice for large construction projects and such details will be set out in the 'Construction Method Statement', the 'Environmental Management Plan' and the 'Pollution Incident Response Plan', each of which will be submitted for the approval of the appropriate authorities. In addition, during the construction, operation and decommissioning phases, a programme of surface water monitoring would be undertaken and an appropriately qualified environmental scientist would be present during the construction phase to provide specialist advice. The evidence that there would be no material impact on hydrology and hydrogeology is effectively not challenged by any evidence to the contrary.
- 2.53 Concerns voiced by Objectors about the possible risk of peat slides occurring during construction works owes more to the experience encountered during the construction of an adjacent reservoir than any technical evidence;<sup>107</sup> but such a risk can be avoided

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<sup>104</sup> X/15 Scout Moor Wind Farm – Inspector's Report (paragraph 267)

<sup>105</sup> CD3 Environmental Statement: Volume 1 (paragraph 6.7.3)

CD3 Environmental Statement: Volume 2 Appendices (Appendix 6.2)

<sup>106</sup> CD4 Supplementary Environmental Information Volume 1 (paragraphs 6.3 - 6.3.19; Appendices 6.1 - 6.3)

<sup>107</sup> 1248/W1 & 1249/W1 (Appendix EN/EA 8)



through appropriate working practices and monitoring of the construction process. There is no reasonable basis on which the proposal should be rejected simply because, as is the case with all development projects, care will need to be taken in its construction. Moreover, it is a matter of some considerable weight that English Nature and the Environment Agency are satisfied about the impact of the proposed development on hydrology and hydrogeology, and the Applicant's treatment of those matters.<sup>108</sup>

#### ***Groundwater, aquifers and local water supplies***

2.54 Of the 43 identified private water supplies within the vicinity of the site none are located within the application boundary and it is believed that most, if not all, are from surface water.<sup>109</sup> Although Mrs Lawler, of Dyke Farm, contended that her water supply originated within the application site – assessed to be on the perimeter of the eastern portion of the site – it would not be affected as the nearest turbines (19 and 20) and associated site tracks would be located on the opposite side of the relevant watershed. Overall, the intended construction works, in conjunction with the various mitigation measures, would not give rise to any material risk to water flow or quality.

#### ***Fisheries***

2.55 The River Lune is acknowledged to be a river of high conservation value with one of the most important Atlantic salmon populations in England and Wales. Borrow Beck, Birk Beck and Bretherdale Beck also support important fish populations. Although upper becks are believed to be devoid of fish, it has been assumed that all of the watercourses are of a sensitive nature and the mitigation package has been developed on this basis. Generic concerns about the possibility of silt infiltration or other pollution have been fully addressed in the *Environmental Statement and Supplementary Environmental Information* and specific protocols will be established through the 'Construction Method Statement', the 'Environmental Management Plan' and the 'Pollution Incident Response Plan' to minimise silt deposits and other forms of pollution.

### **Decommissioning and Long Term Management and Restoration of the Site**

2.56 The draft planning conditions include requirements to decommission the wind farm at the end of 25 years, and to restore the site thereafter. It is intended to retain the access tracks and underground infrastructure so as to minimise ground disturbance. However, the turbines would be dismantled and removed from the site in what would effectively be a reversal of the erection process. The foundations would be removed to about 1 metre below ground level; and all traces of the substation and its compound would disappear. These areas would then be re-instated by backfilling with peat to an agreed method statement.<sup>110</sup> Such details would be submitted for agreement shortly before decommissioning.

2.57 The Planning Obligation provides an index-linked decommissioning bond, in the sum of £135,000, with a mechanism for review after 10 years.<sup>111</sup> This will ensure security for the decommissioning and restoration of the site. The approach is based on, and is consistent with, the principles which have been used to calculate decommissioning

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<sup>108</sup> 1248/W1 & 1249/W1 (Section 11.0)

<sup>109</sup> CD4 Supplementary Environmental Information Volume 1 (paragraphs 6.2.35; Table 6.2)  
CD4 Supplementary Environmental Information Volume 2 (Figure 48)

<sup>110</sup> CD3 Environmental Statement: Volume 1 (paragraphs 4.18.1 & 4.18.2)

CD4 Supplementary Environmental Information Volume 1 (paragraphs 3.5.1 – 3.5.10)

<sup>111</sup> X8(3) Planning Obligation (Third Schedule)

bonds for wind farm developments that have received consent. No evidence has been called by anyone to suggest that the bond is inadequate or inappropriate. Should it be considered that some other sum, or mechanism, is required it would be open to the Secretary of State to require such matters to be put in place before any decision is made.

- 2.58 Finally on this issue, the Commoners have suggested that they should be entitled to call on the bond, or be able to benefit from it. It is not clear whether they remain of the view that they could in some circumstances be liable for decommissioning if the operator of the wind farm, or the owner of the land, fails to comply with any condition requiring decommissioning. The Applicant has set out, in its *Outline Legal Submissions*, why the Commoners could not on any view be liable for decommissioning.<sup>112</sup>

## Other Matters

- 2.59 At a late stage in the Inquiry, the Local Authorities asserted that approval of the project would give rise to a **precedent** for other harmful development in a National Park, and should be refused for that reason alone. Even if the Secretary of State were to find the proposal to be harmful, such harm would have to be weighed against the very significant benefits arising from the project; and any decision in favour would be based on a particular factual matrix that would not necessarily have any wider application. Additionally, if there were to be a valid precedent argument, any apparent harmful effect would be merely one aspect of the negative side of the equation.<sup>113</sup> There is nothing in the precedent argument such as to require refusal of consent.
- 2.60 The Friends of Bretherdale complained about the **adequacy of the Environmental Statement**, in that certain decisions are intended to be deferred to agreement by planning conditions, and that this breaches the *Environmental Impact Assessment Directive*. Legal authority confirms that:- ‘..... the environmental statement does not have to describe every environmental effect, however minor, but only the ‘main effects’ or ‘likely significant effects;’<sup>114</sup> and, that, in relation to the imposition of planning conditions:- ‘Constraints must be placed on the planning permission within which future details can be worked out, and the decision maker must form a view about the likely details and their impact on the environment.’<sup>115</sup>
- 2.61 In this regard there is no substantive evidence of deficiencies, and no basis for the Secretary of State to reach the conclusion that the *Environmental Information* as a whole is not fit for purpose. Similarly, there is no reason to anticipate that the proposed conditions would permit variations to the scheme that have not been assessed. On the contrary, the underlying purpose of such conditions is to allow refinement as work proceeds to ensure that the development is within the limits assessed; and any flexibility (e.g. micro-siting of turbines) provides an opportunity for mitigation over and above that which has been assessed. Moreover, it would be wholly inappropriate to draw up a decommissioning method statement at this early stage, as that would require decisions to be taken on matters of detail better left to a later, more appropriate stage.
- 2.62 Concerns have been expressed about the possible impact of the turbines on **tourism**; but, despite the construction of wind farms in various parts of the country, there is no cogent

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<sup>112</sup> CWP/0/46 (paragraphs 45 & 46)

<sup>113</sup> *R (Pembrokeshire Coast National Park Authority)*: [2003] EWHC 2105

<sup>114</sup> *Smith v Secretary of State for Environment, Transport & the Regions* [2003] Env L R 32

*R v Cornwall County Council ex parte Hardy* [2001] Env L R 25

*R v Rochdale Metropolitan Borough Council ex parte Tew* [2000] Env L R 1.

<sup>115</sup> *Smith v Secretary of State for Environment, Transport & the Regions* [2003] Env L R 32 (paragraph 33)

evidence to show a resulting reduction in visitor numbers. Indeed, Cornwall and Cumbria have the largest concentration of wind farms of any of the counties in England, yet, in both cases, the numbers of visitors attracted has increased since the turbines were erected. Various studies fail to support the Objectors' concerns; a Department of Trade and Industry publication describes this as one of the '10 myths' about wind farms; and the North West Regional Assembly identify it as a 'non-planning issue':- '..... the considerable evidence reviewed ..... does not support the contention that there is any significant adverse impact or relationship between wind power and tourism.'<sup>116</sup> It should also be noted that some respondents to the survey undertaken for the Cumbria Tourist Board considered that the wind farm would be an additional attraction.<sup>117</sup>

- 2.63 A small number of Objectors sought to convince the Inquiry that there would be a catastrophic adverse effect on local residential **property prices** but evidence was notably absent. A study by the Royal Institution of Chartered Surveyors explodes the myth by suggesting that wind farms have no lasting impact on house prices.<sup>118</sup> Government guidance confirms that private interests are not a planning matter:- '*The basic question is not whether owners and occupiers of neighbouring properties would experience financial or other loss from a particular development, but whether the proposal would unacceptably affect amenities and the existing use of land and buildings which ought to be protected in the public interest.*'<sup>119</sup>
- 2.64 The impact of **shadow flicker** was mentioned as a concern by some Objectors, but not supported by evidence. However, possible health effects have been considered and found to be unsubstantiated:- '*The risk of photosensitive seizures being precipitated by turbines of the configuration at the Whinash Windfarm is extremely low ..... The risk for glare and flicker induced migraine is similarly extremely low, and is similar to that experienced in the natural environment.*'<sup>120</sup>
- 2.65 It was also asserted that the turbines might distract drivers on the M6 and A6 and present a **road safety** hazard. Reference to national guidance and its confirmation that '*There are now a large number of wind farms adjoining or close to road networks and there has been no history of accidents at any of them*' is sufficient to counter the point.<sup>121</sup>
- 2.66 Finally, one Objector appears to take a point in relation to rights guaranteed by the European Convention on **Human Rights** and Fundamental Freedoms, in relation to Article 1 of the First Protocol to the Convention.<sup>122</sup> The Applicant's *Outline Legal Submissions* address the relevance of that provision and also, for completeness, the relevance of Article 8 of the Convention.<sup>123</sup> For the avoidance of doubt, the Applicant's position is that no issue arises in relation to either the requirements of Article 1 of the First Protocol to the Convention, or Article 8 of the Convention.

## The Planning Balance

- 2.67 The policy matrix at national, regional and local level is wholly supportive of the proposal. In particular, by reference to Matters (1) to (7), this scheme accords with the

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<sup>116</sup> CWP/2/3 (Appendix 12); CWP/0/47 (page 90, table row 6); CWP/1/3 (Appendices 7 - 12)

<sup>117</sup> NWW/10/1 (Appendix Two; Appendix Five - Table Q7)

<sup>118</sup> CWP/2/3 (Appendix 12)

<sup>119</sup> CD8(2) The Planning System: General Principles (paragraph 29)

<sup>120</sup> CD3 Environmental Statement: Volume 1 ( paragraphs 9.5.1 - 9.5.5)

CWP/1/3 (Appendix 14)

<sup>121</sup> CD17 Planning for Renewable Energy: A Companion Guide to PPS22 (Chapter 8: paragraph 54)

<sup>122</sup> NWW/35/1

<sup>123</sup> CWP/0/46 (paragraphs 42 - 46)

dominant themes, revealed by a proper reading, of the *Regional Spatial Strategy for the North West, the Cumbria and Lake District Joint Structure Plan 1991-2006, the Cumbria and Lake District Joint Structure Plan 2001-2016 (Proposed Changes), the Eden Local Plan*, and Government policy on energy as set out in, primarily, the *Energy White Paper* and in *PPS22*.<sup>124</sup> In any event, the imperative nature of the need, having regard particularly to the 2010 targets, is determinative of any balance.

- 2.68 Inherent in the raft of international, European and national policy is an urgent need to pursue renewable energy. There is no choice and the 'precautionary principle' '*means that it is not acceptable just to say we can't be sure that serious damage will happen, so we'll do nothing to prevent it. ....difficult decisions on precautionary action are most likely where there is reason to think there may be a significant threat, but evidence for its existence is as yet lacking or inconclusive.....*'<sup>125</sup> In the present case its effect is to emphasise the urgency of the action required. Landscape, visual impact, public rights of access, National Parks and the rest are all important issues to be considered; but the 'precautionary principle' requires one to stand back and consider them in the context of the underlying issue of the pressing need for response to the world problem of climate change. Sooner, rather than later, all must recognize the need for action and realisation of renewable sources, wherever they occur: - the plain fact is that without a substantial increase in onshore wind developments, the 10% target by 2010 is unachievable.

## Planning Conditions

- 2.69 The draft planning conditions, discussed with the Local Authorities, are generally agreed.<sup>126</sup> Further details of the anemometry masts should be required, but there is no need to stipulate specific measures for traffic control. Latitude of +/- 30 metres in the siting of the tracks and turbines would be acceptable but +/- 50 metres would provide the opportunity for additional mitigation where required.
- 2.70 No point is taken with the objectives of the conditions sought by English Nature and the Environment Agency which have, generally, been incorporated into the draft conditions agreed with the Local Authorities and/or covered by the Planning Obligation.<sup>127</sup>
- 2.71 In terms of the additional conditions sought by NWW/FELLS, it is considered that none of them are necessary as they are covered by other draft conditions, the Planning Obligation or they seek to control matters which are not part of the application (i.e. it is not intended to source stone, or to manufacture concrete, on-site).<sup>128</sup>

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<sup>124</sup> CD23 Regional Planning Guidance for the North West (RPG13)  
CD25 Cumbria and Lake District Joint Structure Plan 1991 - 2006  
CD41 Cumbria and Lake District Joint Structure Plan 2001 - 2016 (Proposed Changes - June 2004)  
CD27 Eden Local Plan 1996  
CD170 Energy White Paper: Our energy future - creating a low carbon economy  
CD16 Planning Policy Statement 22: Renewable Energy

<sup>125</sup> CD139 A better quality of life (paragraph 4.2)  
<sup>126</sup> X/1 (Draft No. 4 14/06/05)

<sup>127</sup> X1 (EA/EN Proposed Ecological Conditions - Comments Prepared by CWP); 1249/W2  
<sup>128</sup> X/1 (Comments on Draft 3 from FELLS and NWW 11.6.05)

## The Case for the Consortium of Local Authorities

### The Policy Framework

- 3.1 The function of this Inquiry is to apply Government policy, not to question it. It is not open to any party to suggest Government policy is wrong, that it ought to be changed, or that the decision should not be made in accordance with it.<sup>129</sup>
- 3.2 The Local Authorities read national planning policy guidance, in *PPS22*, as an instrument of balance. Although it seeks to create a positive environment for the consideration of applications for renewable technology, it expressly recognises the harm that wind energy projects can create in areas of natural beauty. Within National Parks permission for renewable energy projects should only be granted where it can be demonstrated that the objectives of designation of the area will not be compromised; and any significant adverse effects are clearly outweighed by the environmental, social and economic benefits. The potential impact of projects outside, but close to, their boundaries is a material consideration.<sup>130</sup>
- 3.3 At the regional level, the *Regional Spatial Strategy for the North West, RPG13*, has to be read in the context of the *Partial Review (draft)* issued in August 2004 and the more recent *Report of the Panel*. The Panel, in looking at *Renewable Energy Policy ER15*, found it to be severely deficient in identifying criteria to guide renewable energy development as *PPS22* envisages; and recommended that such criteria should be deferred to the full review of the *Regional Spatial Strategy* in 2007.<sup>131</sup>
- 3.4 In the light of this policy vacuum it would be premature, on a proper interpretation of the underlying purpose of Government guidance,<sup>132</sup> to determine a proposal which, by itself, exceeds the anticipated capacity of Eden district (identified in the *AXIS Report* as 35 to 57 turbines in 5 to 7 locations producing 52.5MW - 72MW installed capacity<sup>133</sup>) until criteria are in place, to provide the appropriate context for the competing demands of renewable energy generation and landscape protection. Notably, national guidance recognises that criteria-based policies should be tailored to meet, for example, the presence of nationally designated areas of landscape value. Moreover, given the undeniable role of public participation in regional planning, determination now would deny this element of the plan making process.<sup>134</sup>
- 3.5 Further, active steps are being taken by the Countryside Agency to extend the Lake District National Park eastward, wholly embracing the site. Its decision is informed by a

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<sup>129</sup> EDC/0/39 Closing Submissions

*Gransden EC v Secretary of State for the Environment 1986 [JPL 519]*

*Lord Diplock in Bushell v Secretary of State for the Environment*

<sup>130</sup> CD16 Planning Policy Statement 22: Renewable Energy (paragraphs 11 & 14)

<sup>131</sup> CD230 Partial Review of the RSS for the North West - Report of the Panel (paragraphs 3.5, 3.7 & 3.10)

<sup>132</sup> CD8(2) The Planning System General Principles (paragraphs 6 & 17 - 19)

<sup>133</sup> CD230 Partial Review of the Regional Spatial Strategy for the North West - Report of the Panel (paragraph 3.17)

CD42 Technical Paper 6: Planning for Renewable Energy Development in Cumbria (Part 4 – page 7)

<sup>134</sup> CD17 Planning for Renewable Energy: A Companion Guide to PPS22 (paragraphs 3.3 & 3.39)

EDC/0/13 *Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (Article 7)*

report, which has full regard to the statutory criteria for designating National Parks.<sup>135</sup> However, designation would become unlikely, if this project proceeds, due to its adverse effects on the natural beauty of the area. It follows that the grant of consent would pre-determine the question of where the new National Park boundaries should be drawn.

- 3.6 The Applicant contends that National Park policies, at national, strategic and local levels, should not apply to the proposal as a whole as only a small, and visually insignificant, part of the development would be located within the National Park. However, policies which protect National Parks from inappropriate development are strict; and they are intended to be applied strictly. Incursion here would undoubtedly give rise to a precedent for other harmful development elsewhere and undermine policies for the protection of National Parks.<sup>136</sup>

### The Justification for the Site

- 3.7 It is agreed, as matter of law, that alternative sites can be a relevant consideration where:-
- *the policy framework makes it relevant;*
  - *there is a clear public convenience or advantage;*
  - *the demonstration of adverse effects;*
  - *the existence of alternative sites;*
  - *a situation in which there could only be one permission or at least only a very limited number of permissions.*<sup>137</sup>
- 3.8 In terms of national policy, the indication in PPS22, that regional targets should be reviewed on a regular basis and revised upwards (if they are met), is subject to the caveat of the capacity of the environment in the region for further renewable energy developments.<sup>138</sup> There can be no certainty that such targets will be raised, given the region's high quality landscape, and it would therefore be entirely rational to compare the merits of alternative sites so as to ensure that the region's target is met in the least

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<sup>135</sup> CD219 Recommended Area of Search for Land Worthy of Designation in the North West of England - Final Report (page 77)

<sup>136</sup> EDC/0/39 Closing Submissions:-  
*Poundstretcher Ltd & another v Secretary of State for the Environment & another*  
*R. on the application of Pembrokeshire Coast National Park Authority v National Assembly for Wales*  
*R. (On the application of GOSBEE) v First Secretary of State*  
*Rumsey v Secretary of State for Environment, Transport & the Regions & Waverley BC*  
*Friend v National Assembly for Wales & Newport BC*  
*Eden Restaurants (Holborn) Ltd v Secretary of State for the Environment, Transport & the Regions*  
*Gardline Shipping Ltd v Secretary of State for Environment, Transport & the Regions & Waveney DC*  
*Anthony Stanley Franklin Hickman v the Secretary of State for the Environment & South Bucks DC*  
*Virgin Cinema Properties Ltd and others v Secretary of State for the Environment and others*  
*British Aerospace plc v Secretary of State for the Environment & Secretary of State for Transport*  
*Simon Fairlie v Secretary of State for the Environment & South Somerset DC*  
*International Wind Development UK v The Secretary of State for the Environment & Copeland BC*  
*Woolwich Building Society v Secretary of State for the Environment & another*

<sup>137</sup> EDC/0/39 Closing Submissions:-  
*Jodie Phillips v First Secretary of State & Havant BC and Hutchison 3G (UK) Ltd*  
*R. on the application of Mount Cook Land Ltd & Mount Eden land Ltd v Westminster City Council*  
*Tower Hamlets L.B.C. v Secretary of State for the Environment et al (Court of Appeal)*  
*Rhodes v Minister of Housing and Local Government & another*  
*Secretary of State for the Environment v Edwards & others*  
*Trusthouse Forte Hotels Ltd v Secretary of State for the Environment & another*  
*R. (on the application of Scott Jones & another) v North Warwickshire BC*  
*EC Gransden & Co Ltd & Falkbridge Ltd v Secretary of State for the Environment & Gillingham BC*

<sup>138</sup> CD16 Planning Policy Statement 22: Renewable Energy (paragraph 3)

damaging way. *PPS7* also seeks consideration of alternative sites for major developments in designated areas.<sup>139</sup>

- 3.9 At the local level, *Policy 54 of the Cumbria and Lake District Joint Structure Plan* confirms, in essence, that major developments which have significant environmental effects will only be permitted where all reasonable alternative locations have been explored and found to be unacceptable.<sup>140</sup> *Policy ST4 of the Cumbria and Lake District Joint Structure Plan (Proposed Changes)* contains similar provisions and merits significant weight as it has effectively been endorsed by the Panel following the Examination in Public.<sup>141</sup>
- 3.10 Although the major part of the proposed development would lie outside the Lake District National Park boundary, National Park policy, in effect, falls to be applied to the whole of the development. This is apparent from *Policy E34 of the Cumbria and Lake District Joint Structure Plan (Proposed Changes)* which seeks to prevent harmful development in a range of designated areas, including National Parks, or within their settings.<sup>142</sup> Support for this stance can be found in the *Report of the Panel* who saw no conflict between it and the advice in *PPS22* on buffer zones.<sup>143</sup>
- 3.11 It is argued that a similar approach should be applied to *PPS7*, especially as the guidance note, published by the Department for Environment, Food and Rural Affairs, on *Duties on relevant authorities to have regard to the purposes of National Parks* ..... requires all relevant authorities to take account of the statutory purposes of designation when coming to decisions relating to or affecting land within these areas.<sup>144</sup>
- 3.12 The lack of alternative sites in this instance owes much to the Applicant's failure to carry out a proper assessment of different landscapes with different potential capacities to absorb impacts. Indeed, the approach to site selection focused on upland areas with a pre-conceived minimum wind resource of 7 metres/second. That itself flies in the face of the *Companion Guide to PPS22* which notes that developments in technology and the electricity market over recent years has increased the viability of wind farm developments across the United Kingdom. Wind speeds are seen to be less pivotal in the site selection process and wind farm developments can reasonably be expected to be proposed in all regions of the country.<sup>145</sup> It follows that there must be numerous sites which were automatically excluded from consideration in the *Environmental Statement*.
- 3.13 As to alternative sites, although the Local Authorities are not bound to bring such evidence, the *AXIS Report* provides comprehensive technical consideration of the potential availability of sites for commercial wind farms in Cumbria (additional installed capacity 201 - 370.5MW).<sup>146</sup> It is entitled to be treated with great weight, because it has been endorsed in the *Report of the Panel into the Regional Spatial Strategy*, as it '*follows a well-structured methodology taking into account both technological and policy constraints as well as consultation with individual local planning authorities. In particular it takes account of*

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<sup>139</sup> CD9 Planning Policy Statement 7: Sustainable Development in Rural Areas (paragraph 22)

<sup>140</sup> CD25 Cumbria and Lake District Joint Structure Plan 1991 - 2006

<sup>141</sup> CD41 Cumbria and Lake District Joint Structure Plan 2001 - 2016 (Proposed Changes - June 2004)

<sup>142</sup> CD183 Cumbria and Lake District Joint Structure Plan 2001 - 2016: Report of the Panel (paragraphs 1.68 - 1.74)

<sup>143</sup> CD41 Cumbria and Lake District Joint Structure Plan 2001 - 2016 (Proposed Changes - June 2004)

<sup>144</sup> CD16 Planning Policy Statement 22: Renewable Energy (paragraph 14)

<sup>145</sup> CD183 Cumbria and Lake District Joint Structure Plan 2001 - 2016: Report of the Panel (paragraph 5.1.28)

<sup>146</sup> EDC/1/5 (paragraphs 2; 6 & 8)

<sup>147</sup> CD17 Planning for Renewable Energy: A Companion Guide to PPS22 (paragraph 1; Annex 8 - paragraph 38)

<sup>148</sup> CD42 Technical Paper 6: Planning for Renewable Energy Development in Cumbria (Table 3.5; paragraphs 3.6.2 & 3.6.3)

*the constraints imposed by National Park and other designations.*<sup>147</sup> It is therefore appropriate to conclude that there is before the Inquiry credible evidence of a likelihood, or a real possibility, of an alternative coming forward which would not create anything like the degree of harm arising from this proposal.

## Visual/Landscape Impact

### *Landscape impacts*

3.14 The Local Authorities, in closing, adopted the Countryside Agency's case on landscape impacts. I do not report the Council's evidence here in order to avoid duplication.

### *Visual impacts on public rights of way, commons and access land*

3.15 The underlying character of the area is one of an expansive landscape, uncluttered by development, which provides a sense of wildness.<sup>148</sup> There is little to distinguish the site from its immediate surroundings. Open views predominate; tree cover is in general sparse; and there are few vertical features. Where they exist, the impact of man-made features is remarkably low; nearby pylons fade against a background of rising fells and their open lattice construction, limited height and lack of movement bear no comparison with the proposed turbines whose blade diameter would be twice the height of the pylons. In distant views the pylons are difficult to make out, but the number, scale, spread and movement of the turbines would draw the eye. The *Guidelines for Landscape and Visual Impact Assessment* indicate:-

- *'large-scale changes which introduce new, discordant or intrusive elements into the view are more likely to be significant than small changes involving features already present in the view;*
- *changes in views from recognised and important viewpoints or amenity routes are likely to be more significant than changes affecting other less important paths and roads;*
- *changes affecting large numbers of people are generally more significant than those affecting a relatively small group of users. However, in wilderness landscapes the sensitivity of the people who use these areas may be very high .....*<sup>149</sup>

3.16 The public has extensive rights of access across the application site and surrounding land within the Zone of Visual Influence.<sup>150</sup> By way of illustration of substantial adverse visual impacts, the proposed turbines would dominate the views from within the site and stand out along the ridge when viewed from the north. They would also have substantial adverse impacts as skyline features from vantages in the vicinity of Orton Scar and stand very prominent in views around Shap to Tebay, Tebay Fell and Green Bell in the Howgills (Grid ref: 698 011). Along Borrowdale, although views are contained, the turbines would dominate the ridgeline along the northern side of the valley and very substantial adverse impacts would occur. Substantial effects would also be experienced from Whinfell Common and the footpaths which join the A6 between Garnett Bridge (Grid ref: 527 990) and Bannisdale Low Bridge (Grid ref: 542 011).<sup>151</sup>

3.17 From near viewpoints within the Lake District National Park, the turbines would be readily apparent on or near the skyline, compounded by the exposed, wild and remote

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<sup>147</sup> CD230 Partial Review of the RSS for the North West - Report of the Panel (paragraph 3.17)

<sup>148</sup> CD37 Landscape Character Assessment (paragraph 7.22 – definition of 'wildness')

<sup>149</sup> CD38 Guidelines for Landscape and Visual Impact Assessment (paragraphs 7.48 & 7.49)

<sup>150</sup> EDC/2/3 (Appendix A - JK07 & JK08)

<sup>151</sup> EDC/2/3 (Appendix B - photoviews 1 - 4; 22; 23; & 29); EDC/2/4 (photomontages A; B; M; N; O; & P)



quality of the landscape and its lack of trees and few vertical elements. Moderate to substantial adverse impacts would occur from public rights of way, rising to moderate to very substantial on land with other public access rights. The turbines would have significant impacts on views from within the Yorkshire Dales National Park and substantial to very substantial impacts from public rights of way between the River Lune and the Howgill Fells to the north of Sedbergh.<sup>152</sup>

- 3.18 Moderate adverse impacts would be experienced from the North Pennines Area of Outstanding Natural Beauty, north and east of Appleby-in-Westmorland, where the turbines would be seen on the skyline, albeit at a considerable distance. Moderate to substantial impacts would arise to the north and north-east of Kendal, including the Dales Way, with hubs and blades being apparent.<sup>153</sup>
- 3.19 The impact of the proposal would be increased in views from where it would be seen with the Lambrigg Wind Farm. Examples include:- the Howgill Fells; the hills to the south of Sedbergh; high ground to the south-east of Kendal; and on high ground in the Lake District National Park around Bannisdale, Crookdale and Scout Scar.<sup>154</sup> From all of these, with the exception of the Howgills, Lambrigg is seen against a background of hills and forms a minor component in the view. However, the presence of a long string of turbines along the Whinash ridge would dramatically increase the perceived presence of wind turbines in the landscape as a whole.<sup>155</sup>

#### *Visual impacts on the road and rail network*

- 3.20 The scheme would be visible from stretches of the A6, particularly between Garnett Bridge (Grid Ref: 527 990) and Borrowdale (Grid ref: 552 040); from minor roads between the site and the M6; and the minor road between Sedburgh and Low Borrowbridge (Grid ref: 610 013) where substantial adverse impacts would arise. Direct views would be possible from the B6260 between Orton Scar and Tebay; the minor road between Tebay and Little Asby; and the A685 between Ravenstonedale and Tebay leading to moderate to substantial adverse impacts. In the M6 corridor, open views of dominant ridgeline structures from a long stretch of the southbound motorway, and minor roads south of Shap, would give rise to substantial adverse impacts. The same would apply to the railway, other than where it is in cutting. Sequential impacts along the M6 would also arise as travellers would experience two wind farms over a relatively short distance, with the impact being most apparent for those travelling southbound.<sup>156</sup>

#### *Visual impacts on settlements*

- 3.21 Individual properties in Bretherdale and Borrowdale would experience views dominated by the proposed turbines and substantial to very substantial adverse impacts. Villages to the north, including Orton, are often located within localised dips but some properties would have views of the turbines and experience moderate to substantial impacts. The turbines would have a particularly substantial impact on properties on the western side of Tebay, the motorway service area and properties along the A6 leading to substantial

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<sup>152</sup> EDC/2/3 (Appendix B - photoviews 1; 9 - 18; & 30 - 36); EDC/2/4 (photomontages F; G; I; J; K; L; & T); EDC2/4A (photomontages R & S)

<sup>153</sup> EDC/2/3 (Appendix B - photoviews 6 & 20); EDC/2/4 (photomontages D & E)

<sup>154</sup> Bannisdale & Crookdale run generally north-west from the A6 (indicative Grid refs: 542 011 & 554 051); Scout Scar is located 3.5 kilometres south-west of Kendal town centre (indicative Grid ref: 488 913)

<sup>155</sup> EDC/2/3 (Appendix B - photoviews 8 & 9)

<sup>156</sup> EDC/2/3 (Appendix B - photoviews 1; 3; 4; 19; 21 - 23; 26 & 30)

to very substantial impacts. Properties at Helton (Grid ref: 511 220) with southerly views would experience moderate impacts.<sup>157</sup>

- 3.22 An estimated 3,000 people live within 8 kilometres of the site.<sup>158</sup> Although many might not have direct views of the turbines, they would, nonetheless, be aware of them within their community and as they move around the area. Whilst the public might approve of wind turbines in the abstract, the only public attitude survey (prepared on behalf of, amongst others, the Department of Trade and Industry) shows that the approval rating drops significantly for those who have experience of living within 8 kilometres of a wind farm. Consequently, the degree of harm would be much greater than the Applicant anticipates.<sup>159</sup>

#### ***Impact on the Lake District National Park***

- 3.23 The Lake District National Park is recognised nationally and internationally as a special place. It is described as '*England's Finest Landscape*'. It is a mere 48 kilometres across, yet it possesses a unique combination of spectacular and rugged high fells penetrated by valleys, woodland, tarns and lakes. It is an area of intrinsic landscape beauty. It has been, and remains, a precious national resource, a source of inspiration for writers, painters and naturalists.
- 3.24 Above all, the Lake District has provided pleasure to millions of people; pleasure that is derived from the relatively wild and beautiful countryside, remote in parts, often peaceful and quiet. Notably, the eastern fells form a defined '*Quieter Area*', under *Policy NE5 of the Lake District National Park Local Plan*, where development that would threaten the relative solitude and peace of the area, through visual intrusion for example, will not be permitted.<sup>160</sup> The landscape, as a whole, provides an opportunity for spiritual refreshment, closeness to nature and relief from the urban environment which is so valued by visitors – and which is so very sensitive and vulnerable to inappropriate change. Large man-made constructions of such obvious technological sophistication are not easily reconciled with the intrinsic qualities of wild and open moorland from where this development would be readily seen.
- 3.25 These impacts are not only the physical presence of the turbines but also their appearance, scale and materials of construction. The natural inclination of the eye is to focus on discordant moving features when scanning the landscape. They would have an alien, man-made vertical emphasis in a landscape characterised by horizontal features and the constantly changing weather and light conditions that prevail in this area.
- 3.26 The essential landscape character of the area, derived from geology, geomorphology and land use patterns, flows seamlessly across the Lake District National Park boundary, whether viewed from inside or outside the National Park. The area gained unrestricted access rights in May 2005 and views towards the Howgills and the Yorkshire Dales became available to even more people. Whilst the area may be less used by walkers and visitors than some of the more obvious attractions of the higher fells within the Lake District National Park, its strong feeling of remoteness forms part of the attractiveness for such people. Inevitably, the presence of moving structures in the views, and in the foreground of views toward the Howgills and the Yorkshire Dales, would cause high and harmful visual intrusion.

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<sup>157</sup> EDC/2/3 (Appendix B - photoviews 3; 4; 24 & 25)

<sup>158</sup> EDC/0/23

<sup>159</sup> CD166 Attitudes and Knowledge of Renewable Energy amongst the General Public (page 79)

<sup>160</sup> CD30 Lake District National Park Local Plan 1998

- 3.27 The site forms part of a larger area of County Landscape Importance, extending east and south-east from the Lake District National Park boundary to wrap around the western and northern boundaries of the Yorkshire Dales National Park. *Policy 12 of the Cumbria and Lake District Joint Structure Plan*, which seeks to protect its distinctive character, has been carried forward into *Policy E36 of the Cumbria and Lake District Joint Structure Plan (Proposed Changes)*.<sup>161</sup> Although national guidance advises against local designations, the *Examination in Public Panel Report* supported its retention in recognition of the acknowledgement of the quality of such landscapes in national studies (extending from the *Dower Report* of 1945 and the *Hobhouse Report* of 1947) and to provide continuing landscape protection pending decisions on the inclusion of additional areas within national designations.<sup>162</sup>
- 3.28 There is every expectation that there would be little prospect of extending the Lake District National Park to embrace the application site if the application were to be approved. Although the Applicant describes the landscape 'as on loan' the combined period of construction, operation and decommissioning would be in excess of 25 years, which some would perceive as permanent.<sup>163</sup> The denied opportunity of designation would rob the site of the benefits that would flow from specific management measures and funding, pursuant to the *Lake District National Park Management Plan* (prepared as required by the Environment Act 1995) which aims to 'protect and enhance the qualities of tranquillity, wildness and remoteness'.<sup>164</sup>

#### ***Impact on the Yorkshire Dales National Park***

- 3.29 The rounded and deeply incised Howgill Fells provide some of the best opportunities for upland walking in the whole of the Yorkshire Dales National Park due to their physical characteristics and their location on the north-western edge of the National Park. The north-western tip of the Howgills, in particular, possesses a characteristic sense of wilderness, tranquillity, detachment and freedom sought by walkers. As a whole, the Howgills provide expansive views across the most stimulating landscape in North West England with the dramatic mountains of the Lake District forming a continuous skyline to the west. The tract of upland containing the site forms a visual link, of similar landscape quality, with the two National Parks and contributes to the perception gained from summits in the Howgills of a boundless and relatively natural upland landscape.
- 3.30 By way of illustration of adverse effects, the existing 260° arc view (radiating west through north to south) from Knowles/Linghaw (Grid ref: 637 987) of naked hills, unchanged since the Ice Age, would be reduced by some 30° in its north-western segment by the proposed development. The turbines would have a massive scale, rising to a height in excess of half the mean difference between the valley floor and the Whinash ridge, and stretch across a vulnerable ridgeline. As a result, they would become a focus in their own right and devastate views looking out from the National Park. Their impact on the setting and experience of the National Park would be the more apparent as they would combine with other man-made features to the south-west,

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<sup>161</sup> CD25 Cumbria and Lake District Joint Structure Plan 1991 - 2006

CD41 Cumbria and Lake District Joint Structure Plan 2001 - 2016 (Proposed Changes – June 2004)

<sup>162</sup> CD9 Planning Policy Statement 7: Sustainable Development in Rural Areas (paragraphs 24 & 25)

CD183 Cumbria and Lake District Joint Structure Plan 2001 – 2016: Report of the Panel (paragraphs 5.2.12 – 5.2.19)

<sup>163</sup> FoB/0/7 (paragraph 11.4.20)

<sup>164</sup> CD209 Lake District National Park Management Plan 2004 (page 19 - Policy L6)

notably the infinitely smaller Lambrigg Wind Farm which itself marks part of the skyline, and seriously impair the sense of wilderness sought by walkers.

- 3.31 Overall, the proposal would harm the wider setting of the National Park, erode its core position in an expansive landscape and conflict with the Park Authority's statutory role 'of promoting opportunities for the understanding and enjoyment of the special qualities [of the National Park] by the public.'

## The Planning Balance

- 3.32 The Applicant has exaggerated the benefit of the proposal and has simultaneously underestimated the scale and nature of the impacts on two National Parks. When these matters are set into their proper focus it immediately becomes apparent that the benefit bears no relationship to the extent and range of harm that will be caused by a grant of consent for this scheme.

- 3.33 Government guidance seeks to ensure that wind farms are appropriately located.<sup>165</sup> It is common ground that the *Guidelines for Landscape and Visual Impact Assessment* and *Landscape Character Assessment* provide, together, a comprehensive methodology for considering landscape and visual impacts for this kind of development.<sup>166</sup> It follows that failure to apply the methodology must fatally undermine any reliance which may be placed on the resulting evidence. Yet, so far as the Applicant is concerned there are two such serious failures.

- 3.34 Firstly, the *Guidelines for Landscape and Visual Impact Assessment* set out the importance of identifying and understanding the planning policy context:-

*'National designation may be an indication of the potential for significant effects. Accordingly, sites within or adjacent to, nationally designated landscapes require detailed and rigorous assessments that are appropriate to the status of the landscape. Particular attention should be given to the special attributes and characteristics that justified the original designation together with the policy objectives of the designation..... An analysis of relevant plans and policies, including the degree of compliance or conflict ..... should also provide a picture of the decision making context in which the environmental effects will be evaluated.'*<sup>167</sup>

The same point is made so far as the advice on understanding landscape value is concerned:-

*'The assessment of landscape importance includes references to policy or designations as an indicator of recognised value. If the site is located in, or close to a designed landscape, the evaluation also examines the basis of the designation.'*<sup>168</sup>

However, without good reason, the Applicant has ignored the policy objectives which underpin the designation of National Parks – a designation to which the Government attaches the highest degree of importance.<sup>169</sup> It is not surprising that the Applicant has failed to understand the true value of this landscape.

- 3.35 Secondly, the guidelines indicate that the consideration of alternatives may be '...particularly relevant for sensitive locations'. And 'if there are serious landscape constraints

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<sup>165</sup> CD16 PPS22: Renewable Energy (paragraph 1(vii))

<sup>166</sup> CD37 Landscape Character Assessment

CD38 Guidelines for Landscape and Visual Impact Assessment

<sup>167</sup> CD38 Guidelines for Landscape and Visual Impact Assessment (paragraphs 3.20 & 3.23)

<sup>168</sup> CD38 Guidelines for Landscape and Visual Impact Assessment (paragraph 6.20)

<sup>169</sup> CD207 Environment Act 1995, Part III National Parks (Section 6)

*associated with a particular site, avoidance of effects through the selection of an alternative location is likely to be a preferred solution*.<sup>170</sup> Failure to adhere to this advice not only weakens the Applicant's case but it also threatens to undermine the guidelines and frustrate the attempts to achieve a consistent methodology for landscape impact assessments.

- 3.36 Moving on to the impact of the scheme, the Applicant, rather disparagingly, sees the landscape as one of clutter which is already adversely affected by man-made structures and operations such as pylons and quarries. This is essentially a question of judgment, but it is notable that such views are strongly contested and countered by an array of other expert and local opinion, supported by the immediate proximity to the boundary of the Lake District National Park; the *Cumbria Landscape Strategy*; the *Alison Farmer Report* and photographic evidence.<sup>171</sup> These, in combination, invite the conclusion that the landscape has an existing wild and expansive character which is largely unspoilt and whose continued protection is a matter of national importance.
- 3.37 Turning to the benefits claimed by the Applicant, it was conceded that there is no special need for this site in order to fulfil Government policy. In this regard the Local Authorities adopt the evidence of the Friends of Bretherdale with particular reference to:-
- *the confidence expressed by the British Wind Energy Association that 9.9 % of the 10% target is achievable by 2010 and that the market is expressing increasing confidence in bringing forward schemes;*<sup>172</sup>
  - *94% of planning applications in Scotland received consent in the period 1999 – 2003 with the time taken to achieve consents in England at only 8.5 months; and*
  - *the expectation that PPS22 will provide a stimulus to renewable energy development.*<sup>173</sup>
- 3.38 This leads to the general conclusion that the market has responded, and will continue to respond, to the favourable climate in which renewable energy applications are treated. The recent consent at Scout Moor is an illustration of how easy it has become to locate major wind farms in any landscape without national designation.<sup>174</sup> The supply, without Whinash, will meet the Government's targets making the destructive impacts of Whinash unnecessary. Further, this has to be seen in the context of the Applicant's hysterical approach to the threats of global warming, which, although rehearsed in the *Regional Spatial Strategy*, overlooks *Policy ER2* which calls for '*.....the strongest levels of protection for the North West's finest landscapes and areas of international and national importance and their settings .....* '<sup>175</sup>.
- 3.39 Overall, the Local Authorities do not deny the importance of global warming as a necessary influence on land use policy; but the response to it should be rational and balanced and take account of all impacts. It is contended that the demand for this site to come forward to meet any targets for renewable energy developments is not made out. There are plenty of sites coming forward elsewhere which are capable of meeting and exceeding the national target. The benefit of this development therefore exists only in

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<sup>170</sup> CD38 Guidelines for Landscape and Visual Impact Assessment (paragraphs 4.5 & 4.7)

<sup>171</sup> CD71 Cumbria Landscape Strategy

CD219 Recommended Area of Search for Land Worthy of Designation in the North West of England - Final Report EDC/2/3 (Appendix B - e.g. Photoviews 1 – 3)

<sup>172</sup> EDC/0/4

<sup>173</sup> CD227 National Audit Office - Renewable Energy (paragraphs 2.6 & 2.8)

<sup>174</sup> X/15 Scout Moor Wind Farm – Secretary of State's Decision

<sup>175</sup> CD23 Regional Planning Guidance for the North West (RPG13) (Policy ER2)

the most general sense of providing 67.5MW of renewable energy. The harm on the other hand is specific and immense. It will have a destructive impact on the setting of two National Parks and will adversely affect the character of the landscape in the wider area, including land within the National Parks.

## Planning Conditions

- 3.40 The draft planning conditions are generally agreed.<sup>176</sup> Removal of the turbine bases to a depth of one metre should be stipulated; it is important that the agreed colouring of the turbines is not changed at a future date; and details of the anemometry masts need to be approved. The tolerance in siting of the turbines and tracks of +/- 30 metres could be extended if it were to be agreed with the relevant local planning authority. The provision of appropriate sight lines at the access point on to the A6 is crucial to highway safety but there is no need to specify other individual traffic management measures as these could be agreed as part of a comprehensive scheme. Finally, the additional conditions suggested by FELLs/NWW are unnecessary.<sup>177</sup>

## The Case for the Countryside Agency

### Introduction

- 4.1 The Countryside Agency was created in April 1999, as successor to the Countryside Commission. It has an England-wide purpose to preserve and enhance natural beauty and to secure the conservation and enhancement of the natural beauty and amenity of the countryside generally. The Agency also has a duty to keep under review these matters and the need to secure public access to the countryside for open-air recreation.<sup>178</sup>
- 4.2 The Agency has a particular statutory duty from time to time to consider what areas there are in England which fall within the statutory definition for designation as National Park, namely natural beauty, recreation, and desirability of designation. If land is considered by the Agency to meet the statutory definition, then the Agency is under a statutory duty to proceed with the designation of that land as National Park either in its own right or as an extension to an existing National Park.<sup>179</sup>
- 4.3 It is in this context that the Agency appears at this Inquiry. The relevant statutory duties are widely drawn and confer much discretion on the Agency to act where it appears to be expedient not only in relation to its statutory functions but also '*to do all such things as are incidental to, or conducive to the attainment of the purposes of, any of their functions*'.<sup>180</sup>
- 4.4 The Agency's involvement in development control casework is rare, being restricted to development that would:- set a national precedent where Government advice is lacking; or have a major impact on an important Countryside Agency initiative; or have a

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<sup>176</sup> X/1 (Draft No. 4 14/06/05)

<sup>177</sup> X /1 (Comments on Draft 3 from FELLs and NWW 11.6.05)

<sup>178</sup> CA/0/15 National Parks and Access to the Countryside Act 1949 (Section 1)

CA/0/15 Countryside Act 1968 (Sections 1(2) & 2(2))

<sup>179</sup> CA/0/15 National Parks and Access to the Countryside Act 1949 (Sections 6(1) and 5(2))

CA/0/15 Wildlife and Countryside Act 1981 (Section 45(1))

CD219 Recommended Area of Search for Land Worthy of Designation in the North West of England - Final Report (pages 18 - 20)

<sup>180</sup> CA/0/15 Countryside Act 1968 (Section 1(3)(c))

CA/0/16 *Attorney-General v Great Eastern Railway Co (1880)* quoted in *Hazell v Hammersmith LBC [1992] 1 AC 1*

CA/0/16 *Part Transcript of Proceedings - M25 Motorway Inquiry Hearing (George Dobry CBE QC)*

fundamental effect on the intrinsic character of a National Park, Area of Outstanding Natural Beauty, or Heritage Coast. This proposal engages all three of the criteria.<sup>181</sup>

- 4.5 The Applicant's implication, by reference to the *Lafarge* case, is that the Agency is less than entirely impartial.<sup>182</sup> However, the Agency's objection to the proposal, 'on the grounds that it would be a major development in an area worthy of statutory landscape designation' follows from the landscape being recognised as being of national importance with a background of formally approved recommendations to extend the Lake District National Park to include the application site in 1973 and 1984.<sup>183</sup> It is clear that the objection arose from the possible designation of this land as National Park, and not vice versa. In any event, although the Agency's duties overlap in this case, there is no prospect of bias as, unlike *Lafarge*, in neither matter is the Agency the ultimate decision-maker.
- 4.6 Additionally, as the Agency has a dual remit there is no inherent incompatibility in a 'Lead Board Member' also taking a dual role as such a role conveys no greater involvement in the decision-making process; and the Association of National Park Authorities is not involved in this Inquiry.

#### *Statutory duties in respect of the Section 36 application*

- 4.7 In considering the Applicant's proposals, the Secretary of State is required to have regard to the desirability of preserving natural beauty, and of conserving flora, fauna and geological or physiographical features of special interest. The Secretary of State must also have regard to the extent to which the Applicant has complied with its duty to mitigate any effects on these elements.<sup>184</sup> Further, the Secretary of State must have regard to the purposes of National Parks, including conserving and enhancing the natural beauty of the area and promoting opportunities for the understanding and enjoyment of the special qualities of the area by the public.<sup>185</sup> These lie at the heart of the decision to be made and should be given very considerable weight.

### **The Policy Framework**

- 4.8 The theme of national planning policy is that renewable energy projects should generally be permitted subject to a particular scheme not causing unacceptable harm – the continued protection of the open countryside is a matter of importance and a high level of protection is to be given to the most valued landscapes including those outside national designations which are recognised as being particularly highly valued locally. National Parks are recognised as having the highest status of protection in relation to landscape and scenic beauty; and the purposes for which they are designated are to be given great weight in development control decisions. The potential impact on designated areas of renewable energy projects close to their boundaries will be a material consideration.<sup>186</sup>

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<sup>181</sup> CA/1/3 (Appendix 3); CWP/0/31.

<sup>182</sup> CWP/0/24.

<sup>183</sup> CA/1/3 (Appendix 3, Annex 2); CA/2/4 (Folios 12 & 15)

<sup>184</sup> CA/0/15 Electricity Act 1989 (paragraphs 1(2)(a) & (b) and 1(1)(a) & (b) of Schedule 9)

<sup>185</sup> CA/0/15 National Parks and Access to the Countryside Act 1949 (Sections 11A & 5(1))

<sup>186</sup> CD8 Planning Policy Statement 1: Delivering Sustainable Development (paragraphs 13(ii) & 17)

CD9 Planning Policy Statement 7: Sustainable Development in Rural Areas (paragraphs 15, 16(iv) (v), 21 & 24)

CD16 Planning Policy Statement 22: Renewable Energy (paragraphs 1(i) (vii) (viii) & 14)

CD17 Planning for Renewable Energy: A Companion Guide to PPS22 (paragraph 4.17)

- 4.9 All of the above policies apply to this proposal as the application site extends into the Lake District National Park; and some of the operational development for which consent is sought will take place within the National Park. On this basis, the proposal must be the subject of the most rigorous examination and should only be approved in exceptional circumstances. The Applicant will need to demonstrate that the objectives of designation will not be compromised and any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by the benefits of the scheme.<sup>187</sup>

## Visual/Landscape Impact

### *Landscape assessment*

- 4.10 The agreed method for assessing landscape effects requires an analysis of landscape character, condition and value and an assessment of the likely effects of the development.<sup>188</sup> However, it should be noted that the Applicant has not rigorously followed this advice in the following key areas:-
- *it underplays the existence of key landscape characteristics - set out in 'Countryside Character Volume 2: North West';<sup>189</sup>*
  - *it underscores the condition of the landscape and merges quality with value in its assessment of sensitivity;<sup>190</sup>*
  - *it falls short in recognising the value of the landscape;*
  - *it over-states the impact of uncharacteristic features and adopts a positive attitude to wind farm development;*
  - *it relies on a limited study area of 20 kilometres and undervalues the sensitivity and magnitude of change.*

Moreover, although land within the National Park was correctly sieved out at a very early stage of the site selection process, the Applicant failed to recognise the landscape value and sensitivity of the application site as a similar constraint to selection.<sup>191</sup>

### *Landscape character*

- 4.11 The application site and its immediate landscape context are part of the 'Cumbria High Fells Countryside Character Area', which flows westward to cover the central core of the Lake District.<sup>192</sup> It is also identified as 'Sub-type 13c: Fells' which not only covers the site but also occurs in parts of the Lake District, the Howgills and the Yorkshire Dales National Park.<sup>193</sup> Overall, there are unifying links across a broad sweep of landscape, comprising a single, extensive and virtually unbroken tract of unspoilt countryside unparalleled in England. Nowhere else do two National Parks lie so close together nor give such a strong sense of Northern England's mountainous character.

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<sup>187</sup> CD9 Planning Policy Statement 7: Sustainable Development in Rural Areas (paragraph 22)

CD16 Planning Policy Statement 22: Renewable Energy (paragraphs 11 & 12)

<sup>188</sup> CD38 Guidelines for Landscape and Visual Impact Assessment

<sup>189</sup> CD69 Countryside Character Volume 2: North West (page 31)

<sup>190</sup> CD3 Environmental Statement: Volume 2 Appendices (Appendix 5.1 paragraphs 2.19 & 2.20)

<sup>191</sup> CD3 Environmental Statement: Volume 1 (paragraph 2.2.3);

CD4 Supplementary Environmental Information Volume 1 (paragraph 2.3.2)

<sup>192</sup> CD69 Countryside Character Volume 2: North West (map - page 32)

<sup>193</sup> CD70 Cumbria Landscape Classification (Sheets 3 & 4)

CD3 Environmental Statement: Volume 3 Figures (Figure 19 Landscape Character Plan)



4.12 The key characteristics of the Cumbria High Fells are readily apparent in the site and its immediate surroundings.<sup>194</sup> Notably, it has a wide open, sweeping fell landscape, comprising relatively wild, exposed moorland of rough grassland, dwarf shrub heaths, peat, bracken and rock outcrops, with parallel ridges deeply dissected by the valleys of Borrowdale and Bretherdale. The sheltered dale landscapes are more enclosed with improved and semi-improved grasslands, wetland areas and wooded gills. The ancient network of stone walls, subdividing both the fells and lowland pasture, creates strong landscape patterns. There are few settlements in the valleys and buildings are traditional. Overall, the application site landscape shares the same characteristics as land within the Lake District National Park.

#### ***Landscape condition***

4.13 The landscape is in good condition:- it is generally unspoilt countryside with dramatic landforms and extensive views from the fell tops. It has a remarkable sense of wildness and remoteness given the proximity of the M6 motorway and a strong sense of place. Borrowdale, with its intact patterns of stone walls, gills, woodlands, valley pastures and open fellside is of exceptional high landscape and scenic quality. Isolated 'incongruous features' do not materially undermine the quality of the area in that:-

- *the two lines of pylons closely follow the line of the A6 and for much of their length are not significant in views, often dwarfed by and seen against the surrounding fell landscape; and the 132kV line runs through the Lake District National Park and was installed in the 1930s before designation as National Park;*
- *Shap Pink Quarry, visible only from the northern part of the application site, is not active, its exposed rock-face has over time settled into the landscape and in more distant views it is seen as part of a wide expansive landscape;*
- *the coniferous plantation on Ashted Fell (south-western side of Borrowdale), planted with feathered edges rather than as a regular block, was designed to avoid the ridgeline and better quality meadowland; the plantation in Bretherdale is adjoined by native woodland and is seen in distant views within a much wider landscape context;*
- *the effects of the A6 and M6 are mainly noise related which dissipates with distance;*
- *the masts in the area are isolated and individual elements and do not significantly depreciate the dramatic and scenic qualities of this area as a whole.<sup>195</sup>*

Moreover, although the effects of climate change are uncertain, there is no suggestion that this landscape would become so degraded that its outstanding quality would be lost.<sup>196</sup> By contrast, the proposed wind farm would result in immediate and long-term harm to the landscape.

#### ***Landscape value***

4.14 The highly valued nature of the landscape is not apparent from either the *Environmental Statement* or the *Supplementary Environmental Information* and no reference is made to the consensus of views, extending over time from Dower and Hobhouse to the present day, about the area. Nor is there any mention of the current proposal to extend the National Park boundary.<sup>197</sup> Both documents are also silent on the acknowledgement in the *Cumbria and Lake District Joint Structure Plan* that in some cases Landscapes of County Importance 'stand comparison with nationally designated areas'; and the lobbying

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<sup>194</sup> CD69 Countryside Character Volume 2: North West (page 31)

<sup>195</sup> CA/2/1 (paragraphs 67 - 88); CA2/5 (Photo Panel B, Viewpoint 5); CA2/6 (paragraphs 10 - 12)

<sup>196</sup> CA/3/5 (paragraphs 2 & 3)

<sup>197</sup> CD178 Designation History Series: The Lake District National Park

by Friends of the Lake District for designation of this area for many years.<sup>198</sup> Cultural associations are also important, but the Applicant's literature search conspicuously omits Wainwright's *Walks on the Howgill Fells and Adjoining Fells* and his comments that Borrowdale 'is the most beautiful valley in Westmorland outside the Lake District'.<sup>199</sup>

- 4.15 The area is also important for informal recreation, providing contrast between upland fell, enclosed woodlands and the distinctive dale and shelter of Borrowdale. As a whole, the area provides a high degree of solitude; and the fell tops provide relative wildness and outstanding westerly views of Lakeland peaks and Morecambe Bay; and eastward views of the Howgill Fells and the North Pennines.<sup>200</sup>
- 4.16 Looking at the detailed criteria that underpin landscape value,<sup>201</sup> the Applicant's landscape witness conceded that the area had high scenic quality (albeit not the highest); there was an historic landscape pattern of enclosures, tracks and farmsteads, with the buildings in the valleys reflecting the local vernacular.<sup>202</sup> It was also acknowledged that the application site landscape contained wild characteristics; but, even in the face of the description of the High and Low Fells in the *Lake District Environmentally Sensitive Area Landscape Assessment*, it was not truly wild.<sup>203</sup> On tranquillity, it was accepted that, applying the criteria set out in *Mapping Tranquillity*, the application site landscape met all five positive measurements to a greater or lesser degree. The main negative feature - presence of other people - was generally not apparent; and noise and visibility of urban development or human impact, where they occurred, merited low weight.<sup>204</sup> Finally, it should be noted that English Nature and the Environment Agency do not agree with the Applicant's assessment that the area is of little interest in nature conservation terms.<sup>205</sup>
- 4.17 It is the view of the Countryside Agency that the landscape is of national value, which merits an assessment of exceptional/high, and not medium/high as the Applicant sees it. This provides the appropriate base for assessing subsequent landscape effects. This is reflected in the *Cumbria Landscape Classification* which states that 13c Fells are 'unspoilt quiet fells and valleys which are highly sensitive to all intrusive development.....'.<sup>206</sup> *The Cumbria Landscape Strategy* provides, as a result, that the siting of alien structures, such as wind turbines, should be resisted.<sup>207</sup>

#### ***Landscape effects – sensitivity***

- 4.18 The open and extensive character of the landscape in and adjacent to the site, its integral association with a wider tract of high quality landscape, and its remote and wild quality renders it highly sensitive to large scale development. Its value, condition and conservation interests, and lack of scope for mitigating the effects of the development, contribute further to its sensitivity. These factors, and the predominant backdrop of the sky, demonstrate that the landscape is highly vulnerable and incapable of

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<sup>198</sup> CD25 Cumbria and Lake District Joint Structure Plan 1991 - 2006 (paragraph 3.11); CA/1/3 (Appendix 5)

<sup>199</sup> CD228 Walks on the Howgill Fells and adjoining fells - A Wainwright; NWW/0/5 (page 18)

<sup>200</sup> CD219 Recommended Area of Search for Land Worthy of Designation in the North West of England - Final Report (pages 77 - 78)

<sup>201</sup> CD38 Guidelines for Landscape and Visual Impact Assessment (paragraph 6.17)

CD37 Landscape Character Assessment (paragraphs 7.22 - 7.25)

<sup>202</sup> CD3 Environmental Statement: Volume 1 (paragraph 5.3.40)

<sup>203</sup> CD231 Lake District Environmentally Sensitive Area Landscape Assessment (page 8)

<sup>204</sup> CA/2/6 (Appendix 1).

<sup>205</sup> 1248/W1 & 1249/W1 English Nature and the Environment Agency – Joint Statement (sections 1 & 9)

<sup>206</sup> CD70 Cumbria Landscape Classification (page 65)

<sup>207</sup> CD71 Cumbria Landscape Strategy (page 94)

accommodating a wind farm, stretching some 6 kilometres along a ridge, which would both dwarf the host topography and be wholly out of character with the landscape. This provides ample testimony for the conclusion that *'wind turbine development is likely to have significant adverse landscape and visual impact in the exposed fells and scarps'*.<sup>208</sup>

- 4.19 Looking at the National Park landscapes, the adjoining Lake District fells – which are a highly valued and celebrated recreational landscape<sup>209</sup> – are also highly sensitive to any development on adjacent fell tops, because of their openness, emptiness and wildness (e.g. Whatshaw Common (Grid ref: 542 061) and High House Bank (Grid ref: 518 067) directly overlook the site). Similarly, the Howgill Fells, within the Yorkshire Dales National Park, are highly sensitive having been described as *'a significant area of remote and wild landscape (few man made features/buildings) with a strong sense of place derived from the scale, topography and intact character of fells side vegetation ..... which have high scenic quality. The open expanses of upland coupled with the smooth rounded landform of the fells, has a strong simplicity and unique character'*.<sup>210</sup>
- 4.20 In terms of the wider landscape, the northern Howgill Fells, lying outside the National Park, are similarly highly sensitive to wind farm development as they also comprise of a remote and wild landscape with memorable views and a sense of solitude. In relation to the southern Orton Fells, the landscape is highly valued for its outstanding concentration of limestone features and its historic landscape context which is highly vulnerable to change. Views are also available in the round of the application site, the Cumbria High Fells, the Howgills and the North Pennines.<sup>211</sup> The high sensitivity of this landscape is reinforced by its tranquillity and recognition that it meets the statutory criteria for National Park designation.<sup>212</sup>
- 4.21 Given the common characteristics of these landforms and landscapes, extending eastward from the Lake District National Park over the application site, the Orton Fells and the Howgill Fells into the Yorkshire Dales National Park, the overwhelming conclusion is that, as a whole, the sensitivity of the landscape surrounding the application site is exceptionally high.

#### ***Landscape effects - magnitude of change***

- 4.22 Moving on to gauge the magnitude of change, and the direct effects of the development on the pattern and fabric of the landscape, the proposed wind farm would be larger than any already built in England. The turbines would be large alien structures with their presence emphasised by blade movement. The scale of change would be high, rather than medium as claimed by the Applicant, given the height and spread of the turbines and the effect of man-made structures on a largely pristine natural setting. The project would also see three sections of substantial stone wall removed; some 9 hectares of moorland lost to development; and new tracks constructed with no relation to historic routes. The adverse impacts on the open and exposed fells, and their overall sense of place, would be of very high magnitude.<sup>213</sup>

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<sup>208</sup> CD29 Wind Energy Development in Cumbria (G2 page 30)

<sup>209</sup> CD76 A Pictorial Guide to the Lakeland Fells: A Wainwright (Gray Crag)

<sup>210</sup> CD219 Recommended Area of Search for Land Worthy of Designation in the North West of England - Final Report (pages 71 & 72)

<sup>211</sup> CA3/3 Appendix 2 (Sensitivity of the Wider Landscape Within the ZVI of Whinash Wind Farm)

<sup>212</sup> CD219 Recommended Area of Search for Land Worthy of Designation in the North West of England - Final Report (paragraph 8.1.2)

<sup>213</sup> CA/3/4 Appendix 4 (Views 1 - 4); CA/3/1 (paragraph 74)

- 4.23 Moreover, the wider landscape, extending over a radius of 4 - 6 kilometres from the site, would be transformed into a wind farm landscape, giving way in turn to a fells with wind farm sub-type. The magnitude of change is amply illustrated in photographs submitted by the Agency, from more representative viewpoints within the application site landscape, which graphically demonstrate underscoring in the *Environmental Statement* (e.g. the *Environmental Statement* indicates that from minor local roads west of the M6 'the magnitude of change is likely to be minimal'; and, for local tracks and footpaths, 'it will be walkers in those open, elevated areas .....who will experience a potentially significant visual change').<sup>214</sup> It is also notable that the *Environmental Statement* omits consideration of the Wainwright routes and the Coast to Coast Path which runs through the Zone of Visual Influence from where all 27 blade tips and 21 hubs would potentially be visible.<sup>215</sup>
- 4.24 In the wider and more distant landscape, indirect effects would be felt in both National Parks and other notable landscapes in the locality as demonstrated by the manner in which the Zones of Visual Influence coincide with designated landscapes, or landscapes that are considered worthy of national designation.<sup>216</sup> Photographs from the Howgill Fells and Orton Fells illustrate how the entire wind farm would be visible, its prominence and its impact on the field of view.<sup>217</sup>
- 4.25 From within the Lake District National Park and the Yorkshire Dales National Park, the turbines would be fully visible over considerable distances as alien features contrasting with an essentially natural landscape. Here there is a statutory duty to have regard to the conservation and enhancement of the natural beauty of the area and the promotion of opportunities for the understanding and enjoyment of the special qualities of the area by the public. From both National Parks the magnitude of change would be high.
- 4.26 Looking from within the Lake District National Park, from the direction of Harrop Pike/Gray Crag (Grid refs: 500 078 & 496 073) the turbines would appear as very large moving structures against a backdrop of land and in the context of otherwise stunning views.<sup>218</sup> Although the *Environmental Statement* indicates that 'the proposed development would not adversely affect any landscape within the park' and 'the scope to undertake outdoor activities would not be affected' the Applicant's landscape expert admitted that the wind farm would have a characterising effect on the landscape for a distance of up to 5 kilometres from the site, extending over some 20 - 25 square kilometres of land.<sup>219</sup> Similarly, from the Yorkshire Dales National Park, from the summit of Linghaw/Knowles (grid ref: 638 986) the turbines would stand out markedly and have an indirect effect on some 16 square kilometres of National Park.<sup>220</sup>
- 4.27 The proposed wind farm would occupy a unique location as it would be not only 'sandwiched' between two National Parks but would also be located in the narrowest gap, of only a few kilometres, between two National Parks in England.<sup>221</sup> The relevant

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<sup>214</sup> CD3 Environmental Statement: Volume 1 (Table 5.3)

CA/3/4 Appendix 4 (Views 2 - 3)

<sup>215</sup> CD228 Walks on the Howgill Fells and adjoining fells - A Wainwright;  
CD229 A Coast to Coast Walk (St Bees Head to Robin Hood's Bay) - A Wainwright;  
CA3/4 (Appendix 3: Map 3);

CD3 Environmental Statement: Volume 3 Figures (Figure 15: Hub Height ZVI)

<sup>216</sup> CA/3/4 (Maps 2 & 3)

<sup>217</sup> CD4 Supplementary Environmental Information Volume 2 (Figures 35e & 35f )

<sup>218</sup> CD4 Supplementary Environmental Information Volume 2 (Figure 35d)

<sup>219</sup> CD3 Environmental Statement: Volume 1 (table 5.4)

<sup>220</sup> CD4 Supplementary Environmental Information Volume 2 (Figure 40 - correct viewing distance: 160mm)

<sup>221</sup> EDC/2/3 (Appendix A - JK09)

test of whether the proposal both conserves and enhances their natural beauty would not be fulfilled in relation to both National Parks. Moreover, mitigation is not possible in this location.

*Designation of the application site as National Park*

- 4.28 The application site, and other nearby land, (Area 14) is proposed for designation as National Park.<sup>222</sup> The timing is coincidental and unrelated to the Whinash application:- it follows the conclusion of work on new National Park designations in the New Forest and South Downs; and clarification by the Minister, in May 2004, that minor boundary changes could be made without review of the whole boundary.<sup>223</sup> The process also includes related extensions to the Yorkshire Dales National Park and to two Areas of Outstanding Natural Beauty. Following a visit to the area the Agency's Board instructed Alison Farmer Associates to identify an area of search for land worthy of national landscape designation in the area between the Lake District and Yorkshire Dales National Parks. The subsequent report is a thorough, robust and up-to-date assessment of the quality of the application site landscape.<sup>224</sup>
- 4.29 Historically, the natural beauty of the application site was recognised as early as 1945 in the *Dower Report* and the inclusion of the application site on its map of areas to be considered when National Parks were selected. Shortly afterwards, in 1947, the *Hobhouse Report* described the Howgill Fells 'conservation area' (which also included the application site) as intrinsically suitable to be a National Park.<sup>225</sup> However, designation was not pursued as adjacent countryside of still higher quality was given preference in the selection process.<sup>226</sup>
- 4.30 The Countryside Commission, in 1973, in its review of Areas of Outstanding Natural Beauty, concluded that the Howgill Fells 'conservation area' included large areas of fine landscape which would form suitable and logical extensions of the National Parks. In particular, the moorland area adjoining the Lake District National Park (including the application site) was recommended for approval as an extension to the National Park.<sup>227</sup> Later, in 1984, the Countryside Commission's provisional programme for National Park boundary review proposed an extension to the Lake District National Park to take in Whinfell and Borrowdale. It was allocated medium priority; but was not pursued because the programme, which involved a full review of park boundaries as a whole, was shelved as it was proving long, complex and costly.<sup>228</sup>
- 4.31 Moving up-to-date, the *Alison Farmer Report* sets out an assessment of Area 14 and how it was considered to fully meet the natural beauty criterion for designation:-

*'This is a dramatic landscape with distinctive and dominant features and a representative example of glacial landform of high scenic quality. There are few built elements*

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<sup>222</sup> CD219 Recommended Area of Search for Land Worthy of Designation in the North West of England - Final Report (Map - page 5)  
CA/2/5 (Map 3)

<sup>223</sup> CA/0/2 (Annex 2)

<sup>224</sup> CD219 Recommended Area of Search for Land Worthy of Designation in the North West of England - Final Report (Executive Summary paragraph 3.2)

CD37 Landscape Character Assessment (Chapter 7)

<sup>225</sup> CD219 Recommended Area of Search for Land Worthy of Designation in the North West of England - Final Report (Map - page 14)

<sup>226</sup> CD172 National Parks in England and Wales: Report by John Dower (Map II)

CD173 Report of the National Parks Committee (Hobhouse) (paragraph 231)

<sup>227</sup> CA/2/4 (Folio 12 paragraph 12; Appendix 2; Appendix 1 (site 4))

<sup>228</sup> CA/2/4 (Folio 15 pages 1 -3 & 6); CA/2/3 (Appendix 5)

*(buildings/roads) and an intact pattern of stone walls, gill woodlands and open fellside giving rise to an unspoilt, remote and isolated area with extensive areas of high tranquillity. On the upper fells there is a colourful patchwork of vegetation associated with open grassland/common land, and this coupled with the dramatic landform and views gives a sense of relative wildness and strong sense of place. This landscape is of value for its nature conservation..... It is also an historic landscape with numerous ancient droveroads/cart tracks crossing the fells and the area is culturally associated with A Wainwright.*<sup>229</sup>

- 4.32 The presence of some uncharacteristic features was considered to not significantly detract from the quality of the area:-

*'Incongruous features include the radio masts on Whinfell Beacon and the coniferous plantations to the west and in Bretherdale. The impact of the former features is reduced by their isolated and singular nature and the dominant scale of unspoilt landscape which surrounds the Beacon. The area therefore retains a remote feel and remains in an intact condition. The coniferous plantations reflect the topography of the fellside and although not characteristic are not considered to be incongruous in location or form to materially undermine the quality of the area.'*<sup>230</sup>

- 4.33 Further fieldwork was undertaken giving particular scrutiny to the influence of incongruous features in the locality, leading to the conclusion that whilst uncharacteristic features occurred, they had a localised or isolated impact and did not have a significant effect on the landscape. The overall conclusion reached was that the application site landscape was of national significance and of national value.<sup>231</sup>

- 4.34 As far as recreation is concerned, the Agency's operational advice is that designated areas should provide, or be capable of providing, a 'markedly superior' experience for open air recreation. The area in question has a rich diversity within a compact area, which provides contrasting experiences of intimate sheltered dales and exhilarating exposed ridges. Population density is low and the absence of vehicular through routes gives it a deeply rural character offering tranquillity and a high degree of relative wildness – Wainwright described Borrowdale as a place where *'Loneliness and loveliness go hand in hand here'*.<sup>232</sup> Again the *Alison Farmer Report* finds the test to be fully met.<sup>233</sup>

- 4.35 If designated, the land would be brought under the management of the Lake District National Park Authority. This would provide access to Government funding; integrated management with a landscape focus; opportunities to take specific measures to promote the understanding and enjoyment of the special qualities of the area; and to address current or future recreational pressures. The *Alison Farmer Report* concluded that designation was desirable to ensure conservation of the special qualities of the area.<sup>234</sup>

- 4.36 As to the designation process, the Agency's Board has concluded that the application site landscape, including Birkbeck Fells Common, Whinash, Borrowdale and Whinfell,

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<sup>229</sup> CD219 Recommended Area of Search for Land Worthy of Designation in the North West of England - Final Report (pages 77 & 78)

CA/2/1 (paragraph 60 and related photographs in CA/2/5)

<sup>230</sup> CD219 Recommended Area of Search for Land Worthy of Designation in the North West of England - Final Report (page 78)

CA2/2 (paragraph 61)

<sup>231</sup> CA/2/1 (paragraphs 67 – 87)

<sup>232</sup> CD228 Walks on the Howgill Fells and adjoining fells - A Wainwright (The Whinfell Ridge - Introduction)

<sup>233</sup> CD219 Recommended Area of Search for Land Worthy of Designation in the North West of England - Final Report (pages 77 & 78)

<sup>234</sup> CD219 Recommended Area of Search for Land Worthy of Designation in the North West of England - Final Report (pages 77 & 78)

meet the statutory definition of National Park.<sup>235</sup> Consequently, the statutory duty under Section 6(1) of the National Parks and Access to the Countryside Act 1949 Act is now firmly engaged and the Agency must proceed with the designation by making a Variation Order (programmed for March 2007).<sup>236</sup>

- 4.37 There is no indication that any of the relevant Local Authorities would object;<sup>237</sup> few landowners would be affected and there would be limited scope for contentious issues as any objection would have to be on the basis of the statutory criteria (i.e. natural beauty, recreation and desirability of designation). Indeed the Applicant's landscape witness accepted that, for designation to fail, all those who considered the landscape, from Dower on, would have to be wrong. Confirmation of the Order might be expected by May 2008 at the latest; which should predate the operation of the wind farm, if consented, by some months. Whilst it cannot be taken as a foregone conclusion, designation as a matter of fact is overwhelmingly likely and the application site is a candidate or *de facto* National Park. Thus, the application site should be treated as if it were in a national designation, in particular for the purposes of national planning policy.
- 4.38 In any event, the proposal for designation of the application site landscape as National Park is a material consideration in the Secretary of State's decision in its own right, and the Applicant accepts that at least some weight should be attributed to the designation proposal. In the Agency's opinion, given the Board resolution of 5 May 2005, very considerable weight should be given to this consideration. *Circular No 84 of 1950*, relating to the original designation of National Parks, is still relevant to the interim protection to be afforded to land whilst in the process of designation. The Circular provides:- *'It is now specially important that during the interval which must elapse before the Parks can be selected and formally designated, the powers of this [1949] Act and the Act of 1947 should be used in such a way that the development as Parks of the areas ultimately selected should as far as possible not be prejudiced'*.<sup>238</sup>
- 4.39 As to the effect on designation, if the wind farm were to be approved and constructed, the northern half of the area of search for National Park designation would be transformed into a wind farm landscape; and, the remainder would fall under the influence of the wind farm resulting in a fundamental contrast with the landscape type which characterises most of the Lake District National Park. The visual presence of turbines would also affect the area's natural beauty, tranquillity and remote characteristics and alter its special qualities and enjoyment by visitors. As a consequence, designation is likely to be seriously jeopardised. Whilst the proposal is intended to have a limited lifespan, there could be no guarantee that continued use or re-powering of the site would not be sought. Support has been found for the view that 25 years should be regarded to be tantamount to development of a permanent nature.<sup>239</sup>
- 4.40 In terms of the designation process, there is no discretion to include land in a National Park where it does not meet the statutory criteria or in anticipation of subsequent restoration.<sup>240</sup> The circumstances of including Fawley Power Station within the recently designated South Downs National Park are entirely different in that:- *'the power station complex is not so extensive as to warrant being regarded as a part of the open tract of land'*.<sup>241</sup>

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<sup>235</sup> CA/0/2; CA/0/6.

<sup>236</sup> CA/0/15 Wildlife and Countryside Act 1981 (Section 45(1)); CA/02 (Annex 6)

<sup>237</sup> EDC/0/26; EDC/0/22; EDC/0/33

<sup>238</sup> CA/2/4 (Folio 10 paragraph 8)

<sup>239</sup> EDC/0/16 (paragraph 52); FoB/0/7 (paragraph 11.4.20)

<sup>240</sup> CA/0/8 (paragraphs 45 & 46)

<sup>241</sup> CWP/0/36 (paragraph 8(ii))

Here, the proposed wind farm would occupy or dominate the extensive tract of land proposed for designation.

- 4.41 The Agency is currently preparing a detailed boundary for the proposed extension of the Lake District National Park, which will be considered by the Board in January 2006. However, the designation will be reappraised if the wind farm is approved.<sup>242</sup> If the land is not designated it will lose the benefits of long-term active management and funding and the public would lose the benefit arising from an extension to the National Park as a managed resource for open-air recreation. The likely loss of National Park designation is a material consideration which counts against the scheme.
- 4.42 There is an added factor in that the Agency is also under a statutory duty from time to time to consider whether land already designated continues to meet the definition of National Park.<sup>243</sup> Given the impact of the development on the Lake District National Park landscape, as described above, approval could lead to land being removed from the National Park up to a distance of 5 kilometres from the site.

## The Planning Balance

- 4.43 Whilst there is a need for clean energy, there is also a need for countryside to provide experiences of relative wildness and tranquillity. The conservation of the natural beauty of National Parks is an interest of national significance and conserving protected landscapes is a central policy objective of sustainable development. Future generations must inherit fine landscapes, for refreshment and inspiration. These are both national interests which must be balanced:- neither is overriding.
- 4.44 The attempt to reconcile competing interests is recognised in *PPS22*. National policy seeks the sensitive exploitation of renewable energy sources, in appropriate locations, where environmental impacts can be addressed satisfactorily, and where unacceptable harm is not caused.<sup>244</sup> This scheme fails those tests.
- 4.45 The Applicant's approach to the project relies on the rationale of national need for renewable energy:- there is nothing else to favour the development. But Government policy does not dictate renewable energy at any cost.<sup>245</sup> Here the harm which would be caused to nationally important and nationally designated landscapes would be very substantial. The Agency does not consider that the benefits claimed by the Applicant in the generation of renewable energy from this one particular scheme are sufficient to outweigh the substantial harm that would be caused to interests of local and national importance.

## The Case for the Friends of Bretherdale

### The Policy Framework

- 5.1 The overwhelming scientific consensus linking greenhouse gases with climate change is acknowledged and it is right that the Government should set targets to reduce national

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<sup>242</sup> CA/0/2 (paragraphs 9 & 11)

<sup>243</sup> CA/0/15 National Parks and Access to the Countryside Act 1949 (Section 6(1)); CA/0/12

<sup>244</sup> CD16 Planning Policy Statement 22: Renewable Energy (August 2004) (Key Principle 1(i))

<sup>245</sup> CD8 Planning Policy Statement 1: Delivering Sustainable Development (paragraphs 5, 17 – 21, 26 & 27)

CD16 Planning Policy Statement 22: Renewable Energy (paragraphs 11, 12 & 14)

CD17 Planning for Renewable Energy: A Companion Guide to PPS22 (paragraphs 3.27, 3.29 & 4.17)

CD9 Planning Policy Statement 7: Sustainable Development in Rural Areas (paragraph 15)



usage of fossil fuels. In translating these into regional targets for the North West, *Policy ER15 of the Partial Review of the Regional Spatial Strategy (draft)* makes plain the need to consider the effect of any proposal on the character of the surrounding landscape and its ecology; and to balance the wider environmental, social and economic benefits of the proposal. It also points to the need for an understanding of local renewable resources, changes in technology and the role of offshore installations.<sup>246</sup>

- 5.2 The introduction to *PPS22* confirms that renewable energy can be tapped from a number of natural sources in the environment. Although the guidance does not apply offshore, the role of offshore wind cannot be ignored and Cumbria also possesses a number of more suitable onshore sites with potential for wind generation. There is also enormous potential for wider use of photovoltaics and scope for co-firing at fossil fuel burning power stations; biomass from forest residues; and small biomass power plants burning short rotation coppice crops. Added to this, energy saving could be achieved from greater use of public transport; improved insulation and more efficient heating of domestic buildings; and conservation of energy use across all sectors.<sup>247</sup>
- 5.3 Moreover, *PPS22*, although indicating that significant weight should be given to the wider environmental benefits of renewable energy projects, contains the key thread of requiring them to be appropriately located and their environmental impact to be acceptable. Projects within, or close to, National Parks are to be given careful scrutiny in recognition of the especial importance of nationally recognised designations and the objectives which underpinned their designation. Whilst renewable energy schemes are, rightly, not ruled out, the anticipation is of '*small-scale developments*' subject to the caveat of '*no significant environmental detriment to the area concerned.*' In all instances much will depend on the scale and nature of the project and the site-specific landscape and visual effects.<sup>248</sup>
- 5.4 Calculations show that the proposal would deliver a minor contribution in the quest to achieving Government targets for reducing carbon dioxide emissions (0.09% of the 2010 target; less than 0.07% of the 2020 target; and 0.02% of the 2050 target).<sup>249</sup> Although it is accepted that the cumulative effect of even the smallest scheme, when taken with others, will have great value, the benefits arising from Whinash alone would be small.

## The Justification for the Site

- 5.5 The fundamental question is whether there is a need for a wind farm of this particular type, size and scale in this location? *The Energy White Paper* explains that some 10GW of renewable capacity must be installed in the United Kingdom by 2010 to meet the national target of supplying 10% of electricity by that date from renewable sources; with the expectation that 7% - 8% will come from wind energy.<sup>250</sup> *The White Paper* goes on to identify proposals for 1.4GW with the offshore wind industry expecting to deliver a further 3 - 4GW by 2010; leaving a balance for onshore wind of between 1.6 - 3.6GW.<sup>251</sup>

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<sup>246</sup> CD24 Partial Review of RPG13 (Policy ER15; paragraphs 8.58 – 8.67)

<sup>247</sup> CD16 Planning Policy Statement 22: Renewable Energy (paragraph 18)  
MJD/1/2 (Appendices E, G, P, S & T)

<sup>248</sup> CD16 Planning Policy Statement 22: Renewable Energy (paragraphs 1(i) – (iv), (vii), 2, 3, 11, 12, 14, 19 & 20)

<sup>249</sup> MJD/1/2 (Appendix C)

<sup>250</sup> CD170 Energy White Paper (paragraph 4.9) [NB 10GW (Giga Watts) = 10,000MW (Mega Watts)]  
CWP/1/3 (appendix 2 - page 10)

<sup>251</sup> CD170 Energy White Paper (paragraph 4.45)

- 5.6 In Scotland, onshore schemes that would deliver 0.92GW already have planning permission; and other schemes of various sizes and at varying stages of investigation or application have potential to deliver up to 8.99GW.<sup>252</sup> Whilst not all of these will come to fruition the typical approval rate should realize in the order of at least 7.48GW.<sup>253</sup> On this basis Scotland alone would comfortably ensure that national targets were met; and it is known that there will be additional contributions from other parts of the United Kingdom as evidenced by the decision at Scout Moor.<sup>254</sup>
- 5.7 In terms of more local targets, the draft regional target for all sources of renewable energy, derived from the *AXIS Report*, does not rely on, or indeed anticipate, a scheme of this size in this particular location.<sup>255</sup> County targets will in due course be based on the regional target and the role of alternative sources of renewable energy should not be under-estimated. Hence, it cannot be claimed that there is any national or local need for the project to meet either short term needs or long term ambitions.

## Visual/Landscape Impact

### *Landscape character*

- 5.8 The application site lies within a landscape character type which spreads outward from the Lake District National Park across the site and into the Howgill Fells. The fell tops of Whinash have an exposed wild and spectacular feel with outstanding panoramic views of the Coniston range, to the west, and the Howgills and the North Pennines, generally to the east. The open moorland of Bretherdale Common also provides a sense of remoteness and wildness with little semblance of built development, save for the telecommunication masts on Whinell Beacon to the south. The valley bottoms of Borrowdale and Bretherdale, by contrast, are sheltered and tranquil, but nonetheless exhibit characteristics of remoteness. These attributes would be significantly harmed by the proposal.<sup>256</sup>
- 5.9 It is accepted that the landscape is not without blemishes; but not to the degree acclaimed by the Applicant. Notably:-
- the electricity pylons are smaller in scale, of open lattice construction and siting has sought to avoid higher ground;
  - the ridge-line communication masts are also of lesser scale and lack the element of eye-catching movement;
  - the route of the M6 follows the grain of the landscape and does not cut across the fell landscape;
  - afforestation is fairly common throughout the Lake District National Park;
  - local quarries are shielded to some degree by topography and other areas within the National Park have not been immune to the effects of quarrying (e.g. Kirkstone Pass, Coniston Old Man).

Despite these elements, the landscape of the site and its surroundings is of high quality and its potential for designation as an extension to the National Park suggests that it is of

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<sup>252</sup> FELLs/04 (page 7 - Chart 1); FoB/0/8 (based on analysis of FELLs/0/3)

<sup>253</sup> FoB/0/5

<sup>254</sup> X/15 Scout Moor Wind Farm – Secretary of State's Decision

<sup>255</sup> CD42 Technical Paper 6: Planning for Renewable Energy Development in Cumbria (paragraph 3.6.1)

<sup>256</sup> CD3 Environmental Statement: Volume 1 (paragraph 5.8.6)

exceptional quality.<sup>257</sup> It should be borne in mind that the *Dower Report*, when specifically considering the case for the Lake District to become a National Park, made express mention of disfiguring elements through forestry, roads and overhead power lines – but this did not prevent Hobbouse from endorsing the case for designation.<sup>258</sup>

### *Landscape effects*

- 5.10 The erection of alien man-made structures and surface tracks across a broad sweep of sensitive landscape would significantly change the physical and sensory attributes of the site and its surroundings. In particular, the open and exposed moorland setting would be no longer seen as spectacular, wild or remote, and the intense feeling of remoteness, tranquility and wildness found in Borrowdale would be lost. The Applicant's assessment of the development as having '*a high degree of transparency and a marked horizontal impression*' would be at odds with the view from Breasthigh Road, for example, where there would be an overwhelming vertical impact on the open moorland landscape.<sup>259</sup>
- 5.11 Similarly, the alleged '*consonant with the elevated, windswept, exposed upland*' belittles the industrializing impact that the project would have on taming a wild and rugged landscape and the inherent contrast between precise manufactured structures and the weather-beaten semi-natural moorland landscape.<sup>260</sup> It is also considered that there can be no grounds for the Applicant's claim that the non-traditional form of wind turbines (e.g. at Lambrigg and Wharrels Hill) has already been accepted in the landscape, as those are of an entirely different scale and character.
- 5.12 Further, exception is taken with the Applicant's calibration of landscape effects and the conclusion that '*significant effects would be confined to the south-east margins of the character area*' and would largely be localized to the site.<sup>261</sup> In reality, the effects would be more extensive and would include a substantial part of the Lake District National Park covered by the High Fells character area and part of the Yorkshire Dales National Park. There would also be greater impacts than predicted on the Orton Fells landscape character sub-type, as the turbines would form a striking skyline feature along a ridge which is read as part of the Lake District National Park. Finally, the Applicant's conclusion that '*the strong underlying landscape structure would remain*' is challenged as 27 turbines on a high ridgeline would undoubtedly result in an adverse change to the landscape.<sup>262</sup>

### *Visual effects*

- 5.13 Moving on to visual effects, the *Environmental Statement* plays down potential visual effects and over-states the shielding value of topography.<sup>263</sup> There are few places within a range of up to 7 kilometres where some part of the development would not be visible and in most instances viewers would be overwhelmed by the sheer scale and size of the development. Further afield, blade tips above hub height would be visible from within a significant area of the 20 kilometre Zone of Visual Influence with a marked

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<sup>257</sup> CD3 Environmental Statement: Volume 2 Appendices (Appendix 5.1 - paragraph 2.17)

<sup>258</sup> CD172 National Parks in England and Wales: Report by John Dower (paragraph 22)

<sup>259</sup> CD3 Environmental Statement: Volume 1 (paragraph 5.8.10)

<sup>260</sup> CD3 Environmental Statement: Volume 1 (paragraph 5.8.13 (3))

<sup>261</sup> CD3 Environmental Statement: Volume 1 (paragraph 5.8.14)

<sup>262</sup> CD3 Environmental Statement: Volume 1 (paragraph 5.8.24)

<sup>263</sup> CD3 Environmental Statement: Volume 1 (paragraphs 5.8.33 - 5.8.36)

concentration of at least 21 turbines at hub height stretching across a quadrant to the north and east.<sup>264</sup>

- 5.14 Specifically, there are numerous instances where landscape and visual effects have been assessed on a very 'conservative' scale. Impacts greater than those claimed would occur from the West Coast mainline; west-bound on the A685 near Kelleth; southbound on the Shap section of the A6; minor roads and footpaths to the west of the M6 and around Orton. Crucially, the route over Breasthigh Road to Greenholme, and views from the Orton area, would be dominated by a horseshoe of turbines on the skyline.<sup>265</sup>
- 5.15 Similarly, greater emphasis should be ascribed to the magnitude of visual effects on walkers who would be using the area to seek solitude, tranquility or the visual drama of a spectacular natural landscape. Greater impacts would occur at:-
- viewpoint A (A6/Shap) through the interruption of spectacular views;
  - viewpoint D (Harrop Pike/Gray Crag) where the skyline turbines would be visually prominent in a high altitude upland landscape which provides solace to walkers;
  - viewpoint F (Tebay Fell) due to the significant spread and visual prominence of the development over a series of identifiable fells, major effects would apply 'in the round' as opposed to the Applicant's claim '*when centred in the view*' with particular prominence on crisp clear days;
  - viewpoint G (A6 south of Bannisdale) as the eye of the viewer would be drawn to the turbines as a result of the road layout;
  - viewpoint H (Brunt Knot) because the turbines would be seen as a prominent string of vertical features resulting in a more than partial change to the undeveloped panoramic landscape;
  - viewpoint I (High Street) where, despite the wind farm forming a small element in a distant vista, the development would appear incongruous within an otherwise undeveloped landscape used for recreational purposes;
  - viewpoint J (Tebay) as the backdrop of the High Fells landscape would become dominated by man-made structures across a broad sweep of the landscape;
  - viewpoint N (M6 corridor) where ridge-line turbines across a broad section of high quality landscape would change the perception of the landscape and its gateway role to the Lake District National Park.<sup>266</sup>
- 5.16 Overall, the proposal would have significant adverse visual effects and it is inconceivable how 27 spinning turbines spread over a vast area of open moorland landscape could either enhance or protect the landscape as suggested by the Applicant. Whilst a single turbine might give the impression of elegance, a large group tends towards clutter with slight variations in blade rotation speed and uneven height and spacing. Moreover, the Whinash landscape is characterized generally by horizontal lines where turbines of a disproportionate scale, standing tall above the skyline, would appear incongruous and destroy the perceived scale of the landscape and its overwhelming sense of space.
- 5.17 Additional harm would arise in instances where the Whinash and Lambrigg sites form part of a single view, notably from vantages to the north, east and south or where the

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<sup>264</sup> CD3 Environmental Statement: Volume 3 Figures (Figures 14b & 15)

<sup>265</sup> FLD1/1 (paragraphs 4.64 - 4.69)

<sup>266</sup> CD3 Environmental Statement: Volume 3 Figures  
FLD/1/1 (paragraphs 4.70 - 4.80)

two projects would be seen within a short space of time by those traveling along the M6, local roads or on the train.

### ***World Heritage Site designation***

5.18 The background to the World Heritage Convention, the nomination history of the Lake District as a World Heritage Site and the World Heritage Convention Guidelines are set out in *Sections 1 - 4 of ICOMOS/1/1*.

5.19 The application site has possible international importance as a result of the Government's Tentative List of potential World Heritage Sites. That imposes a duty to protect the inherent Outstanding Universal Value of the potential World Heritage Site and its setting. In this regard, the boundary of the proposed World Heritage Site currently coincides with the National Park boundary and the proposed site falls within its setting. Nomination, based on the fusion of landscape and the activity of man, is being actively progressed. Operational Guidelines underpin the process and set out the need to provide an adequate buffer zone to protect the site, important views and other areas or attributes that are functionally important.

5.20 The qualities of the Lake District are encapsulated in the text of the Tentative List:-

*'The Lake District is outstandingly beautiful. It possesses a unique combination of spectacular mountains and rugged fells, pastoral and wooded valleys, and numerous lakes, tarns and rivers. The character of the area is inseparable for its cultural history, and the personalities, life styles and traditions of the Lake District people. Each valley has its own individuality, and the resulting diversity of the landscape contributes enormously to the quality of the area as a whole.....*

*The landforms are overlain by the evidence of man's activities, particularly the patterns of fields and farmsteads..... The extensive upland grasslands include large areas of unfenced common land that is still grazed communally .....*

*The Lake District has long been recognized as a place to find spiritual refreshment and opportunities for quiet countryside recreation. In the 18<sup>th</sup> century it played a significant part in the revolution in landscape tastes which saw mountains, previously portrayed as nature's 'shames and ills' become 'temples of nature' built by the Almighty. Writers, poets and artists developed a high regard for the picturesque ..... and subsequently a romantic view of the landscape ... .. which glorified the rural scene and rural traditions. In the 19<sup>th</sup> century it was a focus for those wishing to secure public access to the countryside, and to protect it from inappropriate developments. As a result the Lake District played a formative role in landscape perception and design, the development of the national park movement in Britain and the establishment of bodies such as the National Trust.....*

*The combination of natural and cultural elements of the landscape, and its association with literary and artistic achievements, have [sic] earned it an international profile.<sup>267</sup>*

5.21 Many of these qualities, both visually and contextually, are apparent from outside the boundaries of the National Park, notably in and around Borrowdale and Bretherdale where the pattern of human occupation today, with dale-foot villages and farms strung out along the dale bottoms, is distinctively 'Lakeland'. The blend of scenery, farming traditions and artistic creativity is at the heart of the attractiveness of the district to many visitors. They deserve protection from a development that would have a massively

undesirable impact on the qualities and value of the Lake District as a potential World Heritage Site which could compromise the ability of the Lake District to be considered for World Heritage status.

### *Appeal decisions*

- 5.22 Appeal decisions in Cumbria provide no support for the project.<sup>268</sup> Decisions at Hill Top, Brocklebank and Wharrels Hill, Bothel near Wigton confirm that the crucial test is the ability of the landscape to absorb a particular form of development. In the former the Inspector found the landscape to lack significant visual containment, and the site to be prominent and widely open to view, whereas in the second the Inspector found that turbines could be accommodated without fundamentally disturbing or disrupting the underlying character of the landscape. The Hill Top decision is also notable for the conclusion that visitors, or recreational users, seeking a sense of isolation would be likely to be sensitive to the visual impact of wind turbines rather than perceiving them to be a source of interest.
- 5.23 Beyond Cumbria, the recent Scout Moor decision is of note, primarily for the marked contrast between the characteristics of that site and those of Whinash, with particular reference to the Inspector's conclusion that *'the site is, however, a visually self-contained landscape, with interconnecting views to urban areas'*.<sup>269</sup> Here, by contrast, the landscape is open and extensive with the site providing interconnecting views and a tangible link between the Lake District National Park and the Yorkshire Dales National Park.

### **The Impact on Recreation, Footpaths and Bridleways**

- 5.24 The *Hobhouse Report* recognised the importance of protecting the sensitive boundary zone of a National Park in that:- *'the boundary of a National Park should not be regarded as a sharp barrier between amenity and recreational values within, and disregard for such values without'*.<sup>270</sup> This is the more important as the original boundaries of the Lake District National Park and the Yorkshire Dales National Park, having been based largely on old administrative boundaries, were artificial and anomalous with no regard to the character and continuity of the landscape. In particular, the Whinash uplands connect the Lake District National Park with the Howgill Fells, Yorkshire Dales National Park and the North Pennines Area of Outstanding Natural Beauty making what seems a continuum of 'wild' upland scenery extending beyond the distant horizons to the north, east and west.<sup>271</sup> The once busy route of the A6, which marked the eastern limits of the Lake District National Park, is now an insignificant boundary.
- 5.25 Wainwright, writing of the Howgill Fells after the construction of the M6 motorway stated:- *'From the highest point, The Calf, the distant scene is unexcelled. There is not a more extensive panorama in England than this. And all that is seen is fair to look upon ..... Here is pervading tranquility ..... their greatest appeal must be to those who love to walk freely over the tops and commune with nature in solitude. There is no better place for doing this than the Howgill Fells, bless them.'*<sup>272</sup>

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<sup>268</sup> FLD/1/2 Appendices 7 - 11

<sup>269</sup> X/15 Scout Moor Wind Farm – Inspector's Report (paragraph 262)

<sup>270</sup> CD173 Report of the National Parks Committee (Hobhouse) (paragraph 43)

<sup>271</sup> EDC/2/3 (Appendix A - JK09)

<sup>272</sup> CD228 Walks on the Howgill Fells and adjoining fells - A Wainwright (The Howgill Fells – Introduction)

- 5.26 The proposed wind farm would seriously impair the view from a number of peaks in the Howgill Fells and provide a continuous reminder along a number of descending ridge walks. The sense of unbroken countryside would be lost and Whinash would be seen as a conspicuous man-made intrusion into a largely unspoiled wild landscape.
- 5.27 According to the Ramblers' Association, the Whinash ridge and surrounding countryside is popular with local walkers; three rights of way cross the site and the entire area is now defined as 'open country'.<sup>273</sup> Friends of the Lake District confirm the increasing popularity of walking in the area, aided by published walks in the local press and popular books, with strong local appreciation of the special qualities of the area and for those seeking to 'get away from it all'.
- 5.28 The area around Orton and Tebay is also used regularly for walking and the Coast to Coast route goes through Shap to Orton from where the wind farm would be visible. The wider area of Borrowdale, Bretherdale, the northern Howgills and Orton Fells offers high quality walking and it is becoming increasingly popular as a quieter destination than some of the more widely used parts of the Lake District.
- 5.29 Overall, there is no doubt that the project will severely damage the recreation experience for visitors to the area, both within and outside the Lake District National Park.

### **The Effect on Nature Conservation and Fauna**

- 5.30 The Applicant has consistently underscored the nature conservation significance of the site in relation to the presence of blanket bog especially to the north and west of Breasthigh Road. Blanket bog is a priority habitat in both the United Kingdom and the County Biodiversity Action Plans; and the latter aims to '*ensure no further loss of blanket mire in Cumbria*'.<sup>274</sup> This part of the site (which includes Turbines 1 - 9 and associated access tracks), and other land to the north of the site, is to be promoted as a possible new Cumbria Wildlife Site (Bretherdale Bank). The aim would be to secure improved habitat quality by a combination of reduced grazing and blocking of ditches to reduce water run-off.
- 5.31 However, earth moving on a massive scale, arising from the excavation of turbine foundations, service and drainage ditches, and the construction of tracks will inevitably place the future of the blanket bog at risk. This is evidenced by the recognition that the exact siting of turbine bases and access tracks will often need to be determined on site as work progresses, with micro-siting variation by up to 30 metres, or possibly more in some instances. Notwithstanding the well-intended mitigation measures, the cutting and storing of peat turves, for example, is likely to be a difficult operation and there can be no guarantee that subsequent re-use over disturbed areas would achieve total re-establishment.<sup>275</sup> Failure to do so could lead to drying out and subsequent erosion as well as a loss of bog habitat. Foundation concrete mixes also need to be known to prevent alkalizing effects on the water within the bog.
- 5.32 The offer of funding for the Shap and Birkbeck Fells Site of Special Scientific Interest, through the Planning Obligation, is of no relevance as work would have to be undertaken in any event, consistent with Government policy, to ensure that such sites are in an appropriate or recovering condition by 2009. In addition, there is no certainty as to

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<sup>273</sup> RA/1/2

<sup>274</sup> 1248/W1 & 1249/W1 Joint Statement by English Nature & the Environment Agency (Section 10.0)

<sup>275</sup> CD4 Supplementary Environmental Information Volume 1 (Chapter 3)

how the proposed Community Trust Fund would be applied in that the Trust has not been formed; the Trustees are not known; binding '*successors in title to the site*' is legally uncertain; and its application extends to the whole of Cumbria. Even if these matters are resolved, benefit in monetary terms could not overcome the adverse effects of the proposal.<sup>276</sup>

### **The Effect on Hydrology, Hydrogeology and Water Supplies**

- 5.33 The streams that originate on the site are important spawning grounds for salmon, sea trout and brown trout, all of which are very sensitive to organic or chemical pollution and particularly vulnerable during winter and spring. The Bretherdale Beck system is also a habitat for whiteclaw crayfish which is a globally-threatened species listed in *Annexes II and V of the European Habitats Directive*. The habitat and vegetation of the catchment is suitable for water voles which, despite no recorded sightings, are also a priority species within the Biodiversity Action Plan.
- 5.34 Potential disaster from pollution, including increased suspended particles, depends entirely on imprecise and untested mitigation measures that in the Applicant's words rely on '*procedures [that] are rigorously pursued during all phases of the scheme, in combination with diligent on-site monitoring.*'<sup>277</sup> This is compounded by having to undertake construction work during the winter and spring so as to avoid the bird nesting season. Common sense, and the woeful experience of Cefn Croes, suggests serious doubts about the ability of the Applicant to achieve in practice the outcome which forms the basis of its assessment. Indeed, it is unrealistic to rely on day-to-day site management and the vigilance of regulatory bodies with limited resources to protect the ecological resource.

### **Decommissioning and Long Term Management and Restoration of the Site**

- 5.35 The prospect of decommissioning has been a key feature of the Applicant's mitigation proposals but the practical implications and environmental effects of decommissioning have not been assessed. Moreover, there is no intention to consider and agree these elements before the start of construction works; with subsequent decisions being deferred to a future date in the run up to decommissioning. Such impacts should be assessed and addressed at the outset.

### **The Planning Balance**

- 5.36 Although it is accepted that something needs to be done to counter global warming, this project would damage an area of nationally important landscape, visually and ecologically, and undermine the purposes of National Park designation. The foundation of Government policy is that there should be no need to use locations in which environmental impact cannot be addressed satisfactorily. The especial importance of National Parks, and the need to ensure that any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by other considerations, is also acknowledged; and the same approach is to be taken to projects located close to the boundary of National Parks and other designated areas.<sup>278</sup>

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<sup>276</sup> X8 (3 & 4) Planning Obligation and Covenant for Community Trust Fund

<sup>277</sup> CWP/6/2 (paragraph S6)

<sup>278</sup> CD16 Planning Policy Statement 22: Renewable Energy (paragraphs 1 (i), 11 & 14)



## Planning Conditions

- 5.37 The mitigation of adverse effects relies heavily on planning conditions and it is notable that English Nature and the Environment Agency withdrew their objection subject to the imposition of conditions attached to their statement.<sup>279</sup> However, without canvassing their views the Applicant seeks to introduce flexibility to allow construction activities inside the bird nesting season. Similarly, condition 8, as recommended by English Nature and the Environment Agency, which requires an Environmental Management Plan for the whole site and targets to be set for habitat restoration, appears to have been watered down by seeking to limit habitat restoration to the northern part of the site (Bretherdale Bank - Common Land Unit 108).<sup>280</sup>
- 5.38 Of greatest concern is the extent to which many decisions will be deferred to a stage after a decision has been taken on the proposal, with particular regard to conditions recommended by English Nature and the Environment Agency (e.g. conditions 2 and 8 – relating to the restoration of blanket bog and the management of the site, respectively). The same applies to the flexibility intended for the positioning of the tracks and turbines which could see them located in areas that have not been subject to assessment. This would be in breach of the *Environmental Impact Assessment Directive* which requires mitigation to be assessed after public consultation and before project approval.<sup>281</sup>

## The Case for Friends of Eden, Lakeland and Lunesdale Scenery (FELLS)

### Introduction

- 6.1 FELLS is a voluntary organisation, formed in 1999, ‘to fight against visual pollution of a countryside which is renowned for its beauty throughout the world, and on whose protection the local economy is heavily dependent, notably visual pollution by the siting of wind turbines in unsuitable places’. It is an informed body of expert opinion which also draws on other national and international expertise. Its evidence provides a ‘critique of’, and not a ‘challenge to’, Government energy policy.

### The Policy Framework

#### *Energy demand and supply*

- 6.2 The publication of the *Energy White Paper*, and its encouragement of public debate, is welcomed. However, it does not address the growth of worldwide energy demand, the expectations of the developing world and the problems of maintaining supply. Moreover, the foundation of the *Kyoto Protocol* is only binding on some 40 countries; withdrawal is possible; and monitoring and enforcement is becoming increasingly difficult. Some major energy users remain outside the Protocol; coupled with major developing countries, where hungry demand and inefficient use, produce substantial

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<sup>279</sup> 1248/W1 & 1249/W1 Joint Statement by English Nature and the Environment Agency (Appendix EN/EA 9) & 1249/W2

<sup>280</sup> X1 (EA/EN Proposed Ecological Conditions – Comments Prepared by CWP)

<sup>281</sup> FoB/0/16 *Smith v Secretary of State for Environment, Transport and the Regions* [2003]

carbon dioxide emissions. Given that the United Kingdom emits only 2% of global carbon dioxide, more demanding Government aspirations will be swamped by emissions elsewhere. Moreover, carbon dioxide emissions are but one of eight factors influencing climate change.<sup>282</sup>

- 6.3 Energy efficiency can result in substantial savings in carbon dioxide emissions; but the United Kingdom lags behind many of its European Community neighbours.<sup>283</sup> It is recognised that energy efficiency could achieve half of the savings required by 2020 – well in excess of the contribution of wind energy – without environmentally damaging impacts. Government policy has favoured wind energy, at the expense of other technologies, due to generous subsidies. Yet, due to the intermittency and unpredictability of wind, the average output is around 24% of installed capacity; and back-up capability is required.
- 6.4 The *Energy White Paper* has a number of shortcomings. Firstly, it recognises that nuclear generation is an important source of carbon free electricity; but by 2025 only one nuclear power station will remain. The economics have been distorted by subsidies elsewhere, and concerns about the storage of nuclear waste are not justified. Worldwide there are 440 nuclear reactors in operation and more than 30 under construction. The Government should therefore re-assess the future potential for nuclear power.
- 6.5 Secondly, it fails as a sustainable policy framework as there is nothing to stem the growing demand for transport which is responsible for 36% of the United Kingdom's energy consumption. Transport growth and rising emissions are accepted without question and its thrust is irreconcilable with *Kyoto* targets. The *Energy Act 2004* is similarly biased to power generation with limited regard for the implications of transport, domestic or industrial energy use.
- 6.6 Thirdly, the United Kingdom is becoming heavily dependent on imported oil and gas to the extent that by 2020 some 75% of its primary energy source will be imported. The economics of demand will see rising prices; and reliance on exports from unstable countries, with pipelines vulnerable to terrorism, which could see interruptions and shortages. There is no means of guaranteeing security of electricity supplies.
- 6.7 Growing demand for electricity is incapable of being met from renewable sources and the gap between demand and supply will increase as coal fired power stations are retired by opting out of costly modifications to control emissions; installed capacity will fall by 24% between 2003 and 2020. The combined effects of nuclear and coal closures could see a gap in excess of 60% by 2020.

#### *Climate change*

- 6.8 The *Energy White Paper* is largely predicated on the acceptance of global warming and climate change as established facts. Although the *Intergovernmental Panel on Climate Change* has influenced policy, its scientific 'consensus' is not a substitute for rigorous scientific research. In particular, the *Third Assessment Report (2001)* has been criticised for its over-emphasis on climate modelling; bias to rising temperatures in the lower layer of the earth's atmosphere; 'projections' with no statistical probability for the claimed rise in temperatures by 2100; the assumed carbon dioxide emissions of developing countries related to improbable growth in gross domestic product; and a high scenario

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<sup>282</sup> FELS/5/3 (page 7); FELS/9/1 (Appendix 1)

<sup>283</sup> CD170 Energy White Paper (Chapter 3)

for world population by 2100. Consequential anticipated changes in sea levels (Maldives), hurricane patterns (United States of America), climate warming (Alaska) and receding glaciers have not been borne out. These factors question the underlying assumptions which have influenced international and national policy.

- 6.9 At a more local level the United Kingdom's *Climate Impacts Programme* was set up in 1997. Its climate change scenarios, as revised and updated in 2002, start from the flawed premise of the *Intergovernmental Panel's Third Assessment Report* and have to be treated with extreme caution. Further work is ongoing with the launch of a wide-ranging consultation paper on the review of the United Kingdom's Climate Change Programme, (albeit omitting consultation with all the important scientific bodies); and a report from the *International Climate Change Taskforce* which is based on the 'foundation' of the *Third Assessment Report*. Overall, scientific understanding of global warming, and the relationship of greenhouse gasses, is in its infancy. There is a need to act and to embark on a long term strategy; but that is not a sufficient basis to condone the immediate devastation of the Whinash landscape - even if failure to deliver the project would put at risk achievement of the 10% renewable target by 2010.

***Carbon dioxide emissions, wind farms and the role of other abatement strategies***

- 6.10 Energy provided by a wind farm is likely, in general, to displace emissions from coal followed by gas, but the link is complex. In 1993 the average carbon dioxide saving was estimated to be 654 grams per kilowatt/hour (g/KWh); a later gas-based saving indicated 430 g/KWh; and savings by 2010 are predicted to be 270 g/KWh. Nonetheless, the British Wind Energy Association continues to use a figure of 860 g/KWh. Consequently, potential savings in nearly all planning applications are overstated which, in turn, distorts the validity of wind farms as a means of tackling climate change.<sup>284</sup>
- 6.11 It is not known whether the predicted savings by 2010 are actual or theoretical as other power plants will have to remain operational, to compensate and balance the uncertainties of the wind, yet operating below capacity and maximum efficiency with resultant increased carbon dioxide emissions for each kilowatt/hour generated. There is considerable uncertainty as to whether real carbon dioxide abatement will be achieved; and it is notable that the considerably greater wind generating capacity of Germany and Denmark has not resulted in the closure of fossil fuelled power stations.
- 6.12 The cost of reducing carbon dioxide emissions is high compared with all other methods of mitigation. The National Audit Office estimates that wind energy will receive subsidies of some £700 million per year (2003 – 2006) rising to £1,000 million per year by 2010. Savings are related to an assumed level of performance which wind turbines have failed to deliver; the United Kingdom's figure for 2003 was 24.1% compared to an estimated achievable average of 30%. Wind farms local to Cumbria, albeit with smaller turbines than those proposed, had load factors ranging between 17.2% and 28.2%. In the case of Whinash the carbon dioxide savings claimed, 177,980 tonnes, will at most be 55,878 tonnes. Overall, the surge to provide wind power has been fuelled by financial incentives to offset higher generation costs, which has had the effect of depressing the move to alternative renewables.<sup>285</sup> The outcome is unbalanced and places an over-emphasis on renewably generated electricity as a means of emission abatement.

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<sup>284</sup> FELS/5/2

<sup>285</sup> FELS/0/8 (pages 4 - 6)

- 6.13 Concerns have also been expressed about the substantial investment needed to convert the national transmission and distribution network from a system with few generation sources to one with a significant number of small contributors and for more active management. The problem could become more acute if wind power proposals in Scotland, the Western Isles and the Shetlands are progressed. Denmark and Ireland have already seen the situation where the network cannot guarantee priority to taking power generated by the wind; and, as the proportion of wind to overall energy generation increases, wind power output will become the more susceptible to being curtailed. Thus, the aim of achieving a high level of wind capacity is counter productive; and a manageable level could be easily achieved from offshore locations.
- 6.14 Nuclear generation is the most reliable and cost-effective way of producing electricity without carbon dioxide emissions. However, most of the United Kingdom's capacity will have been decommissioned by 2020, which makes the consideration of other low carbon generation options the more urgent. In this regard there is considerable scope to raise the efficiency of coal-fired power stations by technical enhancements (capable of reducing emissions from 1100 - 1300 g/KWh to around 320 g/KWh of power produced). There are significant commercial hurdles to be overcome but the economics are becoming more favourable. At the same time, technology exists to capture and store carbon dioxide. This would make continued use of coal-fired plants more attractive; and co-firing with biomass provides an opportunity for reduced emissions. Combined heat and power plants are also capable of displacing carbon dioxide emissions.
- 6.15 Undoubtedly, there are better options than the wind which would be capable of meeting the targets for reduced carbon dioxide emissions in a more cost effective manner; and it is notable that the Government has conceded that the United Kingdom may miss its *Kyoto* targets. Other technologies and measures would also have the added advantage of not having to plunder one of the most scenic parts of the British countryside.

*Firm and non-firm renewables in the electricity generating mix*

- 6.16 'Firm' sources of renewable energy, which are available when required, reliable and predictable, include biomass, biofuels, waste incineration, landfill gas and large-scale hydro. These accounted for almost 80% of electricity generation from renewable sources in 2003 compared to 3.4% from wind. Tidal power/flow is reliable and predictable but generation is discontinuous; costs are high and there would be environmental impacts. Solar and photovoltaics, installed on individual houses, are capable of contributing a significant element of domestic load but the United Kingdom has fallen a long way behind the pioneering progress of Japan and Germany.
- 6.17 Wind power, is 'non-firm' being weather dependent, unpredictable, unreliable and only available under certain conditions. Although it has a complementary role to play, the 10% target of electricity from renewables by 2010 is capable of being achieved without resorting to excessive onshore wind generation. Moreover, given that off-shore licences amount to 7,169MW, the predicted offshore contribution of 1,662MW (installed capacity) by 2010 seems likely to be far exceeded. Projections to 2020 anticipate an increasing role for wave, tidal, biomass and solar power; and medium to long term estimates for wave and tidal are favourable. Overall, a wide range of alternatives, capable of meeting the Government's targets for electricity generation and reduction in greenhouse gases, is available; environmentally damaging projects, such as Whinash, are unnecessary.

*The European experience*

6.18 In 2003 wind turbines in West Denmark generated about 21% of domestic electricity consumption, but some 80% of this was off-loaded to neighbouring countries during periods of high winds. At other times, West Denmark had to import electricity and the initially impressive contribution of wind fell to around 4% of overall annual consumption. Balancing West Denmark's production has relied on the large networks of its neighbours; and the ability of their primary hydropower systems to respond to short term fluctuations. However, the United Kingdom does not have the same degree of flexibility and balancing will only be achieved by curtailing contributions from wind turbines. This is the more apparent as construction becomes concentrated in the north-west of England, Wales and Scotland. It is notable that at February 2005 wind projects in Scotland were said to be approaching 16,000MW; but the capacity of the inter-connector with England is less than 2MW.

## The Planning Balance

6.19 FELS regards the proposal to be of great importance in defining the future for upland landscapes of England. Although it does not present any landscape evidence, it affirms its total support for the Local Authorities, the Countryside Agency, the Friends of Bretherdale and NWW. It rejects the implausible stance taken by the Applicant on landscape impacts. Moreover, it does not accept the oft-cited environmental imperative in favour of wind power. Government policy on the need to take action to reduce the emission of greenhouse and other gases is not denied – but there are more effective ways of achieving that objective. All these matters need to be weighed in the final balance.

## Planning Conditions

6.20 Comments on the planning conditions are reported in the case for NWW.

## The Case for the No Whinash Windfarm Committee (NWW)

### Introduction

7.1 NWW was formed in 2002 in response to the proposal. It draws together opposition from the settlements of Orton and Tebay; it represents the views of Orton, Tebay, Shap and Ravenstonedale Parish Councils; and it has been supported by several thousand letters of objection, collected locally, principally from users of the Tebay motorway service area. The case for NWW is supported by an animated 3D visualisation presentation, a film of 'The Whinash Walk' and comparison with a similar sized development at Cefn Croes in mid-Wales.<sup>286</sup>

### The Justification for the Site

7.2 The site selection process was flawed from the outset. The *Environmental Statement* explains that it '..... begins with a review of documentary evidence ..... which gives an indication of long-term annual wind speeds. To be commercially acceptable, generally sites with an average wind speed below 7 metres per second are excluded .....'.<sup>287</sup> However, such data is based on a 45 metre hub height; the wind resource will be much greater at the proposed hub height of 70 metres; and it follows that the threshold wind speed would be available over a much wider area.

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<sup>286</sup> NWW/1a & 1b, NWW/1/3 & NWW/60/4

<sup>287</sup> CD3 Environmental Statement: Volume 1 (paragraph 2.2.2)

- 7.3 This process has therefore unnecessarily restricted the area of search and given the site much greater prominence than it merits. Moreover, there is no evidence of other sites or options considered; and at a time of increasing deployment offshore, there is no explanation why onshore was chosen. The duty to '*ensure that the least worst option has been chosen*' has not been discharged;<sup>288</sup> and to put the matter in context there is no similar constructed wind farm on such a prominent ridgeline.<sup>289</sup>

## Visual/Landscape Impact

- 7.4 The proposed wind farm would occupy a huge area, within a grid of some 6 kilometres x 2 kilometres whereas all other projects within Cumbria, with the exception of Kirkby Moor (1 kilometre x 2 kilometres), fall within a 1 kilometre x 1 kilometre square. Further, in this particular case, the longer dimension coincides with the crest of the Whinash ridge which extends the landscape of the high mountains and moorlands to the west into the deep Lune valley which rises eastward into the Howgill Fells. Significantly, although the ridge is erratic in height, it is generally no more than about 200 metres above the floors of Borrowdale and Bretherdale. In this setting, the proposed turbines, rising more than half of that mean difference, would be dramatically apparent when viewed across and along either valley; from the eastern fells and the Howgills; and from the upper Lune valley. It must also be borne in mind that the total area of blade sweep would be more than any project built in the United Kingdom (Whinash - 171,747m<sup>2</sup>; Cefn Croes - 143,728m<sup>2</sup>; and Cairn Uish - 140,744m<sup>2</sup>); and very significantly greater than the wind farm at Lambrigg (15,095m<sup>2</sup>).<sup>290</sup>
- 7.5 This proposal is unusual, but not unique, in having a substantial boundary that coincides with that of a National Park. The actual boundary, as a means of protecting a landscape, is of little significance here, as the landscape outside the National Park is contiguous with that within, and the impact of the proposal will extend far beyond the area of the site. It should be observed that proposals just outside National Parks have been refused at Barningham High Moor (Yorkshire Dales National Park); at Cilciffeth, Corston and Wogaston (Pembrokeshire Coast National Park) and others on the fringes of the Lake District National Park.<sup>291</sup>
- 7.6 The Whinash ridge is also a focal point, as routes, from the north and east, are funnelled into the Lune gorge at Tebay. Here there is a remarkable degree of direct or angled visibility towards the ridge and numerous areas from where most of the turbines (hubs and tips) would be visible.<sup>292</sup> Similarly, along the A6, there would be progressive views down the ridge from a southerly direction, especially on the immediate approach to Huck's Bridge (Grid ref: 552 040), and direct views from the Shap summit to the north.<sup>293</sup> Even more dramatic views would be gained across and diagonally along the dale from the crest of the Whinell ridge.<sup>294</sup>
- 7.7 In identifying landscape effects, NWW bases its assessment on a more flexible system, than conventionally used in the *Guidelines for Visual Impact Assessment*, which is

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<sup>288</sup> NWW/1/2 (Appendix E)

*Jodie Phillips v Secretary of State (2003) EWHC2415 & Blewett v Derbyshire (2003) EWHC2775 (Admin)*

<sup>289</sup> NWW/1/2 (Appendix B)

<sup>290</sup> NWW/1/1 (Table at paragraph 2.3.1)

<sup>291</sup> NWW/1/2 (Appendix D)

<sup>292</sup> CD4 Supplementary Environmental Information Volume 2 (Figure 42)

CD3 Environmental Statement: Volume 3 Figures (Figure 15)

<sup>293</sup> CD3 Environmental Statement: Volume 3 Figures (Figure 17 Viewpoints A & G; Figures 18a & 18g)

<sup>294</sup> CA/3/4 (Appendix 4 - View 1: As existing; View 1: As proposed)

designed to balance both sensitivity and magnitude around a central medium or moderate category. It also recognises the limitations of photographic evidence which produces a seeming reduction of the vertical scale; an uncharacteristically wider field of view than the human eye; and limitations of overall quality and clarity. In particular, it should be noted that many of the photographs in the *Environmental Statement* lack definition, even where they have seemingly been enhanced. Even at the closest viewpoint, the turbines are not sharp or clear when seen against the sky.<sup>295</sup> There are also notable omissions in the selected viewpoints leading to gaps in the impacts that would arise; and none of the evidence, other than that produced by NWW, shows the movement of the turbine blades.<sup>296</sup>

- 7.8 The site was within the areas recommended for consideration for National Park status in 1945 and 1947; but was not included in the formal designation in 1951 – apparently for administrative and financial reasons. The turbines, located on a conspicuous ridge, would tame the wildness of the landscape; affect its natural beauty; and sever the connection between the Cumbria High Fells and the Howgill Fells. The landscape is fully suited to National Park status; it is contiguous with the Lake District landscape; and the development should be judged accordingly. Those qualities have not been diminished by the construction of the motorway; the objectives of the National Park should remain paramount.
- 7.9 Overall, the Applicant's portrayal of the landscape and visual impacts fails to confirm the real sense of place and the effects that will inevitably arise. By way of example the *Environmental Statement* for Lambrigg assessed the magnitude of change from an elevated viewpoint at a distance of 6.3 kilometres as 'Medium/Low'; whereas, from a similar elevated, but slightly closer viewpoint, the Applicant records the impact of this scheme as 'Low'.<sup>297</sup> When faced with comparison during cross-examination the witness stood his ground on the latter and chose to down-grade the impact of Lambrigg to 'Negligible' which suggests that the Applicant has under-stated the magnitude of impact in the most sensitive location for what is, potentially, the largest wind power station in England.

### **The Impact on Recreation, Footpaths and Bridleways**

- 7.10 According to a guide with international experience of leading walking tours, participants first saw curiosity and interest in wind turbines, but over a short space of time found them to be an irritant to their enjoyment of the walk and the countryside. The proposal would have an adverse effect on the views from the Coast to Coast footpath (in the vicinity of High Street, Shap, Orton Fells and beyond Kirkby Stephen) over a period of two days walking.<sup>298</sup> Views from the recently opened Walney to Wear (W2W) cycle route would also be affected as it passes through the Lune gorge and beyond Orton where turbines would characterise the view.<sup>299</sup>
- 7.11 From the Whinash ridge itself, walkers and other users would lose the high degree of openness and centrality to immense views of the South Cumbria Fells, the High Eastern Fells, the Shap Fells, the Orton Fells, the Cross Fell Pennines, the Howgill Fells and

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<sup>295</sup> CD3 Environmental Statement: Volume 3 Figures (Figure 18a)

<sup>296</sup> NWW/1/2 (pages 29 & 30); NWW/1/3 (Appendices 1a - 1c & 2)

<sup>297</sup> CD3 Environmental Statement: Volume 3 Figures (Figure 18d)  
NWW/0/9

<sup>298</sup> NWW/0/13

<sup>299</sup> NWW/0/14

moorlands beyond, rounding to Morecambe Bay. The landscape is also cherished by local people for walking and relaxation, its sense of remoteness, inspiration, beauty and timelessness – factors that the Applicant fails to acknowledge.

### **The Effect on Nature Conservation and Fauna**

- 7.12 There were doubts about the quality of the *Environmental Statement*, in its coverage of botanical issues, and the scope and nature of the consultation undertaken. However, it was conceded that the *Supplementary Environmental Information* had addressed many of the concerns.<sup>300</sup>
- 7.13 The site provides a natural corridor for wildlife between two National Parks. Bat roosts are known to exist locally, but no survey has been undertaken; peregrines, owls and golden eagles use the area; the Lune gorge is a natural route for racing pigeons; and the site has potential to support water voles.

### **The Effect on Hydrology, Hydrogeology and Water Supplies**

- 7.14 The River Lune is the most prolific salmon river in the North West, with some 2,000 anglers regularly fishing. Before disease struck in 1967 an estimated 30,000 salmon ran into the river; but over the last 12 years the run has been slightly less than 8,000. Local organisations are working to enhance the biodiversity of tributaries and to restock suitable streams in the upper catchment with over £500,000 spent in the last 7 years. Water quality, and avoidance of siltation, is of critical importance to the spawning grounds and young salmon. Construction works on the scale and terrain proposed, in an area of very high rainfall, runs the risk of run off from peat soils and landslides which, without effective safeguards, could jeopardise water quality.<sup>301</sup>

### **Other Matters**

- 7.15 The *Kyoto Protocol* seeks to reduce greenhouse gas emissions and has a much wider focus than the current drive to renewable energy. Other, more economic, technologies have been overlooked and wind farms have a disproportionate visual impact in terms of their generating capacity. Wind power is intermittent and undue reliance on this source could lead to supply disruptions.
- 7.16 Tourism is one of the county's key industries, sustaining a number of rural communities, which is vital to the regeneration of Cumbria. It is based on an international reputation for having a world class landscape. As the wind farm would be located in a prominent position adjacent to gateway access routes along the M6 motorway and the West Coast mainline railway, its presence could adversely affect the perception of the area and inflict long term damage on the brand and image of Cumbria as a whole.<sup>302</sup> This would lead to a loss of visitors and damage to an already fragile economy where tourism remains the county's fastest growing industry in England's poorest region.
- 7.17 A survey of tourism businesses shows opposition to the proposal (37%); and concerns about visual intrusion (54%), adverse effect on the visitor experience (42%), and loss of visitors (39%). A nationwide poll (2,000 respondents) and local face-to face interviews (449 interviewees) add weight to these concerns.<sup>303</sup> Although the wind farm might itself

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<sup>300</sup> NWW/5/2

<sup>301</sup> NWW/4/1 and Appendices

<sup>302</sup> CD4 Supplementary Environmental Information Volume 2 (Figure 35n, Viewpoint N, M6 Corridor)

<sup>303</sup> NWW/10/2 (Appendices 3 & 4)



be an 'attraction' in the short term, this would not be sufficient to offset its impact on the very characteristics which are so important to tourism.

- 7.18 Orton Farmers Ltd is an example of a local entrepreneurial enterprise which relies on tourism. The monthly farmers' market has allowed farmers to diversify into direct sales and has led to the creation and retention of small rural businesses. Food and tourism go together and distant visitors are attracted by its location and setting. The company's own survey revealed that 30% of customers travel more than 40 kilometres and spend almost twice as much as local people. However, a substantial proportion of these would not make the journey if the wind farm went ahead. Lost income on this scale would be likely to lead to the closure of the market.<sup>304</sup>
- 7.19 Properties in the locality would be less attractive to buyers, particularly those close to or in full view of the turbines, leading to greatly reduced values – possibly by as much as 50%. A significant proportion of Chartered Surveyors, in a national survey, have experienced negative effects on house prices close to wind turbines. There is no redress for loss in value, although one purchaser successfully secured damages from a vendor who had not declared proposals to construct a wind farm nearby.<sup>305</sup>
- 7.20 A survey of the residents of South Tebay shows 87% of residents to be against the project and only 4.6% in favour. Concerns of an overwhelming majority include:- effect on landscape; environmental damage; property values and blight; impact on tourism; light flicker; and noise. If the development goes ahead, residents ask that a monitoring panel should be set up with wide ranging powers.<sup>306</sup>
- 7.21 As to private interests, an Inspector has taken an important step in accepting that impacts on local residents can amount to more than 'private interests':- *'In my opinion the visual impact of the proposed wind farm on each individual resident living in the vicinity is an aspect of the public interest. I fail to see how the public interest can be safeguarded by development that would be visually harmful when seen from several neighbouring properties.'*<sup>307</sup>
- 7.22 The unspoilt nature of Bretherdale and the wider locality provide a range of local memories – they should remain that way. The locality is of great scenic importance with the Lune gorge forming an environmental, geographical and emotional entrance to the Lake District. Added concerns relate to visual impact, light flicker, noise, effects on spring-fed water supply and property blight.

## Planning Conditions

- 7.23 NWW and FELLs raised a number of detailed points about the conditions generally agreed between the Applicant and the Local Authorities. In terms of the preamble, the respective authorities should reach a joint agreement where further details are to be submitted. As concerns remain about controlling construction works, the developer should be held responsible for any works carried out on its behalf; and a bond should be lodged to meet decommissioning costs. Agreement should be reached on plant and machinery to be used on site, with further details of any bridges, drains and measures to avoid erosion and siltation. There should also be a method programme for any materials to be removed from the site. Turbine bases should be restored to an agreed depth and details of the anemometry masts need to be agreed. None of the structures should carry

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<sup>304</sup> NWW/13/1 (page 5)

<sup>305</sup> NWW/12/2 (Appendices)

<sup>306</sup> NWW/33/2 & NWW/33/3

<sup>307</sup> NWW/1/1 (paragraphs 3.11.3 - 3.11.4)

illumination; protection of footpaths should include any other public rights of way; and the noise condition should apply to any consented, rather than existing, dwellings.

- 7.24 Added conditions should preclude stone being sourced and concrete being manufactured on-site. If either proves unavoidable, details should be agreed. Water abstraction, wheel washing and disposal of used water need to be controlled as does the possibility of particulates reaching watercourses. Access tracks should not be gated. To avoid the sort of problems described at Cefn Croes, construction work should be monitored by an independent engineer; an Environmental Management Committee should be established; and funding should be available for mitigation and restoration on an on-going basis.<sup>308</sup>

### **Written Representations on behalf of NWW<sup>309</sup>**

- 7.25 **Orton Parish Council** strongly opposes the proposal because of its likely physical and economic impact. **Ravenstonedale Parish Council** raises concerns about landscape impact; the use of common land and interference with the rights of Commoners; the effect on public rights of way and bridleways; loss of enjoyment conferred by the Countryside and Rights of Way Act 2000; and adverse effect on tourism. **Tebay Parish Council** echoes concerns about visual impact and economic effects.
- 7.26 **A number of small businesses and individuals** (including a chocolate manufacturer and providers of tourist accommodation and related services) are concerned about the loss of visitors, echoed by coach operators who might review their tours. **A public awareness campaign**, run from the motorway service area at Tebay, has generated several thousand responses, the majority of which opposed the development and raised a number of common themes which are summarised below in paragraphs 9.19 – 9.22.
- 7.27 **Residents of Bretherdale and Greenholme** tell of concerns about visual impact and the dominance of the turbines; noise and shadow flicker; water supply/quality; television reception; and blighted property. The **occupants of Bretherdale Foot** allege interference with their Human Rights (*'The right to peaceful enjoyment of family life and property'*).<sup>310</sup> They are also critical of the absence of noise assessment within the immediate vicinity of their property. Impact on horse-riders is mentioned as three of the turbines would be within the absolute minimum safety margin of 200 metres advocated by the British Horse Society and three others would conflict with its preferred limit of 3 x blade tip height.
- 7.28 **Other interested persons** lament the loss of view, the openness of the sky and enjoyment of the landscape; expound on the inefficiencies and cost of wind power and opportunities for less intrusive alternatives; and point to the effect on the proposals to extend the Lake District National Park.
- 7.29 **Several individuals and the Tebay Anglers** refer to the adverse consequences of run-off leading to the movement of peat soils into water courses. In particular, reference is made to the siting of turbines 18, 21 – 24, 26 and 27 and the associated access tracks which could cause a divide to the watershed and direct more water into the Borrowdale Beck; and the possibility of the tracks to turbines 17, 19 and 20 affecting the natural divide between Bretherdale Beck and Borrowdale Beck. In terms of track construction, there are concerns about peat compression, possible liquification and movement of peat.

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<sup>308</sup> X/1 (Comments on Draft 3 from FELLs and NWW 11.6.05)

<sup>309</sup> Raising matters not already covered in 'The Case for NWW'

<sup>310</sup> NWW/35/1

Spillages of pollutants could also be a risk to water supplies. In terms of the fisheries, peat run-off could destroy spawning beds for salmon, sea trout, brown trout and have an adverse effect on whiteclaw crayfish.

## The Case for Interested Parties and Persons

### The Policy Framework

- 8.1 **Jill Perry, for South Lakeland Friends of the Earth**, contested the Local Authorities' claim of prematurity as Cumbria was a long way from approaching the 2010 renewable energy target and little progress had been made in preparing a Supplementary Planning Document identifying areas of search for wind energy.<sup>311</sup> **Tony Juniper, Executive Director for Friends of the Earth**, spoke of the overall challenge presented by global warming and climate change and the need to act now rather than wait in hope for developments in technology. **Jill Perry** pointed to studies that suggest that climate change might be more serious than hitherto predicted; and, the political progress in building on the *Kyoto Protocol*. Locally, as early as 1998, a report focused its attention on the way that climate change would affect the landscape and ecology of rural uplands. The proposal was consistent with Government policy; the alternative, nuclear option, was uncertain and unsustainable; more expensive than wind power; and was not carbon free. **Anita Stirzaker**, a local person with membership of several organisations and experience of the tourist industry, also referred to the effects of climate change and the need to act now:- wind energy provided that opportunity but nuclear did not.
- 8.2 **Sir Donald Miller**, a Chartered Engineer with extensive experience of electricity generation and transmission, criticised Government energy policy for its concentration on renewable energy without proper regard for cost and alternatives. Moreover, there was nothing conclusive to support the premise that increased carbon dioxide levels are the cause of global warming as the activity of humankind makes only a small contribution (approximately 3%) to greenhouse gases and less than one-third of man-made emissions in the United Kingdom come from electricity generation. Although accepting that it would be difficult to argue against taking measures to reduce harmful emissions, where practicable, he maintained that the Government had, nevertheless, seized upon renewable energy as a way of being seen to be doing something – irrespective of its unacceptable cost and insignificant emissions savings in global terms.
- 8.3 Moreover, **Sir Donald** could not agree with the Prime Minister's view '*that climate change is the world's greatest environmental challenge*'<sup>312</sup> and he saw the 10% target of renewable energy generation by 2010 as excessive. Wind power was, in his view, ineffective and costly, relying on back-up plant, new infrastructure and massive subsidy; and other sources of renewable energy were even less competitive. Money would be better spent in securing economic and reliable electricity supplies utilising nuclear and cleaner coal technologies, and in research for carbon dioxide sequestration and hydrogen powered vehicles.
- 8.4 **Francis Melford**, a mechanical engineer with a background in electricity generation, outlined the role of coal in providing one-third of the country's electricity supply as being readily available worldwide, easily stockpiled, comparatively cheap and of providing a buffer to rising gas prices and the run-down of nuclear power. Although

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<sup>311</sup> CD183 Cumbria and Lake District Joint Structure Plan - 2001 - 2016 - Report of the Panel (paragraph 6.38)  
<sup>312</sup> CWP/1/3 (page 10)

coal-fired powered stations were a major source of carbon dioxide, the installation of improved 'supercritical' boilers could increase efficiency and secure reduced emissions in the order of 10 - 20% which could be doubled by including biomass in the fuel mix. Retrofitting existing power stations would provide an early solution to reduced emissions with round the clock generation and would, on an equivalent investment, deliver double the carbon dioxide reductions achievable at Whinash. **Sir Christopher Audland**, with a distinguished Civil Service career in science, technology and energy, added that the Government knew that its *Energy White Paper* would not deliver its stated energy aims and a review of nuclear capacity could be anticipated.

- 8.5 **David Natrass**, a District Councillor speaking on his own behalf, referred to the impact of air travel as the fastest contributor to carbon dioxide emissions; and the European Community Commission's report which indicated that within the European Community 19% of energy use could be saved by 2020 using current technology. **John Mander, on behalf of the U.K. Independence Party**, commented on the futility of wind as a replacement source of energy due to its limited contribution and massive land take.

### Visual/Landscape Impact

- 8.6 **Jill Perry** explained that the wind farm would be visible from only small areas of the Lake District and Yorkshire Dales National Parks and most of the closer views would contain only some of the turbines. It was notable that affected views often had man-made features and the landscape, containing the A6 and M6, pylons, quarries, and coniferous plantations, was not of the highest quality. **Marianne Bennett**, a local wildlife artist, found the landscape, albeit striking, to have been damaged by man-made changes; and **Ronald Stirzaker**, a retired local resident, saw no logic, for similar reasons, in including the site within the National Park. **Anita Stirzaker** considered wind turbines to be aesthetically beautiful and pointed out that they would not be widely visible as they would be hidden by larger hills within the Lake District National Park.
- 8.7 **Sir Christopher Audland**, with the advantage of widespread experience in the conservation of natural heritage, viewed the Lake District as embracing the greater part of Cumbria (including Whinash, the Whinell ridge and Borrowdale). The impact of the turbines, the biggest yet in England, could not be portrayed accurately in photomontages as, unlike the NWW visualisation, they are shown to be motionless. The claim that the turbines would be insignificant at ranges over 5 - 7 kilometres was contested as both Lambrigg and Caton Moor could be seen from more than double these distances. The greater height of the turbines now proposed would have added impact, and the turbines would be visible from large areas up to 40 kilometres away. The railway and motorway had been accommodated sensitively into the landscape and the pylons at Shap had been sited to minimise disruption to the skyline – the opposite was true of the proposal. Moreover, the A6 was now a quiet Class A road (with less traffic than either the A591 or A592); and careful control had been exerted over quarrying; and restoration of Shap Pink Quarry would be achieved by 2015.
- 8.8 The loss of beautiful countryside needs to be taken into account and less prominent offshore or industrial sites should be chosen. A lifespan limited to 25 years cannot be guaranteed as the original turbines at Caton Moor, in an Area of Outstanding Natural Beauty, had been replaced after just over 10 years of operation by significantly larger turbines.<sup>313</sup> The proposal was at odds with Government policy as its environmental

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<sup>313</sup> CD202 Bundle of Appeal Decisions (Decision 15)

impacts could not be addressed satisfactorily; and the effect on designated areas was a further material consideration. A range of historic local personalities, synonymous with the natural beauty of the Lake District landscape (Beatrix Potter, Canon Rawnsley, John Ruskin, Alfred Wainwright and William Wordsworth), would have been horrified by these proposals. It is doubted whether any wind farm in Cumbria would have such a profound negative impact.

- 8.9 Active consideration is being given to extending the Lake District National Park and creating a World Heritage Site. Europa Nostra endorses the Countryside Agency's initiative and expresses the view that approval of the wind farm would be untimely: it had also debated the impact of wind-power on the countryside and concluded that social, economic, tourism, historical, cultural, wildlife and landscape impacts should be taken into account in all decisions.<sup>314</sup>
- 8.10 **Sir Donald Miller** added that the insensitive impact of the proposal, which would be more significant than the visual material implies, should be compared with the care lavished on hydro-power developments where careful siting, often underground, has been achieved. **Miss R McChesney**, a resident of Tebay, spoke about the calm, serene and timeless aura of the fells and the untold damage that the proposal would bring to the landscape; the privilege of seeing rare birds; and the loss to future generations.
- 8.11 **Ruth Walsh, Chair of Communities Opposing Lamonby Turbines (COLT)**, saw the Whinash decision as a determining point as approval would indicate that no landscape outside the National Park was worthy of protection. The 'temporary' nature of the development provided no solace as new generation turbines could appear and the site might be extended. **COLT** warned of the dangers of proliferation when Lamonby was proposed and a ring of steel was now appearing around the finest National Park. The landscape was as good as anything in Europe and it should be protected and sustained as a place of tranquillity and peace for those who live in it, work in it and visit it.
- 8.12 **David Natrass**, regarded the A6, in the vicinity of the site, as one of the finest drives through the countryside and considered the M6, to the east, to be the most dramatic area of motorway in the country. Wind turbines along the Whinash ridge would be seen from this gateway to the northern Lakes and would destroy the grandeur and scale of the Howgills and the Lune gorge. Despite the proximity of these roads, and the sight of aircraft, the Whinash ridge was both wild and remote and its qualities merit protection. **Raymond Clark**, a Fisheries Officer and small farmer, cherished the beauty of the local landscape as did **John Burra** who told of his family's long connection with the area, his efforts to protect and enhance the landscape and opportunities for walking. **John Mander** spoke with similar sentiment and viewed the proposal as 'titanic human arrogance'. Despite its 'edge' of Lake District location the proposal would be seen across the Cumbrian skyline and it could deny World Heritage status. **Len Clark**, a resident of Tebay, also outlined concerns about landscape impact.

## The Impact on Recreation, Footpaths and Bridleways

- 8.13 **Jill Perry** drew attention to the ten myths about wind turbines and lack of evidence to support the belief that wind farms deter visitors.<sup>315</sup> Crucially, the proposed turbines would not be seen by most visitors to the Lake District – northbound users of the M6 usually turn off for Kendal (Junction 36) and southbound visitors tend to

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<sup>314</sup> 1417/W1

<sup>315</sup> [www.dti.gov.uk/renewables](http://www.dti.gov.uk/renewables) - Wind power: 10 myths explained

leave at Penrith (Junction 40). Any views that might be obtained would be at a distance of 10 - 15 kilometres.<sup>316</sup> The Whinash ridge was not a significant beauty spot and was not well used; but new surfaced tracks would make access easier. The foot and mouth outbreak had caused an understandable drop in visitor numbers in 2001 but there was no such correlation in relation to wind farms built during the last 13 years. **Marianne Bennett** pointed to the overwhelming positive response to wind turbines in a study commissioned by the Friends of the Lake District.<sup>317</sup> **Anita Stirzaker** saw an opportunity to attract tourists to this area and to take some of the pressure off the National Park – ‘turbine walks’ might become popular; and **Ronald Stirzaker** saw no reason why turbines should deter visitors.

- 8.14 By contrast, **Sir Christopher Audland** contended that the proposal would have a major impact on tourism, which provides 27% of all employment in Cumbria, as tourists visit the area for its natural beauty, peace, quiet, access to unspoilt places and opportunities for outdoor recreation. **Sir Donald Miller** expressed the view that the development would also be in the wrong place as the Lakeland hills are a unique attraction and major asset in the tourist industry. **John Mander** suggested that tourists would be put off by seeing monolithic structures from the railway and motorway.
- 8.15 **Dr Kaye Little**, from the Cefn Croes Action Group, explained that the construction of Cefn Croes Wind Farm had resulted in the closure or obstruction of footpaths, bridleways and other rights of way and the site had effectively become a no go area during construction due to the dangers of large machinery and deep excavations. Once operational the turbines had made the area unpleasant with adverse effects on horses:- one bridleway had become unusable as it was no more than 10 metres from a turbine.

## Noise Impact

- 8.16 **Sir Donald Miller** criticised the Applicant's approach to noise and its reliance on *ETSU-R-97*, as this report had been prepared at a time when there was little operating experience of wind turbines and it was intended for review within two years of publication.<sup>318</sup> Specifically, noise measurements had been taken in two of the wettest months on record, with becks in full flow dominating background noise. Extracting the lowest 10% of readings was arbitrary and no comfort could be drawn from the Applicant's claimed verification by comparing the results to readings taken from a ‘similar’ location in mid-Wales. Acknowledging that he had not undertaken any site specific assessment, Sir Donald sought to demonstrate (by reference to *Figure 10 in ETSU-R-97*) that background noise in summer months would be less than claimed by the Applicant.<sup>319</sup>
- 8.17 Moreover, the Applicant's assessment took no account of the effects of stable night time atmospheric conditions, which could increase impulsive noise levels by as much as 18dB above those predicted. Extensive reference to technical papers was made to support this proposition and to illustrate the degree of annoyance experienced by people living nearby. Added to this, the problem could be compounded by greater wind speeds at nacelle height (70 metres) compared to those recorded by the anemometer

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<sup>316</sup> FOE-SL/1/2 (Appendix 2)

<sup>317</sup> CD61 A Study into the Attitude of Visitors, Tourists and Tourism Organisations towards Wind Farms on the Boundaries of the Lake District National Park

<sup>318</sup> CD111 ETSU-R-97 : The Assessment and Rating of Noise from Wind Farms

<sup>319</sup> SDM/1/2(Add) (paragraphs 1 - 2)

(25 metres). The outcome would inevitably be serious noise intrusion for neighbouring residents.<sup>320</sup>

- 8.18 **Sir Donald** also referred to a wind farm at Ardrossan in Ayrshire where he had found noise around 1 kilometre down wind to be very considerable. He was content to rely on his own hearing to judge that it was annoying without any reference to background levels or to the noise limits imposed by the planning permission. He also sought to argue that one Scottish Local Planning Authority's Wind Energy Guidelines discouraged turbines where houses were within 20 times the height to the blade tip.<sup>321</sup>
- 8.19 **David Brierley**, a member of the Marton, Askam and Ireleth Wind Farm Action Group, outlined longstanding noise problems associated with the Askam-in-Furness Wind Farm. Attempts by the Council to secure control and mitigation had been unsuccessful and court action instigated by local residents had failed. Others should be aware of the problem, which could occur anywhere, and the ineffectiveness of planning conditions. **Dr Karl Hallam**, formerly working as a General Practitioner in Tebay for 27 years, knew of research in other countries about low frequency noise but the effects on health were largely anecdotal – if the medical world did not know enough about such impacts then no-one else could assess them. Site specifically, **Mrs Felicity Lawler**, of Dyke Farm, Greenholme expressed concern about noise and strobic effects.

### The Effect on Nature Conservation and Fauna

- 8.20 **Marianne Bennett** thought it significant that the Royal Society for the Protection of Birds had not opposed the proposal. Scientists had noted that moorland birds are breeding earlier leading to problems of food supply and particular threats to the golden plover, greenshank and red grouse. Blanket bog within the site has degraded and there would be an opportunity to secure improvements. **Jill Perry** also welcomed the commitment to improve the blanket bog, bringing benefits to flora and fauna, and urged farmers to co-operate by reducing sheep grazing.
- 8.21 **Dr Kaye Little** presented an eye-witness visual presentation of construction works at Cefn Croes, a similar upland moorland site. Site preparation had been a major civil engineering project, involving huge machinery pushing swathes through the site – it was inconceivable that the careful cutting and stacking of peat turfs would occur at Whinash. Foundation pits became flooded, necessitating pumping out, and concrete lorries dripped concrete around the site. Cable and parallel drainage trenches added to ground disturbance. Subsequent site restoration, still incomplete, had been a sad attempt to replace lost vegetation.
- 8.22 **Colin Simms**, an independent naturalist who had studied the area since 1960, told of his concerns about the impact on birds, many of which favoured open spaces, without man-made influence. **David Natrass**, referred to increasing evidence about bird mortality.

### The Effect on Hydrology, Hydrogeology and Water Supplies

- 8.23 **David Natrass** doubted the developer's ability to improve blanket bog within the site. The experience at Cefn Croes provided stark evidence of despoliation. There, none of the monitoring authorities had appreciated the ongoing damage to the hydrology of the site; straw bales had proved ineffective in protecting watercourses, peat was allowed to

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<sup>320</sup> SDM/1/1 (paragraphs D1 - D11); SDM/1/2(Add) (paragraphs 3 - 7; Appendices C - D); SDM/03

<sup>321</sup> SDM/1/2(Add) (Appendix E) – **Inspector's note:** The guideline (Visual Impact) is not relevant to noise

dry out and, after heavy rain, liquid mud flowed to water courses. Consultants had, belatedly, been appointed to advise on restoration works, but the damage was largely irreversible. The construction of Ovenden Moor Wind Farm had resulted in some areas of peat drying out and others becoming over-saturated with knock-on effects on the ecology of the site. Erosion here could damage fisheries and local water supplies. **Raymond Clark** thought it inevitable that silt pollution would arise and affect salmon and trout breeding grounds. **Len Clark**, expressed similar concerns about damage to watercourses and fisheries.

- 8.24 **Mrs Felicity Lawler**, explained that the water supply to Dyke Farm, Greenholme originated on Roundthwaite Common and expressed concern that the project would affect both its quality and quantity and also the watercourses running across the land.

## Other Matters

- 8.25 **Jill Perry** considered that the proposal would benefit the local economy as 183 firms capable of serving the wind industry are located in the North West, with 50 of these in Cumbria.<sup>322</sup> The establishment of a Community Wind Farm Trust to support the local *Agenda 21 Strategy* was also to be welcomed.
- 8.26 **Jill Perry**, supported by **Ronald Stirzaker**, criticised the exaggerations and inaccuracies used by opponents in their display at Tebay services and the manner in which the public might have been swayed. She knew of nothing to support claims that drivers would be distracted; a survey of Chartered Surveyors had shown that any effects on house prices had been temporary; and there was no question of precedent as any new scheme would have to be looked at in the context of cumulative impact.<sup>323</sup>
- 8.27 **Dr Karl Hallam** portrayed the local community as 'uncomplaining'. However, residents felt a sense of impotence in reacting to the proposal and a sense of anxiety and resentment to a project that would devalue their homes and replace an outlook over the reassuring beauty of wild fells with giant turbines. **David Natrass** expressed concerns about traffic safety and the possibility of drivers being distracted by the movement of the blades, particularly when compounded by light flicker.
- 8.28 **Dr Kaye Little** reminded everyone that concrete production and associated manufacturing, construction and transport operations released large amounts of carbon dioxide and challenged the claim that the energy pay-back for a wind turbine was about six months. The local community should also anticipate damage and alterations to local roads, damage to buildings, traffic chaos and delays.
- 8.29 **Alun Lewis** presented a 'walker's perspective' telling of the beauty and tranquillity of Bretherdale and Borrowdale valleys and his concerns about the detrimental effect on the beauty and charm of the area and on its image and brand. **Mrs Felicity Lawler** spoke of trepidation in carrying out plans to alter Dyke Farm due to the effect on house prices.

## Planning Conditions

- 8.30 **Sir Christopher Audland** suggested that consideration should be given to the colour of the turbines; the deposit of a bond for decommissioning and restoration work; and the publication of monthly reports on electricity output. **Dr Kaye Little** drew attention to the impact of the substation at Cefn Croes, and its floodlighting in an area of previous

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<sup>322</sup> FOE-SL/1/2 (A) (Appendix 2)

<sup>323</sup> FOE-SL/1/2 (A) (Appendix 3)



darkness; and the clutter of overhead cabling to provide grid connection. The authorities should be aware that the contractors at Cefn Croes set up an unauthorised concrete production plant, illegally extracted water and washed lorries on site. Vigilant monitoring of the conditions and the provisions of the Obligation would be essential.

## Written Representations

### *Joint Statement by English Nature and the Environment Agency*

- 9.1 The two bodies jointly confirm that they have no objections in principle to the proposal, subject to the imposition of appropriately worded planning conditions and the signing of a Planning Obligation to ensure future management of the site and its surroundings. It records disagreement with the Applicant's assessment that *'the majority of the area is of little interest in nature conservation terms'* which *'causes us concern because it calls into question how they would assess environmental quality that should be given protection through mitigation measures.'* In this regard the northern half of the site might well meet criteria justifying its informal notification as a Site of Wildlife Interest by Cumbria Wildlife Trust and of county significance to nature conservation. The common land within the site also supports blanket bog; albeit degraded but capable of improvement by restoring a more natural hydrology and by reducing grazing.
- 9.2 *Figure 50 in the Supplementary Environmental Information Volume 2* is accepted as providing a reasonable representation of the extent of the nature conservation habitats which are considered to be of more than local value and that some land can be considered as active bog worthy of protection.<sup>324</sup> Although there are criticisms of the survey of fauna and vegetation categorisation, it has been possible to identify areas of priority importance either by reason of nature conservation habitat priority and/or because of its significance to the catchment environment.<sup>325</sup>
- 9.3 Within the site, blanket bog is the only European Union Priority Habitat; and whiteclaw crayfish and Atlantic salmon are two European species that might be affected by the development if there were harmful effects on the catchments of Birk Beck and Bretherdale Beck. A large part of the site contains inactive blanket bog but this could become active through appropriate management such as grip (ditch) blocking and modification of the grazing regime across the entire site.<sup>326</sup> Watercourses on the site are of high water quality and support both economically and environmentally important fisheries.
- 9.4 The construction of turbine bases will involve disturbance to local hydrology with potential for significant risk to bog and flush communities and to water quality in upper stream catchments. Also some bases are shown to be sited on blanket bog leading to a direct loss of habitat. In view of the sensitive nature of the site it is recommended that:-
- micro-siting of turbine positions should be allowed at least 30 metres from the positions shown on the application plans to limit the loss and/or damage to blanket bog;
  - an ecological site manager should be employed on site to be responsible for the implementation of a method statement for the authorised construction and dismantling of the turbines;

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<sup>324</sup> CD4 Supplementary Environmental Information Volume 2 (Figure 50)

<sup>325</sup> 1248/W1 & 1249/W1 (Appendix EN/EA 1: Map 1)

<sup>326</sup> 1248/W1 & 1249/W1 (Appendix EN/EA9 – Condition 8)

- decisions concerning micro-siting should be undertaken on site in association with the vegetation maps and with measurements of peat depth;
  - micro-siting of turbines 1 and 3 and associated tracks and cable trenches should be stipulated to avoid risk to bog pools in the vicinity. As a survey undertaken by the Agency shows turbine 1 to be located in an area of deep peat (in excess of 50 centimetres deep) in Area 2, it should either be omitted or located outside the area. With proper management this area could make a significant contribution to targets for blanket bog restoration to favourable condition;<sup>327</sup>
  - the access track and cabling trenches in Area 5, which is considered to be the most important area of active blanket bog within the site, should be located alongside the wall to avoid potential hydrological and ecological damage;
  - the profile and drainage arrangements of the substation and temporary storage compound will require integration with a revised track line in order to avoid erosion and/or changes to water quality or water surge events affecting stream headwaters;
  - planning conditions be imposed requiring effective site management to prevent changes to water quality/quantity which might result in damage to the ecology of the becks as the most significant risks of ecological damage are likely to arise from the construction of lengthy access tracks, adjacent cable trenches and drainage ditches. Excavation and stockpiling of soils and peat will have a huge potential to result in concentrated or diffuse silt pollution and bog slippage;
  - the use of floating roads in all but the shallowest areas of peat, subject to agreement on the type and size of hardcore to avoid changes in water quality or chemistry;
  - micro-siting of specified access tracks/cable trenches, with a minimum 30 metre tolerance of mapped positions;<sup>328</sup>
  - a planning condition requiring the ecological site manager to agree the detail of the proposed works with the planning authority at various stages of construction;
  - a Planning Obligation be entered into relating to the management of the Shap Fells and Birkbeck Common Site of Special Scientific Interest.
- 9.5 In a subsequent letter, commenting on the draft conditions prepared by the Local Authorities, the two organisations indicate that they are content for the Inspector to recommend whether conditions 2 and 7, relating to the restoration of unfavourable bog and the appointment of a full time environmental site manager (in addition to the appointment of an environmental officer provided for in the Planning Obligation) should be replaced or supplemented by a Planning Obligation. They also note the issues raised about planning conditions at Cefn Croes but consider their suggested conditions to be comprehensive and to be framed such that they allow the building in of any necessary additional detail in proposed schemes of management.<sup>329</sup>

#### ***Other Written Statements***

- 9.6 A number of local residents and interested groups have submitted written statements, most of which contain similar points made by those appearing at the Inquiry. Of those in support, ***Greenpeace*** sets out the grave and present dangers of climate change; indicates that onshore wind energy is the most cost-effective and immediate technology;

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<sup>327</sup> CD4 Supplementary Environmental Information Volume 2 (Tables 45 & 50)

1248/W1 & 1249/W1 (Appendix EN/EA 1 & 7)

<sup>328</sup> 1248/W1 & 1249/W1 (Appendix EN/EA 1 – map)

<sup>329</sup> 1248/W1 & 1249/W1 (Appendix EN/EA 9); 1249/W2

- and concludes that the visual impact of this proposal is not a sufficient reason to refuse permission.
- 9.7 **Renewables Northwest**, set up in 2002 to promote renewable energy in the North West, explains the importance of Whinash in the context of sub-regional/Government targets; and points to the location of the site being outside the National Park where such schemes should be supported. **EnviroLink Northwest**, which is tasked with stimulating economic development opportunities in the region from the renewable energy industry, identifies Whinash as being crucial to companies based in the region with strong potential to supply parts, components and services for the wind industry.
- 9.8 **Friends Against Contaminated Environments** supports this renewable energy project as a poignant response to the nightmare threat of nuclear power. More specifically, it recognises the lack of landscape designation covering Whinash, its capacity to absorb a large wind farm, proximity to the national grid and excellent road access. It also refers to general and specific support for wind energy; and benefits to tourism and economic activity. **Baywind Energy Co-operative Limited**, owners and operators of a small wind farm near Ulveston, is keen to enable other communities to become stake-holders in wind energy developments.
- 9.9 **Scientists for Global Responsibility**, a United Kingdom based organisation whose aim is 'to promote ethical science and technology', points to the scientific consensus and undeniable threat of climate change and the need for urgent action. It recognises wind as the main resource in what is a faltering response; it criticises those who oppose subsidies for the industry; and points to the obstacles in adopting other energy efficiency measures and the risks associated with nuclear power. Whinash has already been marred by the impact of human activity and the development will bring related ecological benefits. Refusal would undermine future wind energy developments across the United Kingdom and jeopardise the achievement of targets for reducing greenhouse gas emissions.
- 9.10 **Ms J Glover**, a resident of Kendal, explains that the 'environmental' cost of wind power is the effect on the landscape; although some people do not like turbines the cost is far less than fossil sources of electricity generation. Other renewable technologies are likely to come to the fore in due course, at which time wind turbines could be removed leaving not a sign that they were once there. Wind power currently offers the best prospect of tackling climate change and a small price for our electricity. Finally, **M L Tahernia** adds support to the need to take action to avert climate change.
- 9.11 Opposing the project, **Miss P Baseley** is concerned that the turbines will dominate the skyline and obliterate stunning countryside; house prices will fall; and, like Lambrigg, turbines will frequently stand idle. **David Fallowfield** opines that the project has more to do with politics than with energy production and the landscape should not be sacrificed.
- 9.12 **Dave Major** writes of his feeling of devastation – his walks will be overshadowed, views dominated and sunsets ruined. He asks why other ways of saving energy are ignored and points to concerns about noise, light flicker, property values and the effects on the fragile surface of Whinash. **Judith McKendrey** questions the impact on the peat bog; the effectiveness of floating roads and re-seeding; adequacy of probing samples and the need to defer decisions to circumstances found on site as work proceeds; the reality of adequate monitoring; and the consequences of run-off and possible land-slips.

- 9.13 **M J Mullett** sets out in some detail his views that turbines are a folly of energy policy resulting in the industrialisation of large areas of countryside; this proposal will dominate the surrounding landscape and damage the tourist industry; there is a need for detailed research into the effects on birds; despite reassurances, there is ongoing concern about health effects of low frequency noise; increased hard surfaces will contribute to future flooding; construction will cause damage to peat and soil structures; and the wide spaces between the turbines will leave scope for more to be built.
- 9.14 **Mrs V H Spragg**, a resident of Roundthwaite, is concerned about sunsets being marred by rotating blades; noise being echoed by the valley sides; and the protection of the water supply. **Michael Moss** adds his concerns about visual impact and pollution created in developing the scheme; and **John Walton** expresses the view that profit and greed should not decimate the northern fells of Cumbria. **William Lawler**, Dyke Farm, Greenholme, questions the effects on water supplies, ecology and bridleways.
- 9.15 **Hugh Duff**, who changed from an appearance at the Inquiry to written representations, tells why he loves the hills and fells of Cumbria – for their solitude; views of sky and hills; uninterrupted views of the Pennines, the Howgills and Lakeland hills; and the complete absence of man-made objects. The proposal will spoil what he holds dear.
- 9.16 **Mr B Moon and Miss G Haythornthwaite**, who live about 500 metres from the wind farm at Askam-in-Furness, explain that they experienced noise nuisance from the outset of operation. Although a noise reduction management system was installed after several years of complaints, it has not, contrary to what the Applicant says, eliminated all noise nuisance and the need to complain; and the noise emanates from a broad spread (58%) of the compass.
- 9.17 In his ‘statement of case’ **Colin Pickthall MP** says that he does not oppose wind farms in principle but he has strong feelings about locating them in upland areas of great natural beauty. He has been active in pursuing the current case to extend the Lake District National Park and is concerned that approval of the wind farm would preclude designation. The proposal would be intrusive in the landscape and would impact on flora and fauna. He also sees growing evidence of locating wind farms offshore and in lowland, coastal and brownfield areas.
- 9.18 **The National Trust** is concerned about the scale and the potential visual impacts of the proposal which would be clearly visible from within the adjacent National Parks – the accepted renewable energy benefits would be outweighed by these adverse effects. The **Chair to the Governing Body of Tebay Community Primary School** points to the uninterrupted views that the school will have of the wind farm; the possible health implications of low-level noise; potential distraction caused by shadow flicker; disruption to the school’s broadband connection caused by electro-magnetic interference; and the likely impact on the school roll if families move out of the area in response to the development.

#### **Other Written Representations**

- 9.19 Before and during the Inquiry a total of 1,226 personally sent and signed **letters of support** were submitted. In addition, amongst the standard proforma objections presented by NWW, some 343 ‘spoilt’ forms were found containing comments in support, taking the total to 1569.<sup>330</sup> Duplication of returns was found to be minimal.

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<sup>330</sup> X/22

- 9.20 Support was based on the need for wind power and other forms of renewable energy to cut down on harmful emissions and to save the planet from global warming; nuclear was not an option. Some considered that all parts of the country should make a contribution and that wind turbines were aesthetically pleasing; claims about the need for back-up supplies were disputed; and the visual impact of Whinash on an already man-made affected landscape had been exaggerated.
- 9.21 Similarly, before and during the inquiry a total of 1,454 personally sent and signed **letters of objection** were submitted.<sup>331</sup> A further 3,055 individually signed standard pro-forma objection letters, 562 standard objection postcards, and petition-style objection forms containing 690 signatures were also submitted. Shortly before the close of the Inquiry the total number of objections stood at 5,761. However, on day 23 of the Inquiry, NWW presented four boxes of further representations containing 11,594 objections in the form of standard pro-forma letters or postcards which took the total to 17,355 objections (excluding 'spoilt' proforma). There is some evidence of duplicates amongst the pro-forma returns which, by sample, amounted to approximately 5%. This would have the effect of reducing the total number of objections to around 16,500.<sup>332</sup>
- 9.22 By far the greatest number of objections related to the unacceptable impact of the Whinash proposal on the appearance, appreciation and enjoyment of the landscape and its effect on two National parks. Much was made of the inefficiencies of wind power; subsidies; and the need for back-up supplies. A considerable proportion of objectors were critical of Government energy policy and pointed to alternative sources of generation (fossil fuels, nuclear, tidal and wave power) and some sought an accent on energy saving and research. Some preferred to see wind farms sited offshore and others had noted that some countries were abandoning wind power. Concerns were also expressed about localised effects in terms of the impact on the local economy and local people; noise; property prices; wildlife, ecology and watercourses; and road safety.

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<sup>331</sup> X/20(a) & X/20(b)

<sup>332</sup> X/21(a) – X/21(d)

## C: THE SECTION 194 APPLICATION

### The Case for Chalmerston Wind Power Limited

- 10.1 The Section 194 case should be read with that of the Section 36 application in relation to Commoners, private interests, recreation and rights of way. The Applicant's *Report on Common Land Issues* is also an integral part of the case.<sup>333</sup> The report lies before the Inquiry substantially unchallenged by Objectors, other than Mr Byrne on behalf of the Open Spaces Society. His various documents are essentially legal submissions, containing little in the way of evidence as such, which are addressed fully in the Applicant's *Outline Legal Submissions*.<sup>334</sup> Put shortly, his points are wrong and misconceived in all respects.
- 10.2 It should be noted that, in determining an application under Section 194 of the Law of Property Act 1925, with reference to Section 7 of the Commons Act 1876:-
- the Secretary of State has a wide discretion in deciding whether to grant consent, which is framed as (among other things) a requirement to consider *the expediency of the application*,<sup>335</sup>
  - the Secretary of State must take into consideration whether such application will be for the benefit of the neighbourhood, such benefit being both the status quo, and in weighing the question of expediency, future benefit;
  - other considerations may be relevant in weighing the expediency of the application; and
  - there is nothing in the 1925 Act which limits, expressly or impliedly, the size of development or works which might benefit from consent under Section 194.<sup>336</sup>
- 10.3 In terms of Mr Byrne's submissions, none of them arises (or can arise) from a proper construction of Section 194 of the 1925 Act, and the related provisions in the 1876 Act, because in construing statutory provisions one must seek to give those provisions their plain meaning. By contrast, Mr Byrne's interpretation of the legislation is based on his purposive 'interpretation' of what they ought (in his view) to mean. For example, he took the view that a number of criteria by which the acceptability of a Section 194 application must be adjudged are '..... *derived as a matter of principle from the values that are embedded in the concept of regulation*'.<sup>337</sup> He also contended that the omission of the word 'expediency' from a number of recent decision letters was part of the '*Plain English Campaign*'; but such an approach is, as a matter of law, impermissible.
- 10.4 In addressing the first of those points, it would appear from Mr Byrne's submissions that one must have regard to (i) the scale of the proposed development (that scale being, by logical necessity, relative to the size or area of the parcel of land involved) or, alternatively, that the works must involve an '*extremely small area of land*'; and (ii) whether the works are necessary in the public interest, or not.
- 10.5 In this particular case, the proposed development would occupy a very small part of the application site and the commons as a whole; the generation of renewable energy is

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<sup>333</sup> CWP/0/1.

<sup>334</sup> CWP/046 (paragraphs 34 - 41, 45 & 46)

<sup>335</sup> Section 7 of the Commons Act 1876.

<sup>336</sup> CWP/0/46 (paragraphs 34 - 41; NB paragraphs 35 & 38)

<sup>337</sup> OSS/0/2 (paragraph 2.12)

necessary in the public interest; and it would deliver international, national and local benefits. In terms of the benefit to the neighbourhood various matters should be noted:-

- until 30 May 2005 the public's right of access to part only of the application site was a limited, revocable right granted pursuant to Section 193 of the 1925 Act;
- few people live close to the site, whereas there are numerous areas of 'open country', and registered common land, within 30 kilometres;<sup>338</sup>
- there is no evidence that the site is subject to significant levels of use for recreation;
- it is agreed with the Local Authorities that the proposed development will not undermine their strategy to promote public access to the countryside;
- Objectors have made little or no attempt to distinguish *de facto* from lawful access and thus the assertion of the quantum of access to any particular area must be caveated to that extent. Mere trespass is irrelevant for present purposes.

- 10.6 A similar issue, in factual terms, arose at Scout Moor where, in relation to more extensive rights under Section 193, the Inspector concluded that the proposed 26 x 100 metre (blade tip) turbines and associated works '*..... will not be a significant stumbling block to the continuing access of the public to Scout and Knowl Moors, although it would be a different recreational experience for many*'.<sup>339</sup> The position can be no different in this case. The extent of land take will be minimal in the context of the entire application site, and the right of access over the site will in effect be unaffected. Whilst for those who profess a dislike of wind turbines the recreational experience will be a different one, there are equally those who find wind turbines a positive feature, and for them the experience will remain the same or may even be enhanced. One must not underestimate the potential iconic appeal of the turbines.
- 10.7 It can be seen, therefore, that the present '*benefit of the neighbourhood*' from the common land will be little affected, if at all. Other decisions, specific to wind farms, support the Applicant's case that on any fair approach any impact of turbines on access is '*de minimis*'.<sup>340</sup> At the same time the development carries with it positive future benefits; if climate change is left unrestrained, upland fells such as these will continue to experience detrimental effects through less beneficial rainfall patterns, drying out and erosion. The provision of renewable energy must in those terms be of benefit to the neighbourhood, and those who seek to use the commons. These matters can appropriately be weighed in judging the expediency of granting consent.
- 10.8 As regards the Countryside Agency there is no evidence of its objection having been authorised by the Board, or indeed the necessary delegation authority to an officer. The only conclusion is that there is no lawfully authorised objection or representation by the Agency on this issue.
- 10.9 The proposal will result in a fractional loss of grazing land (9 hectares - approximately 1.14% of the available common land), in terms of the land occupied by the turbines, substation and access tracks, but this would not result in any material effect on the Commoners, and on their rights of common. Livestock will continue to graze up to the turbine bases, often using the columns as shelter, and it is not unusual to see livestock

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<sup>338</sup> EDC/2/3 (Appendix A - JK07)

<sup>339</sup> X/15 Scout Moor Wind Farm: Inspector's Report (paragraph 290)

<sup>340</sup> Report on Common Land Issues (Appendix 5: Kirkby Moor decision (paragraph 12) & Inspector's Report (paragraph 18.3))

lying on stone tracks particularly in wet, cold weather.<sup>341</sup> The Commoners themselves do not make any objection to the proposed development on the basis of any physical interference with the exercise of their grazing rights; and there is nothing to reinforce the assertion that the normal behaviour of hefted sheep could be affected by the laying of new tracks.

- 10.10 The Applicant has reached an agreement with the Commoner holding rights over Bretherdale Bank (CL108), for the purposes of restoration of the active bog habitats within that area (and CL8, for the purposes of enhancement of the Shap and Birkbeck Fells Site of Special Scientific Interest, outside the application site), so that, where necessary, livestock grazing can be limited.<sup>342</sup> Grazing rights will not be limited elsewhere on the site, as feared by some Commoners. As regards decommissioning, the Applicant's position is set out in the *Outline Legal Submissions*:- it is clear beyond doubt that the Commoners could not be liable for decommissioning the wind farm at the end of its life.<sup>343</sup>
- 10.11 In terms of **private interests**, a letter submitted with the application under Section 194 confirms that the landowner, the Lowther Estate, has no objection. A written claim by Viscount Lowther to ownership of the site is unsubstantiated.<sup>344</sup> Any grant of consent cannot of itself prejudice such hypothetical private interest; indeed a material benefit would accrue as the value of the land would be enhanced. Whether any relevant private interest is then in a position to prevent any consent being acted upon is a wholly different, and irrelevant, matter.

## The Case for the Countryside Agency

- 11.1 The Agency has a statutory duty in relation to securing access to the countryside for the purposes of recreation.<sup>345</sup> Commons represent a special category of access land which should be protected because of the special features and characteristics for which they are valued.<sup>346</sup> The Government has given an undertaking '*to provide for the protection of all commons for the benefit of future generations*'; and it has been recognised that '*in recent years common land has increasingly become valued for its natural character, its landscape features, the open spaces and recreation opportunities it provides .....*'.<sup>347</sup> In reaching a decision on the Section 194 application the Secretary of State should have regard to whether the works would be expedient, having regard to the benefit of the neighbourhood and to private interests held in the commons.
- 11.2 The application site is of considerable benefit to the neighbourhood, particularly to those who live near to, or within sight of, the land as well as those who visit it. The part of the common subject to Section 193 access rights is available, and used, for enjoyment by local people as a public open space and as a recreational resource. Such benefits would be diminished by the loss of land to development, visual impact, noise and interference to views into and out of the site. The resultant adverse effects on the character and appearance of the land, and its recreational value, would impinge on the quality of life for those who live in the neighbourhood.

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<sup>341</sup> CWP/0/47 (page 90)

<sup>342</sup> X8(3) Section 106 Obligation

<sup>343</sup> CWP/0/46 Outline Legal submissions on behalf of the Applicant (paragraphs 45 & 46)

<sup>344</sup> 1452/W1

<sup>345</sup> Countryside Act 1968 (Section 2(2)(c))

<sup>346</sup> OSS/1/8 (paragraph 2)

<sup>347</sup> OSS/1/8 (Foreward)



- 11.3 The two factors referred to in the legislation – benefit of the neighbourhood and private interests – are the primary factors to which the Secretary of State should have regard. These two considerations should be given priority in the decision-making process, above any wider reasons why it might be expedient to permit the works. The Agency considers that consent under Section 194 should be refused.
- 11.4 Finally, for the avoidance of doubt, the Agency's appearance at the Inquiry and its position on common land matters was properly authorised by the Countryside Agency's Board.<sup>348</sup>

## **The Case for the Friends of Bretherdale**

- 12.1 The Friends of the Lake District own High Borrowdale Farm (Grid ref: 574 024), which comprises some 44 hectares of land to the south of the application site; there are limited grazing rights on Roundthwaite Common (CL41); and substantial funds have been spent to significantly enhance the special qualities of Borrowdale and its enjoyment by the public.
- 12.2 In terms of Section 193 of the Law of Property Act 1925, Roundthwaite Common is the subject of a Deed of Declaration which provides a public right of access for air and exercise. The other two commons gained the right of access for people on foot from 28 May 2005. Established and newly acquired rights would be adversely affected by the impact of the proposal on the special qualities of the landscape and its potential for designation as a National Park for the reasons set out in the Section 36 case. The Friends also have concerns about the reaction of ponies to turbines and impacts, albeit small in relation to the total area of the commons, on their limited grazing rights.
- 12.3 Section 194 applies to access in its widest sense; and the 'Minister' is required to consider the development in the context of its benefit of the neighbourhood as well as to the private interests in the land. The volume of local opposition is testimony to the significant dis-benefits that would be caused to the neighbourhood; and the presence of the M6 to the east of the commons makes their value all the greater. Moreover, precedent decisions (e.g. a bungalow on a small area of Tebay Fell Common) show strong protection for commons and little weight can be given to the Applicant's claim that the development would occupy only a small fraction of the commons in question.<sup>349</sup> The proposal would have a massive physical presence and the creation of a wind farm landscape within the site would represent a psychological barrier to the sense of freedom and wildness.
- 12.4 It is evident that the Applicant has given scant regard to the cultural heritage of commons and there are outstanding matters about the nature and agreement with graziers in respect of compensation:- and the consent of the Commoners would be needed to achieve obvious mitigation measures in the southern half of the site. Overall, the claimed benefits are insignificant to over-ride statutory considerations.

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<sup>348</sup> CA/013; CWP/0/31 (paragraph 36f)

<sup>349</sup> FLD/3/1 Appendices

## The Case for The Open Spaces Society

- 13.1 The overarching objective of the law and policy on common land is to preserve commons for what they are and to maintain and enhance their underlying physical features and public access that is unique to commons. Commons enjoy special protection as a national reserve. The issues relevant to the Section 194 application must therefore be determined in the context of the law and policy on common land which, unlike planning policy, gives no special status to wind farm proposals. Notably, no mention of wind farms is made in either the *Government's Common Land Policy Statement 2002* or the *draft Commons Bill (November 2004)*. Indeed the former expressly sets out the Government's objectives 'to secure the future of common land and village greens [and] to protect the features and characteristics that make such land so valuable .....'.<sup>350</sup> The Applicant's approach of ignoring or denying the existence of the commons issues and subsuming them within the planning issues is fatally flawed.
- 13.2 Examination of a representative selection of permitted Section 194 cases shows a number of underlying criteria, which have been derived from the 1876 Act. In particular, applications involve small scale buildings or works relative to the area of the common; the area involved is peripheral to the common; and in all instances the taking of the land from the common must be in the public interest.<sup>351</sup> The Applicant's contention that there is nothing in the 1925 Act which limits, expressly or impliedly, the size of development or works which might benefit from consent under section 194 makes a nonsense of all the commons legislation subsequent to 1845.
- 13.3 The proposal includes the whole of Bretherdale Common and the greater part of both Bretherdale Bank and Roundthwaite Common. If approved, over 7 square kilometres of open and undeveloped common land would be converted into the factory floor of a wind farm. The bogus concept of the minimalist loss of land related to the footprint of each turbine must be ignored, as evidenced in the *Barningham High Moor* decision, because the impact of the development would be felt across the affected commons as a whole.<sup>352</sup> Accordingly it would fail the Section 194 criteria and the only legitimate means of proceeding to appropriate such a vast area for another use would be under the 1981 Acquisition of Land Act. It is of no comfort that the development would not be permanent as its very presence would destroy the valued characteristics of the commons which are protected by commons legislation.
- 13.4 The starting point of any judgement in the context of Section 194 is that the common land in question is to be protected as open, undeveloped spaces. The proposal fails that premise and the positive impacts of wind energy, claimed by the Applicant, are spurious. Indeed the *Companion Guide to PPS22* makes no reference to positive impacts in assessing the visual effects of wind turbines - on the contrary it assumes that their effects will be negative.
- 13.5 Public access is one of a group of principles and values that define the meaning of Section 194. Although access to part of the site has traditionally been on the acquiescence rather than the permission of landowners, this does not undermine its value and similar 'unlawful' access, in the case of *Barningham High Moor*, was held to be an important element of 'the

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<sup>350</sup> OSS/1/8 Defra Common Land Policy Statement July 2002 (paragraph 2)

OSS/1/11 Draft Commons Bill

<sup>351</sup> OSS/1/29

<sup>352</sup> OSS/1/17

*benefit of the neighbourhood*'.<sup>353</sup> In any event, rights of access to the entire site are now guaranteed by the Countryside and Rights of Way Act 2000 and access will continue to be recognised in the context of Section 194 as an intrinsic benefit to an area of land that enjoys special protection.

- 13.6 The decision maker in Section 194 applications has to consider whether it is '*appropriate*', rather than '*expedient*', that consent should be given having regard to the '*benefit of the neighbourhood*' as well as to the '*private interests*' in the common.<sup>354</sup> Here the conclusion must be that it would be inappropriate to destroy the commons as open spaces.

## The Case for the Commoners

- 14.1 ***Peter Graveson, Secretary, Roundthwaite and Bretherdale Commoners' Association***, explained that the Association itself did not have a view on the development. He set out a factual statement of the 'current' position which explained that discussions on option and disturbance agreements had stalled and there was little prospect of any agreement in the immediate future. Similarly, the Applicant had proved unwilling in providing a decommissioning bond to overcome the Commoners' concerns about any risk of liability for subsequent restoration of the site. There were also unresolved issues relating to the aspirations of English Nature and the Environment Agency to drastically reduce stocking levels despite earlier assurances from the Applicant that there were no proposals to reduce sheep grazing on Roundthwaite and Bretherdale Commons.
- 14.2 Correspondence from ***Judith McKendry*** expresses the view that the Commoners should not need to be involved in the decommissioning and that depositing a bond is the Applicant's responsibility. Of the nine conditions recommended by English Nature and the Environment Agency three directly concern the Commoners (nos. 2 – relating to the restoration of blanket bog; 8 – concerning the submission of an Environmental Management Plan; and 9 – requiring the establishment of a management group) which need to be resolved, as does the signing of a Section 106 agreement, before the development could go ahead.<sup>355</sup> Concern was also expressed as to whether the conditions could be met by deferring agreement on some matters to a later stage.
- 14.3 A letter from ***Alan Mawson***, Moor House, Orton, contends that his grazing rights would be affected and new hard surfaced tracks could affect the hefting of the local hill breed sheep. ***William Lawler***, Dyke Farm, Greenholme, foresees problems with grazing rights and refers, anecdotally, to sheep failing to thrive when grazing near turbines. Other letters also tell of lost grazing rights.
- 14.4 Written representations from others without any direct interest in the commons, including ***Orton and Ravenstonedale Parish Councils***, express concern about interference with the Commoners rights of grazing and consider that the development would not in any way be beneficial to the neighbourhood.

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<sup>353</sup> CD202 Bundle of Appeal Decisions (Tab 13 – Inspector's Report (paragraph 14.63))

<sup>354</sup> OSS/1/4 Application Form (Note 6)

<sup>355</sup> 1248/W1 & 1249/W1 (Appendix EN/EA 9)

## D: CONCLUSIONS AND RECOMMENDATIONS

### Introduction

- 15.1 The references in superscript brackets <sup>[x]</sup> are to the principal paragraphs in my report of the cases from where my conclusions are drawn.
- 15.2 My conclusions deal in turn with the Section 36 and the Section 194 applications to construct a wind turbine generating station at Whinash. I have grouped my conclusions to reflect the principal matters identified in the Statement of Matters.<sup>[1.11 – 1.12]</sup>
- 15.3 As is apparent from my reporting of the cases, some of these matters were given greater prominence than others and additional issues occupied the Inquiry, notably the Countryside Agency's proposals to extend the boundary of the Lake District National Park over the application site and a variety of local concerns which included the effect of the proposals on tourism.
- 15.4 FELLS, in particular, appeared at the Inquiry to present what it stressed to be '*a critique of*', as opposed to '*a challenge to*', Government energy policy. Such matters were referred to by others in evidence, written statements and in the many letters of representation.<sup>[6.1 – 6.18, 7.15, 7.28, 8.1 – 8.5, 9.6, 9.8 – 9.10, 9.13, 9.20, 9.22]</sup> While I heard a number of well-researched and technically competent presentations, such evidence is but a small part of a much larger on-going national debate about climate change and future energy supplies which is likely to draw on wider consultation and expertise. In this context, although it was amply demonstrated that there are those who do not support current Government policy, I consider that a Public Inquiry into a specific wind farm is not the appropriate forum to air these differences. As such very little weight should be given to what was, effectively, an outright challenge to current Government policy.<sup>[2.1, 3.1]</sup>
- 15.5 In arriving at my conclusions I have had regard to the *Environmental Statement* and the *Supplementary Environmental Information*.<sup>[1.5]</sup> During the Inquiries certain matters of law and human rights were raised which I have incorporated into the cases for the parties.<sup>[2.10, 2.30, 2.59 – 2.60, 2.66, 3.1, 3.4, 3.6 – 3.7, 4.3, 4.5, 5.38, 7.3, 7.27, 10.1 – 10.5, 13.1 – 13.6]</sup> Whilst these are matters for the respective Secretary's of State I have commented on them where appropriate.

### The Section 36 Electricity Act Application

#### The Policy Framework

- 15.6 The Secretary of State, in setting down the matters likely to be relevant, identified a number of planning policies which the development should be measured against.<sup>[1.11]</sup> In the light of the evidence given, it is apparent that a more limited number are directly relevant. It should also be noted that the *Cumbria and Lake District Joint Structure Plan 2001 - 2016 (Deposit Plan - May 2003)* has been superseded by the *Proposed Changes (June 2004) document*.<sup>[1.26]</sup> Although not referred to by the Secretary of State, the later *Partial Review of the Regional Spatial Strategy (draft)*, extant during the Inquiry, has since been withdrawn and is not relevant to my considerations.<sup>[1.25]</sup> On this basis I have confined my conclusions to the principal planning policies which have a direct bearing on the outcome of the Section 36 application.<sup>[1.27 – 1.29]</sup> I refer to these where they relate to the particular topics under consideration and in the overall Planning Balance; and I provide a final reference in my Summary Conclusions.

## The Justification for the Site

- 15.7 The justification for proposing the Whinash site for a wind farm development owes more to its site specific characteristics than to any form of comparative exercise. The search for a site in this area set a minimum wind resource and ruled out land within the National Park, as well as setting criteria in relation to a number of other matters.<sup>[2.9 – 2.10]</sup> Given the advice in national guidance, that the creation of buffer zones should be avoided and that local landscape and local nature conservation designations should not be used to frustrate proposals for renewable energy schemes, I find no reason why land immediately beyond the Park boundary should have been excluded during the first sieve of the area.<sup>[1.23 – 1.24]</sup> Similarly, the word of caution about the potential impact on designated areas of projects close to their boundaries was not a good enough reason to disqualify the site from the outset.<sup>[3.2]</sup>
- 15.8 There is no dispute that regard has to be given, in certain circumstances, to the possibility of alternative sites being available to accommodate a particular type of development, generally to secure necessary provision in the least damaging manner.<sup>[3.7]</sup> However, in determining the relevance of alternative sites, a preliminary point, as to whether National Park policies should apply to the development as a whole, needs to be resolved given that the major works would be outside the National Park boundary and only the grid connection would be within.<sup>[1.4, 1.13, 2.4]</sup>
- 15.9 To my mind, notwithstanding the tangible link between these two components, and that one would not exist without the other, each element is clearly distinguishable as a matter of fact and degree.<sup>[1.4, 1.13]</sup> In addition, there is no claim that the development proposed within the National Park would be harmful in its own right, or contrary to the objectives of designation.<sup>[2.4]</sup> On this basis, and taking account of the active proposals to designate the site, there is no basis to apply policies that apply exclusively to National Parks (or other nationally designated areas) to that part of the project that lies outside the current limits of the Lake District National Park. It follows that the requirement of *PPS7* to consider alternative sites for major developments in designated areas has no direct relevance to this proposal.<sup>[1.24]</sup> It is also notable that *PPS22*, which sets explicit tests for the consideration of renewable energy proposals in nationally designated areas, green belts, buffer zones and local designations, does not make any mention of alternative sites being a material consideration in the assessment of renewable energy projects.<sup>[2.4]</sup>
- 15.10 *Policy 54 of the Cumbria and Lake District Joint Structure Plan*, despite requiring development to be ‘carried out in such a manner as to cause the least practicable harm’, only dictates the consideration of alternative locations for major developments in National Parks and Areas of Outstanding National Beauty. However, *Policy ST4(3) of the Cumbria and Lake District Joint Structure Plan (Proposed Changes)*, which merits considerable weight, indicates that major development, anywhere within the Plan area, will only be permitted where alternative locations have been fully considered and rejected.<sup>[3.9]</sup> Whilst the specific policy for renewable energy projects outside the Lake District National Park (*Policy R44*) makes no mention of alternatives, categorization of a large wind farm as a ‘major development proposal’ re-engages *Policy ST4(3)*. Hence, this draft Policy makes relevant the consideration of alternative locations.<sup>[1.27]</sup> None have been identified or assessed by the Applicant.<sup>[2.9 – 2.10, 3.12, 7.2 – 7.3]</sup>

- 15.11 Seeking out alternative sites necessarily needs some geographical limits to give the exercise purpose and to avoid it becoming unduly onerous. As the *Cumbria and Lake District Joint Structure Plan (Proposed Changes)* imposes the obligation, it seems reasonable to adopt its administrative area as the area of search. On this basis, there is already detailed evidence, in the *AXIS Report*, of the likely potential for wind energy projects within Cumbria up to 2016. Although the area around Whinash is identified as an area of search, the study does not support a wind farm of this size and scale in this particular location, or anywhere else within the study area. Accordingly, the scheme falls to be assessed on merit without either the implied support of the *AXIS Report* or any claim to being the best, or least damaging, location arising from a further comparative assessment.<sup>[1.30, 3.13]</sup>

## Visual/Landscape Impact

- 15.12 The various landscape and visual impact assessments, generally, follow a methodical and widely recognised process which I have taken into account in coming to my overall conclusions on the broad impacts that the proposal would have.<sup>[2.15, 3.33 – 3.35, 4.10, 7.7]</sup>
- 15.13 In terms of landscape character, the upland open moorland of the application site reflects a much broader sweep of landscape type extending from within the Lake District National Park eastward across the Howgill Fells into the Yorkshire Dales National Park. There are undeniable differences in that the peaks to the west are often higher and more prominent and those to the east are rounded and rolling. However, the broad swathe of the application site, despite its own inherent differences, provides a clear and tangible link between these more distinguished and nationally recognised landscapes.<sup>[1.15, 1.18, 4.11 – 4.12, 5.8]</sup>
- 15.14 The landscape characteristics of the application site and its immediate surroundings, in comparison with the wider landscape character, tend to be less well defined, or in some instances absent.<sup>[2.16]</sup> There is no doubt in my mind, for example, that the site as a whole is not totally wild or remote but those elements are very apparent, for example, along the Whinash ridge and within Borrowdale, respectively.<sup>[5.8]</sup> It is also true that there is more evidence of the impact of human-kind, not least the presence of electricity pylons to the north and west and transport corridors, particularly to the east.<sup>[1.16]</sup> Nevertheless, these elements do not significantly undermine the characteristics of the site nor isolate it in any way from its much more extensive landscape setting.<sup>[3.15, 4.13, 4.32 – 4.33, 5.9]</sup>
- 15.15 The extent and openness of this landscape character type is reinforced by the high degree of inter-visibility from the higher parts of the site with the Lakeland and Pennine hills being clearly visible. From the direction of the Howgills and other fells to the east, the Whinash ridge provides an obvious, albeit lower, foreground to the Lake District; and views from the west extend over and beyond the ridge into a broad panorama of rolling fells.<sup>[1.15, 3.15, 3.29 – 3.31, 4.11 – 4.12, 4.15, 5.8, 7.11]</sup> It is also apparent that the landscape is cherished locally and, despite being generally unpretentious, the forefathers of the Lake District National Park and Yorkshire Dales National Park made recognition of its qualities.<sup>[3.23, 4.14, 4.29, 4.31, 7.8, 7.11, 7.22, 7.28, 8.10, 8.12, 8.29, 9.15]</sup> Wainwright, a celebrated writer of walks in and around the Lake District, pays similar testimony.<sup>[4.14]</sup> Overall, I perceive Whinash to be an integral component of a broad, predominantly empty, upland landscape which is highly sensitive to change.<sup>[4.17 – 4.21]</sup>

- 15.16 Although wind farms might be regarded as synonymous with wind-swept moorlands,<sup>[2.18]</sup> the erection of 27 turbines, each 115 metres high to blade tip, set predominantly along an extensive ridge, would result in a marked and dramatic change to the character of the landscape. Despite the efforts to follow the grain of the topography and the high degree of visual permeability,<sup>[2.22]</sup> the proposed turbines would be striking, vertical, man-made artefacts at a pivotal point in an expansive natural setting.<sup>[7.4, 7.6]</sup> Notwithstanding their inherent symbolism, I consider that the proposed wind turbines would appear at odds with the overall composition of the landscape.
- 15.17 Looking at landscape effects, the proposed turbines would appear massively out of scale with the host topography in that the height to blade tip would be about half that of the rise from valley floor to the ridge. This would be compounded by the effects of movement and the wide spread of the turbines atop a curving ridge some 6 kilometres in length. Although the Whinash ridge is a feature of local significance, in that the topography to the east and west is generally more remarkable and recognisable, the proposal would nonetheless result in a large scale adverse change to the landscape for the duration of the development.<sup>[3.30, 4.22, 5.10 – 5.12, 5.16 – 5.17, 7.4]</sup>
- 15.18 I do not subscribe to the view that the impacts of the principal components of the development should be regarded to be permanent as permission can operate for a finite period tied to subsequent restoration; but I do accept that a period of up to 25 years should be considered as long term.<sup>[2.22]</sup> Whilst proposals might come forward to extend the life of the site, thereby increasing the 'permanence' of the development, the continuing need for this form of renewable energy and its landscape impact would have to be weighed afresh. However, the formation and retention of the access tracks serving each turbine would bring significant permanent change through uncharacteristic formality and ease of access to what I see to be generally wild and untamed moorland.<sup>[5.10]</sup>
- 15.19 The main visual effects would be experienced from within the site where a large tract of moorland would be transformed into a wind farm landscape dominated by tall turbines.<sup>[3.16, 4.23]</sup> Generally open and uninterrupted views from within a radius of 5 - 7 kilometres, from the Howgill Fells, Orton Fells and the nearer Lake District fells would be fundamentally changed by a wide, or in some cases full, array of turbines spread over panoramic and interconnecting views. These effects would be particularly notable from the lower vantage of the Orton Fells, where the well-spaced turbines would stand aloft around the rim of a broad open concave landform; and from higher land, in the general direction of Harrop Pike, within the Lake District National Park, where the scale and extent of the turbines would provide a striking and damaging contrast with the natural landscape. Although I perceive the effects from the Yorkshire Dales National Park to be less significant, given the diminishing effects of distance and the backdrop of higher fells, I consider that the presence of a wind farm, of this scale and extent, would fail to conserve or enhance the natural beauty of both National Parks.<sup>[3.17 – 3.19, 3.23 – 3.26, 3.29 – 3.31, 4.24 – 4.27, 5.13, 5.16]</sup>
- 15.20 More localised visual effects would occur where near roadside turbines, on rising ground above the A6, would provide an immediate foreground presence in a south-bound direction from Shap, with a far greater impact than the electricity pylons on the other side of the road. In the opposite direction, in the vicinity of Huck's Bridge, turbines would tower above the dramatic rise in topography at the entrance to Borrowdale; and from within Borrowdale the turbines along the ridge would be an overbearing influence on the horizontal scale of the valley landscape.<sup>[3.16, 3.20 – 3.21, 5.15, 7.6]</sup>

- 15.21 The curving and dominant spread of turbines in foreground views from the lower southbound vantages of the M6 motorway and the railway, and the introduction of large scale discordant features into the open west facing views of properties in Tebay, would also be significant.<sup>[3.21, 5.14 – 5.15, 7.20, 9.18]</sup> Lesser, but nonetheless important, effects would be experienced by people moving around Greenholme and Bretherdale as different turbines, or small groups, come sequentially into view, sometimes with an element of surprise, above the immediate valley horizon.<sup>[3.22]</sup>
- 15.22 Although it is said that some 3,000 people live within sight of the proposed turbines, the area is by no means extensively or densely populated but, to my mind that does not lessen the significance of the likely effects on visual amenity. It is also notable that there are a number of recognised recreational viewpoints and published amenity routes which would be adversely affected by the proposed development.<sup>[3.18, 4.23, 5.26-5.28, 7.10]</sup>
- 15.23 The Countryside Agency's proposals to designate the site as part of the Lake District National Park are well advanced in that the Agency, after detailed assessment in the *Alison Farmer Report*, has resolved to proceed with designation. At face value that appears to be a factor of some considerable relevance given the Agency's statutory role in these matters.<sup>[4.1 – 4.2, 4.28, 4.36 – 4.38]</sup> However, understandably, the Agency intends to take stock of its position in the light of the Secretary of State's decision on this application. Any decision to proceed with designation would be subject to consultation and other statutory processes, the outcome of which could not be as certain as the Agency and others seem to imply, even if consent were to be withheld for the proposed wind farm. Such matters undoubtedly lessen the weight that should be attributed.<sup>[2.25]</sup>
- 15.24 In the event of consent being granted for the wind farm, the Agency would be faced with the dilemma of either abandoning its intent or proceeding on the basis of very changed circumstances and greater uncertainty in being able to fulfil the necessary tests for designation, notwithstanding the ability to remove the turbines in the fullness of time.<sup>[2.23 – 2.24]</sup> That would be likely to make designation less clear cut and to that extent the wind farm could materially weaken the process of designation and the anticipated related benefits of management and finance that would accrue. Nonetheless, any likely prejudice has to be considered in the context that, irrespective of the wind farm proposal, designation cannot be assumed to be a foregone conclusion.<sup>[2.26, 4.41]</sup>
- 15.25 There is a comparable on-going process in relation to the possible designation of the Lake District National Park as a World Heritage Site.<sup>[5.18 – 5.21]</sup> Inclusion on the Tentative List is a pointer to the special qualities of the area, but no specific additional controls arise. Similarly, there is no clear conclusion about boundaries and whether the site would form part of its immediate or wider setting. Although the turbines could influence future decisions I am not convinced that this is a factor of any significant weight.<sup>[2.33 – 2.34]</sup>
- 15.26 Irrespective of any weight that might be attributable to the proposed designations referred to above, I consider that the Whinash site is an important and integral part of a far reaching landscape which is highly sensitive to change. The proposed wind farm would stand out within this setting, with its incongruous impact on the landscape compounded by its general ridgeline position and the limited scale of the underlying topography. The effects would be far reaching with consequential damage to the natural beauty of the adjoining and nearby National Parks. Overall, I judge the environmental damage to be very serious.



15.27 Against this background, it can be seen that the adverse environmental impacts of the project would conflict with the aims of *PPS22* to minimise the impacts of wind generation and to achieve appropriate environmental safeguards.<sup>[1.23, 3.2]</sup> The proposal would, similarly, be at odds with the objectives of protecting valuable and sensitive landscapes set out in the *Regional Spatial Strategy (Policies ER2 and ER13)*.<sup>[1.27 - 1.28]</sup> There would also be fundamental inconsistency with landscape protection policies in the *Cumbria and Lake District Joint Structure Plan (Policies 2 & 12)*; the *Cumbria and Lake District Joint Structure Plan (Proposed Changes) (Policies ST11, E34, E36 & E37)*; the *Eden Local Plan (Policy NR2)*; and, the objectives of *Supplementary Planning Guidance: Wind Energy Development in Cumbria (Policies G1 and G2)*.<sup>[1.27 - 1.29]</sup>

### **The Impact on Recreation, Footpaths and Bridleways**

15.28 There is evidence that the site and its immediate area are valued for recreation; and recreational use is said to be growing.<sup>[5.27 - 5.28]</sup> However, given the findings of the County Council's access study, and my own observations on several occasions, the application site does not appear to be used by significant numbers of people.<sup>[2.35 - 2.36]</sup> But I can appreciate that those who do, seek it for its sense of openness, wildness, solitude and the extent of its far reaching panoramic views. To my mind, the order of formal tracks and the intrusion of turbines would destroy that experience, even for those who are generally not averse to wind turbines, and I am in no doubt that some would choose to walk elsewhere.<sup>[4.34]</sup>

15.29 The recreation experience of walking along Borrowdale (generally between the A6 and Low Borrowdale) would also undergo fundamental change as the seemingly timeless and tranquil aura of the valley would be lost by the continuing focus of turbines running along the ridge. In the wider landscape (for example from the nearer Lake District National Park fells, the Howgills and to a lesser extent the Yorkshire Dales National Park) the presence of the wind farm would weaken the undeniable impression of walking within a vast upland landscape, where the influence of humankind is very much a secondary element. This would undoubtedly harm the enjoyment of the special qualities of the area and run counter, so far as the National Parks are concerned, to the objectives of designation. Changes from long distance walks or cycle trails should not be ignored, although they are of less importance as the routes pass through changing and contrasting landscapes.<sup>[3.18, 3.24 - 3.26, 3.29 - 3.30, 4.15, 4.19, 4.23 - 4.34, 4.39, 5.15, 5.24 - 5.26, 5.28, 7.10]</sup>

15.30 It must be recognised that easier access, a clearly defined route and a regular surface, with the added interest of the turbines, would attract some people who would not currently venture on to the site; and it is not inconceivable that some might walk in the wider area to gain views of the turbines.<sup>[2.36, 8.13]</sup> However, the fundamental attributes of the site are its natural qualities which, in turn, provide a context for the enjoyment of a much wider landscape where wildness and openness are part of the recreation experience. Although the proposal would have no direct impacts on footpaths, and bridleways, I consider that the impact on recreation is a matter which should weigh heavily against the development.

### **Noise Impact**

15.31 The Applicant's site selection process sought at the outset to minimise potential noise impacts on residential properties by seeking a minimum separation of 600 metres from any dwelling.<sup>[2.9]</sup> Later noise measurements were taken in accordance with recognised guidance in *ETSU-R-97*, which is endorsed by the *Companion Guide to PPS22*. The

extraction of the lowest readings, rather than taking the overall average, seems to me to have been a sensible precaution, in the light of the heightened noise from fast flowing becks, especially as it has been validated by corroborative evidence from a similar survey and reference to *ETSU-R-97*. The absence of data for each residential property is not unusual, as the recognised methodology relies on a representative sample at locations where effects might be significant. Indeed, some locations were expressly avoided as their background noise climate (e.g. Bretherdale Foot) was known to be unusually high. The Applicant's approach and subsequent conclusions have not been challenged by the Local Authorities and no credible evidence was offered to undermine the baseline assessment of the noise environment.<sup>[2.38 – 2.39]</sup>

- 15.32 Predicted noise levels were also questioned, in the context of published research and the first hand experiences of residents living near the Askam-in-Furness Wind Farm which demonstrate that there can be circumstances which might materially distort the original noise assessment.<sup>[8.19, 9.16]</sup> However, the Whinash site is said to be wholly different, in terms of its topography, and reliable high level wind data is available to judge the likelihood of such conditions. In these circumstances I see no reason why subsequent noise levels should be materially higher than those predicted. In any event such matters can be controlled by planning conditions.<sup>[2.40]</sup>
- 15.33 In terms of the concerns about low frequency noise, or infrasound, I place great weight on the advice in the *Companion Guide to PPS22*, which concludes, following a comprehensive study by *ETSU*, that there is no evidence to suggest that low frequency noise from wind turbines is likely to be harmful to human health. I also believe, on the basis of the Applicant's evidence (and my own experiences of walking amongst wind turbines), that recreational users of the site and its immediate surroundings would not find noise from the turbine blades to be a significant factor.<sup>[2.41 – 2.42]</sup>

## **The Effect on Nature Conservation and Fauna**

- 15.34 Whinash, although not subject to any ecological designations, is nonetheless a sensitive site insofar as parts of it are covered by blanket bog. It is agreed that the northern part is the more sensitive in relation to its predominance of deeper peat and scope to re-create active blanket bog. It should also be remembered that the Cumbria Wildlife Trust is seeking to include this land within a new Cumbria Wildlife Site; and that English Nature considers that it might well meet the criteria for notification. With this in mind, working practices will need to minimise both the direct loss of peat and peat erosion and also to encourage the restoration of active blanket bog habitats.<sup>[2.46 – 2.47, 9.1 – 9.5]</sup>
- 15.35 In this regard the site tracks will, where possible, avoid deep peat and where this is not feasible 'floating tracks' will be laid on top of the peat. In addition, micro-siting of both the turbines and the tracks, within defined limits controlled by condition, would provide important flexibility to deviate from the intended position where anticipated potential impacts could be reduced from those already assessed. On this basis, if the project were to go ahead, I would favour variation by up to 50 metres to provide maximum flexibility. I am satisfied that this higher limit would not alter the nature of the development to any material degree.<sup>[2.46, 3.38]</sup>
- 15.36 The Local Authorities, English Nature and the Environment Agency are content with these safeguards save only for the concern of the latter two bodies about the siting of Turbine 1, in what they claim to be an area of deep peat. However, whilst this area is particularly sensitive, the Applicant's more extensive survey work shows considerable

variation in peat depths in this locality with relatively shallow peat coverage around this turbine. Against this background, and given the opportunity for micro-siting, I find no justification to recommend the omission of Turbine 1 or to specify relocation outside the area concerned, if consent is granted.<sup>[2.46, 9.4]</sup>

- 15.37 Credible mitigation measures to minimise adverse effects during the construction phase of the wind farm are set out in some detail in the *Supplementary Environmental Information*.<sup>[2.46]</sup> I am in no doubt that these will require careful site management and rigorous monitoring and control of working methods as a whole. Whilst I heard of difficulties elsewhere,<sup>[5.34, 8.21, 8.23]</sup> I am not convinced that exacting standards, reinforced by planning conditions and the Planning Obligation, cannot be met.<sup>[2.50, 2.53, 9.5]</sup>
- 15.38 The Planning Obligation, and one of the draft conditions agreed between the Applicant and the Local Authorities, would require the submission and implementation of an agreed Environmental Management Plan for the site as a whole. Its main focus would relate to the most significant concentration of blanket bog within the application site (Bretherdale Bank – Common Land Unit 108), where there would be a programme for restricted sheep grazing and the blocking of drainage ditches to encourage the restoration of active blanket bog. However, the aim to secure improvements to other parts of the site is not precluded. To my mind this package of measures would provide adequate, realistic and achievable mitigation for lost habitats arising from the development.<sup>[2.47, 9.3 – 9.5]</sup> The absence of anything more does not, in my view, count against the project.
- 15.39 There are additional proposals to improve habitats in and around the Shap and Birkbeck Fells Site of Special Scientific Interest, outside the application site, through financial contributions made in accordance with the Planning Obligation. Whilst I have noted that other sources of funding would normally be available for the enhancement of such a site and that improvements are likely to be made irrespective of this proposal,<sup>[5.32]</sup> I am not convinced that this element of the Obligation should be ignored in view of its guaranteed long term funding for habitat improvement.<sup>[2.47]</sup>
- 15.40 Concerns about the impacts on bird populations that use the site for over-wintering, breeding and feeding are not ones that I share in the light of the general support for wind farms given by the Royal Society for the Protection of Birds. No evidence was presented to convince me that this project would cause a significant hazard to birds. The restriction of construction activities during the breeding season, secured by condition, would be a legitimate safeguard if consent is granted for the scheme. Finally, in the context of the habitat characteristics of the site and the hunting habits of bats I see no basis to endorse the criticisms made about the lack of bat and invertebrate surveys; and the unconfirmed anticipation of water voles can be safeguarded by a condition requiring a check survey and related mitigation.<sup>[2.48 – 2.49]</sup>

## **The Effect on Hydrology, Hydrogeology and Water Supplies**

- 15.41 The hydrology of the site is highly sensitive given its importance for local fish stocks in tributary streams and in the River Lune. The need to maintain water flows and water quality is of paramount importance as small changes in the catchment regime and increased sediment or pollution could have far reaching consequences.<sup>[5.33, 7.14, 7.29, 9.3 – 9.4]</sup> The *Supplementary Environmental Information* provides a detailed assessment of potential risks and proposed mitigation measures, with further controls available through the suggested planning conditions, notably in relation to the preparation of a

Construction Method Statement; an Environmental Management Plan; a Pollution Incident Response Plan and a programme of regular monitoring.<sup>[2.51 – 2.52, 2.55]</sup> Whilst some Objectors doubted the effectiveness of such measures, and some pointed to well documented problems elsewhere,<sup>[5.34, 7.14, 7.29, 8.21, 8.23]</sup> I heard no evidence that seriously challenged any of the technical, design and mitigation measures proposed by the Applicant. Indeed such measures have been endorsed by English Nature and the Environment Agency.<sup>[2.53]</sup>

- 15.42 In terms of hydrogeology and water supplies there are understandable concerns as a significant number of nearby houses and farms draw their supply from water that originates on the site.<sup>[8.24]</sup> The majority rely on streams whose water quality would be safeguarded as described above. In terms of the groundwater supply to Dyke Farm,<sup>[9.14]</sup> I place greater weight on the Applicant's survey and assessment rather than the more general impression of its origins in relation to the nearest turbines and site tracks.<sup>[2.54]</sup>

### **Decommissioning and Long Term Management and Restoration of the Site**

- 15.43 Little evidence was presented on this matter over and above what is contained in the *Environmental Statement and the Supplementary Environmental Information*.<sup>[2.56]</sup> However, two principal matters were of concern to interested parties.<sup>[5.35, 5.38, 14.1 – 14.2]</sup> In relation to the method of decommissioning, I consider that agreement on the precise techniques can safely be left to a later stage given that the general intentions are clear.<sup>[2.61]</sup> This would also offer the advantage of being able to take account of site-specific considerations at that time so as to minimise or mitigate likely impacts. In terms of the cost of decommissioning, although the adequacy of the fund was questioned, no evidence was called to discredit the Applicant's assessment. In any event, the Planning Obligation provides for annual up-lifting and review after ten years. The assurance, in the *Applicant's Outline Legal Submissions*, that the Commoners would not be under any liability for decommissioning should also be borne in mind.<sup>[2.56 – 2.58]</sup>

### **The Impact on Commoners**

- 15.44 At the Inquiry, and in letters of representation, there was considerable overlap between this matter and the consideration of common land issues related to the Section 194 application. Although I deal with the issue in due course it is relevant to record here, for the purpose of the Section 36 application, that I find no adverse impacts on Commoners or their associated rights.

### **Other Matters**

- 15.45 The impact on *tourism and the regional economy* was a matter raised principally through NWW and in a number of written representations. I can fully appreciate the concerns of businesses which depend largely on tourism, given their importance in providing much needed employment in rural communities and their welcome contribution to the wider Cumbrian economy. It is also apparent that the loss of visitors could seriously undermine a generally fragile rural economy which is on the road to recovery following earlier set backs.<sup>[7.16 – 7.18, 7.25 – 7.26, 8.14]</sup>
- 15.46 The Cumbria Tourist Board's survey of tourism businesses in Cumbria provides added testimony to local concerns, but a significant proportion of responses acknowledge that a wind farm could be an attraction in its own right with potential to attract new 'green' visitors. Surveys of visitors also indicate that some would be deterred from visiting the

area. However, these surveys, and the one undertaken by Orton Farmers Ltd, are forward looking and largely hypothetical and have to be considered in the context of other studies in areas of operational wind farms, and the views of the North West Regional Assembly, which counter these concerns. On balance, I see no justification to contemplate adverse effects on tourism and the rural economy.<sup>[2.13 – 2.14, 2.62]</sup>

- 15.47 On **property prices**, it is understandable, within a generally open and undeveloped landscape with far reaching views, that there is an expectation that any significant change in aspect will be reflected in property valuations.<sup>[7.19]</sup> However, in the light of credible evidence, from the Royal Institution of Chartered Surveyors, that initial perceptions are not borne out and that there is no lasting impact on property prices, I find no basis to come to a contrary view.<sup>[2.63]</sup>
- 15.48 In terms of **shadow flicker** I am satisfied that the critical conditions required to cause such effects, as explained in some detail in the *Companion Guide to PPS22*, (and in expert evidence for the Applicant) are unlikely to arise having particular regard to the distances between the turbines and residential properties and the influence of local topography.<sup>[2.64]</sup> *The Companion Guide* also confirms that turbines should not be considered as particularly hazardous from a **road safety** point of view.<sup>[2.65]</sup> The same document notes that there is no statutory separation distance from **bridle paths** and the British Horse Society's preferred exclusion zone can be the subject of negotiation.<sup>[2.36]</sup> Legitimate worries about **television reception** have been taken into account in the Planning Obligation; and there is no evidence that there would be any interference to other forms of communication.<sup>[1.21]</sup>
- 15.49 Finally, in terms of the rights under **Article 8 of the European Convention on Human Rights**, expressed by the occupants of Bretherdale Foot,<sup>[7.27]</sup> I have concluded that planning conditions can be appropriately imposed to control noise; I am satisfied that strobe or shadow flicker effects are unlikely to arise; there will be effective measures to protect local water supplies; safeguards for television reception; and there is nothing of substance in relation to alleged adverse impacts on other forms of communication.<sup>[2.66]</sup>

## The Planning Balance

- 15.50 The *Energy White Paper* acclaims itself to be '*a milestone in energy policy*' giving recognition to the role of renewable energy supplies in tackling climate change. Its targets are ambitious and it is acknowledged that there needs to be a step change to achieve such programmes. Wind energy is seen as having a crucial role. The gravity of climate change, and the sincerity of the Government's response, is reflected in the Prime Minister's statement that '*climate change is the world's greatest environmental challenge*'. The message, and the associated urgency, could not be clearer.<sup>[1.22, 2.2 - 2.3, 2.68]</sup>
- 15.51 *PPS22* establishes the national framework for facilitating the delivery of renewable energy projects and provides recognition for the wider environmental and economic benefits of such proposals. All renewable energy projects, whatever their scale, are capable of contributing to the overall quantum of clean energy and the response to the damaging effects of climate change. Here, the scale of that contribution is of considerable importance; and there may be economic benefits, given the number of firms within the region that are associated with the energy industry. The energy likely to be generated at Whinash is also significant in the context of 'conservative' regional targets and the general desire to deliver even more where the targets are met.<sup>[2.4 – 2.6, 8.25]</sup>

- 15.52 Set amongst the key principles of PPS22 is the need to take account of environmental impacts in terms of landscape and visual effects which will vary on a case by case basis according to the type of development, its location and landscape setting. I have already assessed those effects as very serious having particular regard to the contribution of the Whinash site to a much wider landscape, part of which is of national importance. I have also expressed concerns about the highly damaging effect of the development on recreation and the appreciation of the wider landscape. My view on both these points remains untouched, even in the knowledge that climate change, if left unchecked, will result in a gradual and natural evolutionary degradation of this cherished landscape.<sup>[2.11]</sup>
- 15.53 In the final analysis, I attach great weight to the compelling need to tackle climate change:- factors which are not denied by the Consortium of Local Authorities, The Countryside Agency and generally by the Friends of Bretherdale.<sup>[3.39, 4.43, 5.1, 5.36]</sup> The absence of harm in relation to many of the matters identified by the Secretary of State is also important; as is the potential to restore blanket bog habitats. However, in the balance required by *Policy 54 of the Cumbria and Lake District Joint Structure Plan, and Policies ST4 and R44 of the Cumbria and Lake District Joint Structure Plan (Proposed Changes)*, I have come to the conclusion that the adverse impact on the landscape, and its consequential enjoyment for recreation, would be so great that it should be the determining factor leading to my recommendation of refusal.<sup>[1.28, 3.39, 4.44 – 4.45, 5.36]</sup>

## Planning Conditions and Planning Obligation

- 15.54 Should the Secretary of State disagree with my recommendation and decide to grant consent, consideration should be given to the imposition of conditions set out in *Appendix D*. These are based on those discussed at the Inquiry, although I have re-ordered and re-worded them as necessary for clarity and precision.<sup>[2.69 – 2.71, 3.40, 7.23]</sup> I have in general adopted the reasons given for the conditions.
- 15.55 In particular, it should be noted that I have omitted the requirement to remove the first 20 metres of the site access tracks (Condition 2), as this sort of detail can be left to the Decommissioning Method Statement; and I am recommending a specific condition to secure that Statement before the permission comes to an end (Condition 3). There needs to be a means of securing the removal of any redundant turbine (Condition 4); and it is important that the details of the turbines are agreed (Condition 5), although I see no need for a condition precluding the display of any symbol or logo as this is an aspect of 'external appearance'. A common direction of rotation is justified (Condition 6); and a tolerance of +/- 50 metres for the siting of the turbines and the associated tracks will give appropriate flexibility to ensure that the development has the least environmental impact (Condition 7).<sup>[2.46, 2.56, 2.69]</sup>
- 15.56 Details need to be agreed for the specification of the foundations and tracks (Condition 8);<sup>[2.46, 5.31]</sup> and more details are required for the substation, the site compound and alterations to the pylon where grid connection is to be made (Conditions 9 - 11). Underground cabling, apart from where it needs to be above ground for connections at the substation and pylon, is stipulated (Condition 12); details of the anemometry masts are to be required (Condition 13); and external lighting should be precluded to avoid light pollution in the otherwise dark night-time landscape (Condition 14).
- 15.57 I am recommending the submission of an 'all-embracing' Construction Method Statement, with specific safeguards for birds and water voles that might be present and

to secure appropriate handling and storage of soils (Conditions 15 - 17).<sup>[2.48 – 2.49, 2.52 – 2.53, 5.31, 5.38]</sup> The monitoring of water quality and the restoration of habitats, where practicable, is also of great importance (Conditions 18 - 19).<sup>[2.51 – 2.55]</sup> Any archaeological interests should also be safeguarded (Condition 20).

- 15.58 The means of providing safe access to the site and controlling traffic movements will need to be approved, but I see no reason to set out piecemeal measures, or specific visibility requirements, in advance of the submission of a comprehensive scheme (Conditions 21 - 23). I also consider that the detailed measures for bunding fuel storage areas, and measures for removing used water, should be the subject of further detail and agreement (Conditions 24 - 25). I endorse the submission of a Pollution Incident Response Plan although I have reworded the condition to reflect guidance in *Appendix 2B (Example J) of Planning Policy Statement 23: Planning and Pollution Control* (Condition 26).
- 15.59 I have sub-divided the suggested noise condition to reflect its constituent components (Conditions 27 - 31).<sup>[2.38, 2.41 – 2.42]</sup> In so doing, I have replaced the onerous and imprecise requirement which would have resulted in the operator having to measure noise emissions at the *'reasonable request of the local planning authority'* with the more certain submission of a noise audit scheme.
- 15.60 Of the remaining conditions discussed at the Inquiry, the protection of public rights of way is subject to other legislation; so too is the sheeting of lorries and the sweeping of the highway. Limiting the movement of plant and machinery over restored areas is unnecessary in the light of other conditions (2, 3 & 15). Precluding any form of storage outside the substation, other than in connection with agriculture, is an unsubstantiated restriction. The remediation of television reception, if required, is provided for in the Planning Obligation.<sup>[1.21 & Appendix C]</sup> Finally, none of the additional points raised by FELLs/NWW, or others, need to be the subject of further conditions.<sup>[7.23 – 7.24, 8.30]</sup>
- 15.61 In terms of the Planning Obligation, I am content that its provisions, in conjunction with the recommended planning conditions referred to above, would provide appropriate safeguards for the ecological interests in the site and the improvement of habitats, on and off site, as mitigation. It gives reassurance in the event of any adverse effects on television reception, although I have no basis on which to judge the adequacy of the sum available for any necessary works. Similarly, although a bond, by letter of credit (which is subject to annual uplift and review after 10 years) is intended to meet the costs of decommissioning, no evidence was presented to justify the sum to be lodged.<sup>[1.7, 1.21, 2.45, 2.47, 2.57 9.1, 9.4 – 9.5]</sup>

## THE SECTION 194 APPLICATION

- 15.62 The statutory framework for considering this application is whether, having regard to the benefit to the neighbourhood and to private interests in the respective commons, it is expedient to grant consent for the proposed development. The benefit to the neighbourhood is defined as *'including the health, comfort and convenience of the inhabitants of any populated places in or near the parish in which the land is situated in the context of the enjoyment of the common as an open space'*, and the private interests is defined as *'including the advantage of the persons interested in the common i.e. the soil owner and persons entitled to common rights'*. It should be remembered that, prior to the enactment of the Countryside and Rights of Way Act 2000, public rights of access applied only, on a revocable basis,

to Roundthwaite Common; elsewhere rights were restricted to grazing.<sup>[1.9, 10.2, 10.5, 11.1, 12.2 – 12.3, 13.1, 13.5]</sup>

- 15.63 Part of the benefit to the neighbourhood is the openness of the commons and the sense of freedom to roam or to use the limited public rights of way across the commons.<sup>[11.2]</sup> In my consideration of the Section 36 application I have expressed the view that the turbines and access tracks would bring uncharacteristic visual intrusion and formality with resultant harm to the enjoyment of the landscape.<sup>[15.26]</sup> Although the turbines would not present any material impediment to the ability to wander at will and, notwithstanding extensive access land with similar attributes,<sup>[2.35]</sup> I firmly believe that the loss of these intrinsic characteristics would be a dis-benefit to the neighbourhood.
- 15.64 The proposed development would occupy a very small part of the commons and so there would be an imperceptible impact on the ability of animals to graze especially as experience elsewhere shows that sheep will graze up to the turbine bases and seek shelter there.<sup>[1.10, 10.10]</sup> Ponies might be inclined to be more circumspect of the presence of turbines, but, given the extent of the commons, I am not persuaded that any real issue arises from these concerns.<sup>[12.2]</sup> Commoners would be able to gain easier access along the new tracks with nothing to suggest that sheep husbandry would be adversely affected.<sup>[10.9]</sup> Understandable concerns about measures to restore habitats by significantly reducing grazing levels across the site are not intended to apply, other than to Bretherdale Bank on the basis of an agreement already reached.<sup>[10.10]</sup> I have also discussed the issue of decommissioning in relation to the Section 36 application and I am assured that there would not be any liability attaching to the Commoners.<sup>[2.57 – 2.58]</sup> On this basis there would be no adverse impacts on Commoners or their associated rights.
- 15.65 In terms of private interests, there is no opposition from the landowners of the site; although it should be recalled that a letter disputing ownership rights was submitted during the course of the Inquiry. However, without proof of title, there is no reliable basis to suppose that there is any other interest in the site.<sup>[10.11]</sup>
- 15.66 The Open Spaces Society, and the Friends of Bretherdale to a lesser degree, sought to argue, by reference to various Section 194 decisions, that large scale proposals affecting common land were inadmissible.<sup>[12.3, 13.2 – 13.3]</sup> Whilst this is a matter of law for the Secretary of State, my reading of the relevant legislation does not support their view.
- 15.67 In balancing the arguments, like my consideration of the Section 36 application, I give great weight to the adverse impacts on the landscape and its value for recreation in so far as this is relevant to the benefit of the neighbourhood. The lack of harm to any other interests; the importance to be attracted to measures that seek to stem climate change; and the biodiversity benefits, through blanket bog restoration, provide the counter balance. However, I do not find these to be sufficient to undermine my recommendation of refusal.

## SUMMARY CONCLUSIONS

- 15.68 Returning to the matters on which the Secretaries of State wished to be informed, I have found the proposal to be contrary to the landscape protection objectives of *Policies ER2 and ER13 of the Regional Spatial Strategy (matter 1)*. It would also be at variance with the landscape protection policies in the *Cumbria and Lake District Joint Structure Plan (Policies 2 and 12)*; the *Cumbria and Lake District Joint Structure Plan (Proposed Changes) (Policies ST11, E34, E36 & E37)*; the *Eden Local Plan (Policy NR2)*; and, the

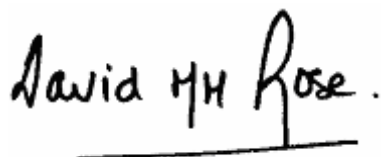


objectives of *Supplementary Planning Guidance: Wind Energy Development in Cumbria (Policies G1 and G2)*. In the balance required by *Policy 54 of the Cumbria and Lake District Joint Structure Plan*, and that arising in *Policies ST4 and R44 of the Proposed Changes document*, I have reached the conclusion that the harm to this particular landscape outweighs the benefits of securing renewable energy at Whinash (*matters 2, 3, 4 & 6*). However, there would be no material conflict with the policies identified in the *Lake District National Park Local Plan (matter 5)*; and the project would be consistent with the Government's general quest for renewable energy (*matter 7*). However, its overriding adverse environmental effects would run counter to the balance required by *PPS22*.

- 15.69 The choice of site arises, in particular, from its wind resource and no effective comparative exercise has been undertaken (*matter 8*). In assessing the visual impact of the wind farm I conclude that it would cause very significant damage to an important landscape with related impacts on the recreational value of the site (*matters 9 and 10*).
- 15.70 I have found that there need be no material impacts in relation to noise; nature conservation and fauna; hydrology and hydrogeology, groundwater, aquifers and local water supplies; users of Public Footpaths and Bridleways (save for those identified in relation to matter 10 above) – subject to the imposition of planning conditions (*matters 11 – 15*). Decommissioning and long term management of the site can be achieved through similar means with financial security through the Planning Obligation (*matter 17*). I also reach the conclusion that, although there would be no direct effects on Commoners, the proposal would not be a 'benefit to the neighbourhood' and therefore it would not be appropriate for consent to be given (*matters 16 and 18*).

## RECOMMENDATIONS

- 15.71 **I recommend that consent be refused** under Section 36 of the Electricity Act 1989 for the construction and operation of a 67.5MW wind turbine generating station at Whinash, Bretherdale and Roundthwaite Commons, Borrowdale, near Tebay; and that a direction under section 90(2) of the Town and Country Planning Act 1990 be not given.
- 15.72 **I recommend that consent be refused** to construct 24 wind turbines, access tracks, temporary hardstandings, 2 meteorological masts and an electricity substation, all on common land, under the provisions of Section 194 of the Law of Property Act 1925 at Roundthwaite and Bretherdale Commons in the Parish of Tebay, District of Eden and County of Cumbria.

  
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INSPECTOR

## **E: APPENDICES**

### **APPENDIX A**

#### **Appearances at the Inquiries**

##### **For the Applicants**

**Andrew Newcombe** of Counsel, instructed by Marcus Trinick, Solicitor, Bond Pearce, Solicitors

**Jeremy Pike** of Counsel, instructed by Marcus Trinick, Solicitor, Bond Pearce, Solicitors

##### *Counsel for the Applicants called:*

**David Stewart** MA (Cantab.), Dip.TP, MRTPI; Principal of David Stewart Associates

**Jeffrey Stevenson** MA, MPhil, MLI, MRTPI, MRICS, MInstEnvSci, FRGS; Principal of Jeffrey Stevenson Associates

**Neil Harris** CEng, FIStructE, MICE, MCIQB, BSc (Eng.), ACGI, MSc (Eng.), DIC

**Dr Alan Edwards** BSc (Hons), PhD, FGS; Director of SLR Consulting

**Stewart Lowther** BA (Hons), MSc, CEnv, MIEEM; Principal Consultant with Hyder Consulting

**Dr Kenneth O'Hara** BSc, PhD; FIFM; Technical Director, AMEC Earth and Environmental Ltd

**Malcolm Hayes** BSc, MIOA; Partner with Hayes McKenzie Partnership

**Christopher Hadley** BSc (Hons Agric), MBIAC; Partner with Smiths Gore, Edinburgh

##### **Supporters**

**Jill Perry** Energy and Climate Campaigner (West Cumbria and North Lakes Friends of the Earth)

##### *Supported by:*

**Tony Juniper** Executive Director, Friends of the Earth, National HQ

##### ***Cumbrian Residents***

**Marianne Bennett** (aka) Marianne Birkby – Wildlife Artist, 8 Chelsea Court, Milnthorpe, Cumbria, LA7 7DJ

**Anita Stirzaker** 6 Quarry House, Quarry Drive, Bowness-on-Windermere, Cumbria, CA23 3DP

**Ronald Stirzaker** 6 Quarry House, Quarry Drive, Bowness-on-Windermere, Cumbria, CA23 3DP

## **Objectors – Rule 6 Parties**

### **For the Consortium of Local Authorities**

**Anthony Crean** of Counsel, instructed by Paul Foote of Eden District Council on behalf of the Consortium

*Counsel called:*

Peter Winter MRTPI; Senior Planning Officer for Lake District National Park Authority

Andrew McCullagh BA, MRTPI, MSC; Deputy Head of Planning for Yorkshire Dales National Park Authority

Robert Evans BA, MRTPI; Technical Director for Wardell Armstrong

Jon King BSC, MLD, MLI; Associate Director for Wardell Armstrong

### **For the Countryside Agency**

**Mr Richard Honey** of Counsel, instructed by Stephen Hedley of the Countryside Agency

*Counsel called:*

Jane Cecil BSc (Hons), MA; Programme Manager for Planning and Finest Countryside with the Countryside Agency

Alison Farmer MA, MLI; Principal of Alison Farmer Associates

Julie Martin BA, MA, MLI, MRTPI, MIEEM; Principal of Julie Martin Associates

### **For the Friends of Bretherdale**

**Mr Robert McCracken** QC, instructed by Graham Hale of Friends of the Lake District on behalf of the Friends of Bretherdale

*Queen's Counsel called:*

Ruth Chambers MSc.; Deputy Chief Executive; The Council for National Parks

Martin Dodds MA, PGC

Graham Hale BA (Hons), MSc, MRTPI; Planning Officer for Friends of the Lake District (on behalf of Friends of the Lake District and CPRE Cumbria Association)

Ian Brodie MPhil; Senior Officer for Friends of the Lake District (on behalf of Friends of the Lake District and CPRE Cumbria Association)

Susan Denyer FSA; Secretary of ICOMOS-UK

Dr Malcolm Petyt MA, DPSA, Dphil; Chairman Yorkshire Dales Society

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Robert Hawkins	BSc.; Countryside Secretary for Penrith Group of the Ramblers' Association
Sir Martin Holdgate	CB, MA, PhD, FIBiol (in his personal capacity and on behalf of Cumbria Wildlife Trust)

### **For the Friends of Eden, Lakeland, and Lunesdale Scenery (FELLS)**

<b>Geoffrey Sinclair</b>	Principal of Environment Information Services
<i>Who called:</i>	
Tim Kimber	Chairman of FELLS, President of the Wildlife Trusts for Lancashire, Manchester and North Merseyside
Dr. Brian Jones	PhD (Phy)
Hugh Sharman	BSc (Eng), ACGI; Director, Incoteco (Denmark) ApS
David White	FICE
Dr Michael Hall	PhD, FRSC, FIBiol; Vice-Chairman of FELLS and Director of Renewable Energy Foundation Ltd
Sir Christopher Audland	KCMG, DL; Founder of FELLS

### **For the No Whinash Windfarm (NWW)**

<b>Geoffrey Sinclair</b>	Principal of Environment Information Services
<i>Who both gave evidence and called:</i>	
Kyle Blue	Chairman of No Whinash Windfarm Committee
Eric Robson	Chairman of the Cumbria Tourist Board
Ian Stephens	BA; Chief Executive of the Cumbria Tourist Board
Jamie Birley	FRICS
David Brockbank	Chairman Cumbria Vision
Lord Chorley	Vice-President of Friends of the Lake District and the Council for National Parks
John Hatt	Nettleport, Firbank, Sedbergh, LA10 5EG
Richard Challenor	BA, FRICS, FAAV
Dr Michael Hall	PhD, FRSC, FIBiol; Vice-Chairman of FELLS and Director of Renewable Energy Foundation Ltd
The Rt Hon David Maclean	MP; Member of Parliament for Penrith & The Border
Lord Inglewood	MA, FSA, RICS
Dr Eve Borrino	PhD; Agricultural Genetics and Botany
Professor Dower	MRTPI, FRICS, Hon FLI

Charles Woodhouse	CVO; Chairman of Rural Regeneration Cumbria
Jane Brook	On behalf of Orton Farmers Ltd
Sharon Coates	Community Nurse
Gordon Allen	Secretary of South Tebay Residents Association
James Cropper	FCA; Lord Lieutenant of Cumbria
Sir Christian Bonington	CBE, DL
Don McClen	CBE, AFC, RAF (ret'd)

### **For the Open Spaces Society**

Steve Byrne 34 Elder Court, Huncoat, Accrington, Lancs BB5 6JP

### **Objectors** (*Organisations, Companies, Local Residents and others*)

Sir Christopher Audland	KCMG, DL; The Old House, Ackenthwaite, Milnthorpe, Cumbria, LA7 7DH
David Brierley	Whitriggs, Tytup, Dalton-in-Furness, Cumbria, LA15 8JW
John Burra	Ingmoor, Orton, Penrith, CA10 3RG
Len Clark	1 Galloper Park, Tebay, Cumbria, CA10 3SU
Raymond Clark	Stoddah, Penruddock, Penrith, CA11 0RY
Peter Graveson	Secretary to the Roundthwaite and Bretherdale Commoners' Association
Dr Karl Hallam	Former local GP
Felicity Lawler	Dyke Farm, Pikestone Lane, Greenholme (Roundthwaite and Bretherdale Commoner)
Alun Lewis	1 Ashfield Court, Orton, Penrith, Cumbria, CA10 3RN
Dr Kaye Little	Cefn Croes Action Group
John Mander	Local resident – Bramrigg, Howgill, Sedbergh, Cumbria, LA10 5HY – and UK Independence Party, Westmorland and North Western Section
Miss R F McChesney	4 South Terrace, Tebay, Penrith, Cumbria, CA10 3XJ
Francis Melford	BSc. Eng, MI. MechE; Engineering Manager at Heysham 1 Nuclear Power Station
Sir Donald Miller	FEng, FRSE, FRAE, FIEE, FIME;
David Natrass	High Street House, High Street, Morland, Penrith, Cumbria, CA10 3AS
Colin Simms	Cross Fell Cottage, Garrigill, by Alston, Cumbria, CA9 3EB

Ruth Walsh

Chair of Communities Opposing Lamonby Turbines (COLT)

## **Interested Parties**

Tebay Primary School

Years 5 and 6 pupils

0-0-0-0

## APPENDIX B

### Documents List

#### A. STATEMENTS OF CASE

SOC/1	Chalmerston Wind Power Limited
SOC/1/1	List of Appeals Decisions (added 10/2/05)
SOC/1/2	Additional List of Appeals Decisions (added 1/3/05)
SOC/2	Cumbria County Council
SOC/3	Eden District Council
SOC/4	Lake District National Park Authority
SOC/5	South Lakeland District Council
SOC/6	Yorkshire Dales National Park Authority
SOC/7	Friends of Bretherdale
SOC/8	No Whinash Windfarm Committee
SOC/9	Friends of Eden, Lakeland & Lunesdale Scenery
SOC/10	Countryside Agency

#### B. CORE DOCUMENTS

CD1 CWP	Scoping Opinion
CD2 CWP	Documentation submitted with section 36 application together with the committee responses, Form B and third party letters and committee reports into application
CD3 CWP	Environmental Statement
CD4 CWP	Supplementary Environmental Information
CD5 CWP	Application form under S194 Law of Property Act
CD6 CWP	Letter from DTI dated 27 October 2004 dealing with Statement of Matters
CD7 CWP	Not allotted
CD8 CWP	PPS 1: Creating sustainable communities
CD9 CWP	PPS 7: Sustainable Development in Rural Areas, 2004
CD10 CWP	PPG 8: Telecommunications
CD11 CWP	PPG 9: Nature conservation
CD12 CWP	PPS 9: Biodiversity and Geological Conservation (consultation paper)
CD13 CWP	PPG 16: Archaeology and planning
CD14 CWP	PPG 17: Planning for open space, sport and recreation
CD15 CWP	PPG 21: Tourism
CD16 CWP	PPS 22: Renewable Energy, August 2004
CD17 CWP	Planning for Renewable Energy: A Companion Guide to PPS22
CD18 CWP	PPS 23: Planning and pollution control
CD19 CWP	PPG 24: Planning and noise
CD20 CWP	PPG 25: Development and flood risk
CD21 CWP	Town and Country Planning (Nature Conservation etc) Regulations 1994
CD22 CWP	Wildlife and Countryside Act (1981) (as amended)
CD23 CWP	RPG 13: Regional Planning Guidance for the North West
CD24 CWP	RPG 13: Partial Review of Regional Planning Guidance for the North West (RPG 13)
CD25 CWP	Cumbria and Lake District Joint Structure Plan 1991 – 2006, 1995
CD26 CWP	Cumbria and Lake District Joint Structure Deposit Plan, 2001 – 2016
CD27 CWP	Eden District Local Plan 1996
CD28 CWP	Eden District Local Plan Review Deposit Draft, 2002
CD29 CWP	Cumbria County Council – Wind Energy Development in Cumbria, 1997
CD30 CWP	Lake District National Park Local Plan, 1998
CD31 CWP	Renewable Energy in North West England: Investigating the Potential and Developing the Targets, ERM for GONW, 2001
CD32 CWP	Countryside Commission, Environmental Assessment – The Treatment of Landscape and Countryside Recreation Issues, CCP 326, 1991

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CD33 CWP	Countryside Commission, 'Wind Energy Development and the Landscape', CCP 357, 1991
CD34 CWP	British Wind Energy Association, 'Best Practice Guidelines for Wind Energy Developments', 1994
CD35 CWP	Durham County Council, Unpublished, 'Impact Assessment Matrices', 1996
CD36 CWP	Scottish Natural Heritage, Guidelines on the Environmental Impacts of Windfarms and Small Scale Hydro Electric Schemes, 2001
CD37 CWP	Swanwick, C., and LUC; Landscape Character assessment – Guidance for England and Scotland, Countryside Agency/SNH, 2002
CD38 CWP	Landscape Institute/Institute of Environmental Management and Assessment; Guidelines for Landscape and Visual Impact Assessment, Spon, 2002
CD39 CWP	University of Newcastle for Scottish Natural Heritage; 'Visual Assessment of Windfarms: Best Practice', Commissioned Report F01AA303A, 2002
CD40 CWP	Scottish Natural Heritage/Countryside Agency, Landscape Character Assessment Series, Topic Paper 6 – Techniques and Criteria for Judging Capacity and Sensitivity – Final Draft, Swanwick, C; for SNH/Countryside Agency, 2004
CD41 CWP	Proposed changes to Cumbria and Lake District Joint Structure Plan 2001 – 2016
CD42 CWP	Technical Paper 6: Planning for Renewable Energy Development in Cumbria in support of Cumbria County Council; 'Cumbria and Lake District Joint Structure Plan 2001 – 2016
CD43 CWP	Technical Paper 5 – Landscape Character'; 2004 in support of Cumbria County Council; Cumbria and Lake District Joint Structure Plan 2001 – 2016
CD44 CWP	Cumbria County Council; 'Sustainability Strategy – 2004', 2004
CD45 CWP	Scottish Natural Heritage/Countryside Agency, Landscape Character Assessment Series, Topic Paper 9 – Climate Change, SNH/Countryside Agency, 2003
CD46 CWP	Young, B., Attitudes Towards Wind Power – A survey of Opinion in Cornwall and Devon, ETSU, 1993
CD47 CWP	British Wind Energy Association Press Release, Public Support for Wind Power, 30 March 1994
CD48 CWP	BBC, Love them or Loathe Them? Public Attitudes Towards Wind Farms in Wales, BBC Wales Research Report, 1994
CD49 CWP	Chris Blandford Associates, Wind Turbine Construction Monitoring Study, Countryside Council for Wales, 1994
CD50 CWP	Robertson Bell Associates Research, Kirkby Moor – Public Opinion Survey Report, March 1994
CD51 CWP	Robertson Bell Associates Research, North Cornwall Tourists Survey, 1996
CD52 CWP	Simon, A. M., A Summary of Research Conducted into Attitudes to Wind Power from 1990-1996, Anne Marie Simon Planning and Research on behalf of British Wind Energy Association, 1996
CD53 CWP	National Wind Power Limited, Overwhelming Public Support for Europe's Largest Wind Farm in Powys, Mid Wales, Press Release plus Summary Sheets on Public Opinion Studies around Wind Farms and Quotations from the Carno Open Day Questionnaires, 1996
CD54 CWP	Gipe, P, Tilting at Windmills: Public Opinion Towards Wind Energy
CD55 CWP	Revie, C., & Stein, G., 'Planning for Renewables', Friends of the Earth Scotland, 1997
CD56 CWP	Dudleston, A., (System Three Social Research), Public Attitudes towards Wind Farms in Scotland, Scottish Executive Central Research Unit, August 2000,
CD57 CWP	Robertson Bell Associates Research, Lambrigg Wind Farm – Public Attitude Survey, RBA/NWP, April 2002
CD58 CWP	NFO System Three, Investigation into the Potential Impact of Wind Farms on Tourism in Scotland Final Report, prepared for Visit Scotland, 2002
CD59 CWP	MORI Scotland, Tourist Attitudes Towards Wind Farms, Research Study Conducted for Scottish Renewables Forum and British Wind Energy Association, Summary Report, MORI, 2002
CD60 CWP	RSPB Survey (Public Attitudes to Wind Farm Development) end 2001
CD61 CWP	Campey, V. et al, A Study into the Attitude of Visitors, Tourists and Tourism Organisations towards Wind farms on the Boundaries of the Lake District National Park, Leeds Metropolitan University, Chapters 6-8, Undated
CD62 CWP	CAG Consultants and Land Use Consultants, Towards a Sustainable Energy Strategy for Cornwall, Consultation Draft, August 2003,
CD63 CWP	MORI Scotland Research, Public Attitudes to Windfarms, Results of a study commissioned by the Scottish Executive, August 2003
CD64 CWP	Kidner D.B., & Morgan R., The Scarweather Sands Offshore Windfarm: A Public Opinion Survey, University of Glamorgan, September 2003



CD65 CWP	Regen SW, The Appropriate Development of Wind Energy – Guidance for Local Planning Authorities, October 2003, p15, quoting National Wind Power Public Opinion Research results
CD66 CWP	Robertson Bell Associates, Novar – Public Opinion Survey, RBA for National Wind Power, 1998
CD67 CWP	Robertson Bell Associates, Taff Ely – Public Opinion Survey, RBA for National Wind Power, 1998
CD68 CWP	CPRE, Tranquil Areas, CPRE/Countryside Commission, 1995
CD69 CWP	Countryside Agency, Countryside Character Vol 2: North West, Landscape Character Areas 8, 17-19; pp 31-37 and pp 56-68, 1998
CD70 CWP	Cumbria County Council; Cumbria Landscape Classification; 1995
CD71 CWP	Cumbria County Council; Cumbria Landscape Strategy; undated but post 1998
CD72 CWP	Cumbria County Council, Assessment of County Landscapes – Technical Paper No 4 in Support of the Cumbria and Lake District Joint Structure Plan 1991-2006; 1992
CD73 CWP	Cumbria County Council; Cumbria Landscape Strategy – Background Paper; July 1998
CD74 CWP	Birkett, W.; Complete Lakeland Fells – Over 120 Classic Walks to all Fell Tops; Collins Willow; 1994; Shap Fells Section pp 205-219
CD75 CWP	Wainwright, A.; The Outlying Fells of Lakeland; Michael Joseph; 1992 edition;
CD76 CWP	Wainwright, A; The Far Eastern Fells; Michael Joseph; 1992 edition; pp 248-269
CD77 CWP	British Geological Survey, Sheet 38 Westmorland (Drift)
CD78 CWP	British Standards Institute, Code of Practice for Site Investigations, 1999
CD79 CWP	CIRIA, Sustainable Urban Drainage Systems – Best Practice Manual for England, Scotland, Wales and Northern Ireland, 2001
CD80 CWP	CIRIA, Sustainable Drainage Systems – Hydraulic, structural and water quality advice, 2004
CD81 CWP	Halcrow Water Report for Department of the Environment Transport and the Regions, Sedimentation in Storage Reservoirs, Final Report. February 2001
CD82 CWP	English Nature, The Upland Management Handbook, Information Note 9 – Moorland Grip Blocking, February 2001
CD83 CWP	Environment Agency, PPG18 – Managing Firewater and Major Spillages
CD84 CWP	Environment Agency, PPG2 – Above Ground Oil Storage Tanks.
CD85 CWP	Environment Agency, PPG21 – Pollution Incident Response Planning
CD86 CWP	Environment Agency, PPG22 – Dealing with Spillages on Highways
CD87 CWP	Environment Agency, PPG23 – Maintenance of Structures over Water
CD88 CWP	Environment Agency, PPG3 – Use And Design Of Oil Separators In Surface Water Drainage Systems
CD89 CWP	Environment Agency, PPG4 – Disposal of Sewage Where No Mains Drainage is Available
CD90 CWP	Environment Agency, PPG5 – Works In, Near or Liable to Affect Watercourses
CD91 CWP	Environment Agency, PPG6 – Working at Construction and Demolition Sites
CD92 CWP	Forestry Commission, Forests and Water, 4 <sup>th</sup> Edition. ISBN 0 85538 615 0, 2003
CD93 CWP	Not allotted
CD94 CWP	Hyder Consulting, June 2004, Whinash Environmental Statement – Addendum: 2004 Botanical Survey.
CD95 CWP	Hyder Consulting, March 2004, Whinash Wind Farm – Turbine bases and access track habitat assessment
CD96 CWP	Holden J, Chapman PJ and Labadz JC, 2004, Artificial Drainage of Peatlands: Hydrological and Hydrochemical Process and Wetland Restoration. In Progress in Physical Geography 28,1, pp.95-123.
CD97 CWP	National Rivers Authority (now Environment Agency). Policy and Practice for the Protection of Groundwater: Regional Appendix Northwest Region, 1995
CD98 CWP	Environment Agency, The Lune Catchment Abstraction Management Strategy (and accompanying Supporting Technical Information), March 2004
CD99 CWP	Environment Agency, River Lune Salmon Action Plan, February 1998
CD100 CWP	The Stationery Office, Conserving Bogs, Management Handbook, ISBN 0 11 495836, 1997
CD101 CWP	Scottish Executive, River Crossing and Migratory Fish: Design Guidance Consultation Paper, 2000
CD102 CWP	CIRIA, Culvert Design Guide, 1999
CD103 CWP	Holden J and Burt TP, Hydrological Studies on Blanket Peat: The significance of the acrotelm-catotelm model. In Journal of Ecology, Vol. 91, No. 1, pp.86-102, 2003
CD104 CWP	CIRIA, Report 532, Control of Water Pollution from Construction Sites, 2001
CD105 CWP	CIRIA, Report C502, Environmental Good Practice on Site, 1999
CD106 CWP	UK Biodiversity Action Plan,

CD107 CWP	Cumbria Local Biodiversity Action Plan, April 2001
CD108 CWP	Draft Government Circular: Biodiversity and Geological Conservation - Statutory obligations and their impact within the planning system, Sept 04
CD109 CWP	English Nature Upland Management Handbook Information Note 1: Assessing Vegetation Condition in English Uplands, February 2001
CD110 CWP	British Standards Institute HMS0, BS4142'1997'. Method for Rating Industrial Noise affecting mixed Residential and industrial Areas, 1997
CD111 CWP	DTI Working Group on Noise from Wind Turbines: The Assessment and Rating of Noise from Windfarms', ETSU Report ETSU-R-97, 1996
CD112 CWP	International Standards Organisation, 'Acoustics – Attenuation of sound during propagation outdoors – Part 2: General method of calculation' ISO 9613-2, 1996
CD113 CWP	Berglund B, Lindvall T, Schwela D H, World Health Organisation, 'Guidelines for Community Noise', 1999
CD114 CWP	British Standards Institute, British Standard BS EN 61400-11 – Wind turbine generator systems; part 11: Acoustic noise measurement techniques, 2003
CD115 CWP	Wilson A, Noise: A final report, Cmnd. 2056, HMSO, London, 1963
CD116 CWP	BS 8233:1999 Sound insulation and noise reduction for buildings – Code of practice, BSI, London, 1999
CD117 CWP	Department of the Environment Transport and Regions, Mineral Planning Guidance 11: Control of noise at surface mineral workings, HMSO, London, 1993
CD118 CWP	British Standards Institution, BS5228 'Noise and vibration control on construction and open sites', Part 1 (Incorporating Amendment No.1) 'Code of practice for basic information and procedures for noise and vibration control', 1997
CD119 CWP	British Standards Institution, BS5228 'Noise and vibration control on construction and open sites', Part 2 'Guide to noise and vibration control legislation for construction and demolition including road construction and maintenance', 1997
CD120 CWP	British Standards Institution, BS5228 'Noise and vibration control on construction and open sites', Part 3 'Code of practice applicable to surface coal extraction by opencast methods' 1997
CD121 CWP	British Standards Institution, BS5228 'Noise and vibration control on construction and open sites', Part 4 (Incorporating Amendment No.1) 'Code of practice for noise and vibration control applicable to piling operations', 1992
CD122 CWP	British Standards Institution, BS6472 'Guide to Evaluation of human exposure to vibration in buildings (1 Hz to 80 Hz)', 1992
CD123 CWP	British Standards Institution, BS7385 ' Evaluation and measurement for vibration in buildings', Part 1 'Guide for measurement of vibrations and evaluation of their effects on buildings', 1990
CD124 CWP	British Standards Institution, BS7385 ' Evaluation and measurement for vibration in buildings', Part 2 'Guide to damage levels from groundborne vibration', 1990
CD125 CWP	Not allotted
CD126 CWP	Bass J H, Bullmore A J, Sloth E, 'Development of a Windfarm Noise Propagation Prediction Model', Final Report for EU Contract JOR3-CT95-0051, 1998
CD127 CWP	D J Snow, 'Low Frequency Noise & Vibration Measurements at a Modern Windfarm', ETSU W/13/00392/REP, 1997
CD128 CWP	Berglund B, Lindvall T, Schwela D H, World Health Organisation, 'Guidelines for Community Noise', 1999
CD129 CWP	ETSU Noise Measurements in Windy Conditions. ETSU W/13/00386/REP, 1996
CD130 CWP	ETSU The Prediction of Propagation of Noise from Wind Turbines with regard to Community Disturbance: ETSU WN 5066, 1990
CD131 CWP	ETSU A Critical Appraisal of Wind Farm Noise Propagation: ETSU W/13/00385/REP, 2000
CD132 CWP	The Commission of the European Communities Report EUR 5398e Environment and Quality of Life: Damage and Annoyance caused by Noise, 1975
CD133 CWP	House of Lords Ctte Report "Renewable Energy: Practicalities" Vol 1 report, July 2004
CD134 CWP	BWEA Press Release, Political Consensus, 2004
CD135 CWP	DTI, Announcement of Proposal for Review of Renewables Obligation, August 2004
CD136 CWP	The Carbon Trust & DTI Renewables Network Impacts Study – April 2004
CD137 CWP	European Commission Directive on the promotion of electricity from Renewable Energy Sources in the internal electricity market (2001/77/EC)
CD138 CWP	Climate Change, The UK Programme, November 2000
CD139 CWP	A Better Quality of Life – UK Sustainable Development Strategy, May 1999
CD140 CWP	Renewables Obligation Status Update, December 2003

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CD141 CWP	Statutory Consultation on Renewables Obligation, August 2001
CD142 CWP	Achieving a Better Quality of Life – Review of Progress Towards Sustainable Development: Government Annual Report 2003
CD143 CWP	EU Commission white paper 1997
CD144 CWP	European Union communication 2004
CD145 CWP	House of Lords Select Committee report on European Communities 1999
CD146 CWP	Royal Commission on Environmental Pollution – 22 <sup>nd</sup> report – Energy – the changing climate, 2000
CD147 CWP	Cabinet Office Performance and Innovation Unit report 2002
CD148 CWP	Enterprise & Culture Committee report Scottish Parliament, 2004
CD149 CWP	House of Lords Welsh Committee report, 1996
CD150 CWP	Association of British Insurers, A Changing Climate for Insurance: A Summary Report for Chief Executives and Policy Makers, June 2004
CD151 CWP	Climate adaptation: Risk Uncertainty and Decision Making; UK Climate Impacts Programme Technical Report May 2003
CD152 CWP	DEFRA, Scientific and technical aspects of climate change, including impacts and adaptation and associated costs, September 2004
CD153 CWP	University of Manchester and Tyndall Centre North, Spatial Implications of Climate Change for the North West
CD154 CWP	University of East Anglia, Global: Climate Change and Biodiversity, April 2003
CD155 CWP	Climate Change, The UK Programme HMSO, January 1994
CD156 CWP	Final report on the Green Paper: Towards a European strategy for the security of electricity supply, 2002
CD157 CWP	Commission of the European Communities, A sustainable Europe for a better world: A European Union Strategy for sustainable development, 2001
CD158 CWP	Climate Change Scenarios for the United Kingdom: The UKCIP02 Scientific Report, 2002
CD159 CWP	OXERA Study into regional renewable energy targets, 2002
CD160 CWP	Renewable Energy Planning Panel Report, Renewable Energy Planning Panel, 2003
CD161 CWP	The Share of Renewable Energy in the EU – Commission Report in Accordance with Article 3 of EC Directive 2001/77/EC evaluation of the effect of legislative instruments and other Community policies on the development of the contribution of renewable energy sources in the EU and proposals for concrete actions, Commission of the European Communities, May 2004
CD162 CWP	ODPM, The Planning Response to Climate Change: Advice on better practice, 2004
CD163 CWP	Action for Sustainability Plan, 2000
CD164 CWP	House of Commons Environmental Audit Committee 10 <sup>th</sup> report, 2004
CD165 CWP	Greenpeace tourist survey at Porthcawl, 23, 24, 25 August 2003
CD166 CWP	Attitudes & knowledge of renewable energy amongst the general public: Report of TNS for Central Office of Information on behalf of DTI, Scottish Exec, National Assembly for Wales & Department of Enterprise Trade and Investment
CD167 CWP	DEFRA Global Atmosphere Research Programme, Annual Report 2002 to 2003
CD168 CWP	House of Lords European Union Committee 30 <sup>th</sup> report 2003-04 – The EU and Climate Change Volume I report
CD169 CWP	From Power to Prosperity, 2001
CD170 EDC	The Energy White Paper, Our Energy Future; creating a low carbon economy Feb 2003
CD171 EDC	Energy White Paper; Summary DTI URN 03/658
CD172 FoB	Ministry of Town and Country Planning – National Parks in England and Wales – Report by John Dower, May 1945 (Cmd6628)
CD173 FoB	Ministry of Town and Country Planning – report of the National Parks Committee (England and Wales), July 1947 (Cmd 7121)
CD174 FoB	The Cultural Landscape – Planning for a Sustainable Partnership between People and Place ICOMOS UK, 2001
CD175 FoB	CPRE campaign briefing – Renewable Energy (February 2003)
CD176 FoB	Not allotted (Document withdrawn)
CD177 FoB	Lee, Frank, Friends of the Lake District draft “Report on Proposals for Further Statutory Protection for the Landscape of Cumbria – Landscape is one of our most precious National Assets – Unfinished business in Cumbria” (203/2004)
CD178 FoB	Designation History Series – The Lake District National Park (1999) – Countryside Agency by Ray Woolmore
CD179 FoB	World Heritage Sites – The Tentative List of the United Kingdom of Great Britain and Northern Ireland – Department for Culture Media and Sport, 1999

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CD180 FoB	Countryside Commission – Landscape Assessment guidance, 1993
CD181 FoB	Not allotted
CD182 FoB	Cumbria County Council's responses to the objections to the renewable energy and landscape policies contained in the revised Cumbria and Lake District Joint Structure Plan 2001 – 2016 – 'Planning Cumbria' (June 2004)
CD183 FoB	Examination in Public Panel's Report into the revised Cumbria and Lake District Joint Structure Plan 2001 – 2016 – 'Planning Cumbria'
CD184 FoB	Ramblers' Association: Countryside Guidance Notes: Section 12 Renewable Energy
CD185 FoB	Ramblers' Association: Web Page – ramblers.org.uk/countryside/energy
CD186 FoB	Countryside and Rights of Way Act 2000
CD187 FoB	The Countryside Agency Provisional Map of Registered Common Land and Open Country; Mapping Area 4 – Upper Northwest England: Sheets 40, 60, 48, 68
CD188 FoB	Ordnance Survey (for Rights of Way): The English Lakes Outdoor Leisure Maps 5 (North Eastern Area) & 7 (South Eastern Area); Explorer OL10, Howgill Fells and Upper Eden Valley.
CD189 FoB	Not allotted (Document withdrawn)
CD190 FoB	Document Withdrawn
CD191 FoB	Commons Registration Act 1965
CD192 FoB	The Law of Property Act 1925
CD193 FoB	The Commons Act 1876
CD194 FoB	The Inclosure Act 1857
CD195 FoB	"A Call for the Wild" National Trust 1999
CD196 FoB	Designation of Shap Fells Road Cuttings as SSSI. Citation file reference NY50/10 NOTE: Already included in Environmental Statement – see CD3 CWP
CD197 FoB	Designation of Shap Fells. Citation File Reference © NY 50/07 NOTE: Already included in Environmental Statement – see CD3 CWP
CD198 FoB	A Flora of Cumbria. Geoffrey Halliday (1997) University of Lancaster
CD199 FoB	Biodiversity: The UK Steering Group report. DTI Energy Paper 60. London HMSO (1995)
CD200 FoB	Renewable Energy Advisory Group Report. Volume 2 Action Plans. London HMSO 1992
CD201 FoB	Royal Commission on Environmental Pollution – 23 <sup>rd</sup> report – Environmental Planning Cm 5459. London The Stationary Office (2002)
CD202 F0B	Bundle of appeal decisions
CD203 CCC	DETR Circular 02/99
CD204 CCC	Cumbria County Council: Cumbria Countryside Access Strategy (Draft) Jan 2005
CD205 CCC	Capita: Whinash Wind Farm Environmental Statement Review and Strategic Landscape and Visual Assessment, Prepared for Cumbria County Council, November 2003
CD206 LDNPA	The Environment Act 1995
CD207 LDNPA	Circular 12/96 The Environment Act 1995, Part III, National Parks
CD208 LDNPA	Review of English National Park Authorities DEFRA 2002
CD209 LDNPA	The Lake District National Park Management Plan 2004
CD210 LDNPA	Lake District National Park Authority Development Control Committee Reports – December 2003, January 2004
CD211 YDNPA	The Sandford Report, 1974
CD212 YDNPA	Fit for the Future, 1991
CD213 YDNPA	The National Park and Access to the Countryside Act, 1949
CD214 YDNPA	The Yorkshire Dales Local Plan, 1996
CD215 YDNPA	The Yorkshire Dales Local Plan Review, Second Deposit, 2004
CD216 YDNPA	The Yorkshire Dales Local Plan Review, Inspector's report, 2005
CD217 SLDC	South Lakeland Local Plan 2006, September 1997
CD218 SLDC	South Lakeland Local Plan 2006 Alteration, Composite Plan, March 2004
CD219 CA	Alison Farmer Associates (Research commissioned by the Countryside Agency that will inform a paper to the Board on 10 March 2005): Area of search for land worthy of national landscape designation in the area between the Lake District and Yorkshire Dales National Parks, 2005
CD220 CA	Countryside Agency, Board Paper AP99/50 – renewable Energy Developments: The Role of the Countryside Agency (and Minutes of the 7 <sup>th</sup> Meeting of the Countryside Agency, paragraph 9), 1999
CD221 CA	Countryside Agency, Objection by the Countryside Agency to the proposed Whinash wind farm (November 2003)

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CD222 CA	Countryside Agency, Board Paper AP04/25 – A Future Approach to National Park and AONB Boundary Revision (and Minutes of the 43 <sup>rd</sup> Meeting of the Countryside Agency, paragraphs 22 to 24), 2004
CD223 CA	Countryside Agency, Board Paper AP05/06 – Countryside Agency Involvement in the Whinash Wind Farm Public Inquiry, 2005
CD224 CWP	SI 2000/1927 Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000
CD225 CWP	ERM/CBA World Heritage Site Study, An Objective Appraisal of the Impact of WHS Inscription of the Lake District Area of Cumbria, September 2004
CD226 CWP	Cumbria County Council, South Lakeland District Council, ETSU, Planning and Renewable Energy in Cumbria, ETSU PR 003, September 1994
CD227 CWP	National Audit Office, Renewable Energy, 11 February 2005
CD228 CA	“Walks on the Howgill Fells and adjoining fells” A. Wainwright [ISBN 0 7112 2238 X] (Book from the series “The Pictorial Guides to the Lakeland Fells”)
CD229 CA	“A Coast to Coast Walk (St. Bees Head to Robin Hood’s Bay) A Pictorial Guide” – Revised Edition – A. Wainwright [ISBN 0 7112 2236 3] (Book from the series “The Pictorial Guides to the Lakeland Fells”)
CD230 CWP	Partial Review of the Regional Spatial Strategy for the North West – Examination in Public – Report of the Panel, March 2005 ( <i>see also CD24 above</i> )
CD231 EDC	Ministry of Agriculture, Fisheries and Food: Lake District Environmentally Sensitive Area – Landscape Assessment (undated)
CD232 EDC	Scottish National Heritage: Guidance – Cumulative Effect of Windfarms, issued 12.8.03
CD233 CCC	Extracts from the Definitive Map and Statement of Rights of Way re. Byway 355003 (also County Road UCR No. U3278) and Byway 367004 and Bridleways 355042 and 367031
CD234 CCC	Certified extracts and plan from the Register of Common Land for Bretherdale Bank, Bretherdale Common and Roundthwaite Common
CD235 EDC	“Mapping Tranquillity – Defining and assessing a valuable resource” Report on project commissioned by the Campaign to Protect Rural England (CPRE) and The Countryside Agency
CD236 CWP	UK International Priorities – The Energy Strategy (Sustainable Energy Policy Network, October 2004) (Foreign & Commonwealth Office, DTI, DEFRA)
CD237 CWP	Climate Change: looking forward (House of Commons Environment, Food and Rural Affairs Committee, 1 April 2005) (Ninth Report of Session 2004-2005: Volume 1)
CD238 OSS	Documents referred to in Open Spaces Society’s Proof of Evidence (Steve Byrne), as listed below with the Open Spaces Society’s reference numbers (OSS/1/3 etc.)
OSS/1/4	Text of s194/extracts s194 application form
OSS/1/5	Extracts from Paul Clayden, 1992, <i>Our Common Land</i> , Open Spaces Society
OSS/1/6	Extracts from G D Gadsden, 1988, <i>The Law of Commons</i> , Sweet & Maxwell
OSS/1/7	Extracts DEFRA application form Acquisition of Land Act 1981/ODPM Circular 02/03 (special procedures related to common land)
OSS/1/8	Extracts DEFRA, July 2002, <i>Common Land Policy Statement 2002</i>
OSS/1/9	DETR consultation on common land: list of organisations consulted (Source: DETR, Feb 2000, <i>Greater Protection and Better Management of Common Land in England and Wales</i> , Annex 3)
OSS/1/10	DEFRA, List of respondents to DETR consultation on common land (Feb–Apr 2000)
OSS/1/11	Details of Commons Bill announced in Queen’s Speech (Nov 2004)
OSS/1/13	Table 2. s194 wind-farm applications: the notion of “footprint”
OSS/1/14	Department of Environment, July 1991, Decision letter, DRA1/1077/553 & DRA1/1077/608 [Tremeer Down (CL373) Cornwall]
OSS/1/18	Sketch Map of proposed wind farm at Barningham High Moor
OSS/1/19	DEFRA, July 2004, Decision letter, CL1 94 [The Ghyll, Murton (CL30) Cumbria]
OSS/1/20	DEFRA, Jun 2004, Decision letter, CL1 67 [Mkt Place, Easingwold (CL120) N Yorks]
OSS/1/21	DEFRA, Jun 2004, Decision letter, CL1 34 [Chesham Bois Common (CL90) Bucks]
OSS/1/22	DEFRA, Apr 2004, Decision letter & Inspector’s report, CL1 41 [Eype Down (CL48) Dorset]
OSS/1/23	DEFRA, Mar 2004, Decision letter, CL1 8 [Racecourse Downs (CL138) & Cardinham Downs (CL139) N Cornwall]
OSS/1/24	DEFRA, Apr 2004, Decision letter & inspector’s report, CL1 1/3/55 [Wetley Moor Common (CL25) Staffs]
OSS/1/25	Maps of the areas of common land affected by the six s194 applications in OSS/1/19-24

## C. GENERAL INQUIRY DOCUMENTS

*(Note: Date in brackets refers to date submitted to the Inquiry)*

X/0	Notice of Inquiry and Statement of Matters
X/1	Notes of First Pre-Inquiry Meeting (PIM) 29/11/04
X/1/1	Agenda for PIM 29/11/04
X/2	Signed Attendance Sheets for PIM 29/11/04
X/3	Notes of Second Pre-Inquiry Meeting 31/01/05
X/3/1	Agenda for PIM 31/01/05
X/4	Signed Attendance Sheets for PIM 31/01/05
X/5	Application for Adjournment - Inspector's report
X/5/1	Letter from English Nature (3/02/05) clarifying position with regard to Application
X/5/2	Letter from Environment Agency (3/02/05) clarifying position with regard to Application
X/6	Letter from Department of Trade and Industry confirming an unchanged Inquiry start date based on current timetable for Supplementary Environmental Information
X/7	Public Inquiry Document List
X/8 (19/4/05)	Inquiry Documents and Agreements – 1. Conditions; 2. Statement of Common Ground (agreed 28/4); 3. Planning Obligation by Unilateral Undertaking; 4. Covenant for Community Trust Fund
X/9 (26/4/05)	Public Notice under the Commons Act 1876 announcing evening session on 18 <sup>th</sup> May 2005 to hear representations on the application under section 194 of the Law of Property Act 1925
X/10 (09/5/05)	Signed Library Attendance Sheet for week beginning Monday 2 <sup>nd</sup> May 2005
X/11 (09/5/05)	Copies of itinerary maps (Maps 1 and 2(A) & 2(B)) used for the “General Overview of Landscape” Site Visit on Monday 9 <sup>th</sup> May 2005
X/12 (11/5/05)	Programme Officer's Note entitled “List of persons notified by Kyle Blue who wish to speak at the Evening Session on Wednesday 18 May 2005”
X/13 (18/5/05)	Programme Officer's Note entitled “List of persons wishing to speak at the Evening Session on Wednesday 18 May 2005 (as at 1pm 18/05/05)” with copies of objection letters
X/14 (various)	Site Visits (including balloons) – suggestions and requests [X/14 (1) Keith Faichney; X/14 (2) NWW Committee; X/14 (3) Countryside Agency; X/14 (4) FELLs; X/14 (5) Kyle Blue (NWW) re. weather balloons; X/14 (6) NWW and FELLs (additional viewpoints); X/14(7) Composite OS map (1:50000 scale) (supplied by LDNPA) showing planned accompanied site visits; X/14(8) Jeffrey Stevenson – suggested route for unaccompanied site visit
X/15 (26/5/05)	Proposed Scout Moor Wind Turbine Generating Station – Secretary of State for Trade & Industry Decision Letter dated 25 May 2005, Section 36 Consent and Inspector's Report & Appendices
X/16 (various)	Copies of press cuttings sent to the Inspector
X/17 (7/6/05)	Signed Library Attendance Sheet for week beginning Monday 30 <sup>th</sup> May 2005
X/18 (9/6/05)	Letter dated 7 June 2005 to the Inspector from East Cumbria Countryside Project (with copy letter dated 4 April 2003 to Casella Stanger) clarifying the nature of the consultation on ecology matters with that organisation
X/19	Signed Inquiry Attendance Sheets – Days 1 to 27 (including Evening Session - Day 14)
X/20(a) & (b)	Two boxes marked X/20 (a) and X/20 (b) containing 1,454 objection letters sent individually to the Secretaries of State or the Inspector and filed numerically in eleven lever-arch files
X/21(a) to (d)	Four boxes marked X/21(a), X/21(b), X/21(c) and X/21(d) containing standard pro-forma objection letters, standard objection postcards and petition-style objection forms (Total objection: 15,901)
X/22	One box marked X/22 containing 1,569 support letters (both individual and standard pro-forma) sent to the Secretary of State or the Inspector and filed in five lever-arch files and one ring binder folder.

## D. APPLICANT'S DOCUMENTS

*(Note: Proof of Evidence (P); Summary Proof of Evidence (S); Appendices (A); Rebuttal Proof of Evidence (R); Supplementary Proof (SuppP); Supplementary Appendices (SuppA); Addendum/Erratum/Correction (Add))*

### (i) PROOFS OF EVIDENCE AND ASSOCIATED WITNESS DOCUMENTS

CWP/1/1 (P)	Proof of Evidence – David Ian Stewart (Policy and Need)
CWP/1/2 (S)	Summary Proof of Evidence – David Ian Stewart (Policy and Need)
CWP/1/3 (A)	Appendices to Proof of Evidence – David Ian Stewart (Policy and Need)

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CWP/1/4 (R)	Rebuttal Proof to Cumbria Tourist Board (NWW/10/1 & /2) – David Ian Stewart
CWP/2/1 (P)	Proof of Evidence – Jeffrey Stevenson (Landscape & Visual Amenity)
CWP/2/2 (S)	Summary Proof of Evidence – Jeffrey Stevenson (Landscape & Visual Amenity)
CWP/2/3 (A)	Appendices to Proof of Evidence – Jeffrey Stevenson (Landscape & Visual Amenity)
CWP/2/4 (R & RA)	Rebuttal Proof (& Appendices) to objectors' documents (various) – Jeffrey Stevenson <i>(details at Section G below)</i>
CWP/3/1 (P)	Proof of Evidence – Neil Harris (Construction)
CWP/3/2 (S)	Summary Proof of Evidence – Neil Harris (Construction)
CWP/3/3 (R)	Rebuttal Proof to objectors' documents (various) – Neil Harris <i>(details at Section G below)</i>
CWP/4/1 (P)	Proof of Evidence – Dr Alan Jonathan Edwards (Hydrology and Hydrogeology)
CWP/4/2 (S)	Summary Proof of Evidence – Dr Alan Jonathan Edwards (Hydrology and Hydrogeology)
CWP/5/1 (P)	Proof of Evidence – Stewart Lowther (Nature Conservation and Fauna)
CWP/5/2 (S)	Summary Proof of Evidence – Stewart Lowther (Nature Conservation and Fauna)
CWP/5/3 (A)	Appendices to Proof of Evidence – Stewart Lowther (Nature Conservation and Fauna)
CWP/5/4 (R)	Rebuttal Proof to objectors' documents (various) – Stewart Lowther <i>(details at Section G)</i>
CWP/6/1 (P)	Proof of Evidence – Dr Kenneth O'Hara (Fish and Fisheries)
CWP/6/2 (S)	Summary Proof of Evidence – Dr Kenneth O'Hara (Fish and Fisheries)
CWP/6/3 (A)	Appendices to Proof of Evidence – Dr Kenneth O'Hara (Fish and Fisheries)
CWP/7/1 (S)	Summary Proof of Evidence – Malcolm David Hayes (Noise and Vibration)
CWP/7/2 (P)	Proof of Evidence – Malcolm David Hayes (Noise and Vibration)
CWP/7/3 (A)	Appendices to Proof of Evidence – Malcolm David Hayes (Noise and Vibration)
CWP/7/4 (R)	Rebuttal Proof to objectors' documents (various) – Malcolm D Hayes <i>(details at Section G)</i>
CWP/8/1 (P)	Proof of Evidence – Christopher Hadley (Agricultural Land Quality)
CWP/8/2 (A)	Appendices to Proof of Evidence – Christopher Hadley (Agricultural Land Quality)

### (ii) OTHER DOCUMENTS SUBMITTED

CWP/0/1	Report on Common Land Issues
CWP/0/2 (19/4)	Opening Statement on behalf of the Applicant – Mr Andrew Newcombe of Counsel
CWP/0/3 (19/4)	CV – General: Professor Graham Harding
CWP/0/4 (19/4)	Extracts from “New and Renewable Energy: Prospects in the UK for the 21 <sup>st</sup> Century: Supporting Analysis” (ETSU) (Annexes – pages 201 and 213)
CWP/0/5 (19/4)	Extracts from “Cumbria Strategic Tourism Market and Development Forecasts: Market Trends Report – Final” (Locum Destination Consulting) (pages 57 and 58)
CWP/0/6 (19/4)	Cumbria County Tourism Data 2000-2003 (Source: STEAM (Scarborough Tourism Economic Activity Monitor) (Helen Adams, Research Manager, Cumbria Tourist Board)
CWP/0/7 (19/4)	Extracts from “Tourism Business Performance: October – December 2004” (Cumbria Tourist Board) (pages 14, 15, 23 – 26)
CWP/0/8 (19/4)	Cumbria Tourist Board Wind Farm Visitor Impact Research – Questionnaire
CWP/0/9 (20/4)	Note by David Stewart (see CWP/1 series above) on Emissions Savings
CWP/0/10 (20/4)	Scarweather Sands Decision Letter dated 6 July 2004 (Ref: A-PP153-99-003)
CWP/0/11 (20/4)	The Scarweather Sands Offshore Wind Farm Order 2004 (Welsh S.I. 2004 No. 3054)
CWP/0/12 (26/4)	Decision Letter from the National Assembly for Wales to Messrs Winckworth Sherwood dated 6 <sup>th</sup> July 2004 re. Proposed Scarweather Sands Offshore Wind Farm and Inspector's Report
CWP/0/13 (26/4)	Inspector's Addendum Report (14/05/2004) on proposed Scarweather Sands Wind Farm
CWP/0/14 (26/4)	Consultation Response from National Wind Power (John Ainslie 31 <sup>st</sup> December 2002) on the AXIS Study – Renewable Energy Development in Cumbria – Stage 1 & 2/3 Reports
CWP/0/15 (26/4)	Extracts (pages 22, 42 to 44) Whinash Wind Farm – Report on Section 36 Application (Eden District Council, December 2003)
CWP/0/16 (27/4)	Extract (page 31) from “The Electricity Industry Review No. 7” (The Electricity Association, March 2003)
CWP/0/17 (28/4)	Note concerning distance of nearest turbine to the LDNP Boundary

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CWP/0/18 (09/5)	Copy photograph of “no windfarm” protest booth taken on Monday April 11 <sup>th</sup> 2005
CWP/0/19 (09/5)	Extracts (pages 7-8 and 10-17) from “Traditional Buildings & Life in The Lake District” by Susan Denyer (Published in association with the National Trust)
CWP/0/20 (09/5)	Extracts (pages 1 and 32-37) from “Walks in the Kendal Area” (Series 3 (2 <sup>nd</sup> Edition)) (Published by The Kendal Group of the Ramblers' Association)
CWP/0/21 (09/5)	Extract (page 8) from “Odd Corners around the Howgills” by Gareth Hayes
CWP/0/22 (09/5)	Two Field Evaluation Sheets, both entitled “A Landscape Worthy of Designation?” and numbered “LCA 6” relating to Birkbeck Fell Common and Borrowdale & W Ridge Area
CWP/0/23 (09/5)	Wildlife and Countryside – Landscape Protection: re. New Forest National Park (DEFRA website pages)
CWP/0/24 (09/5)	Judgment in case “Lafarge Redland Aggregates Ltd v. Scottish Minister” held before Lord Hardie in Court of Session: Outer House 18 October 2000
CWP/0/25 (10/5)	Extract (Sections 60 and 61 – Construction Sites) from the Control of Pollution Act 1974 (1974 Chapter 40) [Butterworths Direct website edition with Notes)
CWP/0/26 (10/5)	Three photographs of grid connection
CWP/0/27 (17/5)	Outlines of Suspension Towers
CWP/0/28 (17/5)	Note by JS on behalf of CWP dated 16.05.05 re. Core Document CD 166 and copy photograph marked CWP/0/28a (18/5)
CWP/0/29 (17/5)	Note by JS on behalf of CWP dated 16.05.05 re pylons
CWP/0/30 (17/5)	Copy of emails between Nicky McIndoe (Bond Pearce) and Paul Foote (Eden DC) dated 22 March 2005
CWP/0/31 (18/5)	The minutes of the 47 <sup>th</sup> Meeting of the Countryside Agency (Thursday 29 January 2005) – three pages from The Countryside Agency website
CWP/0/32 (18/5)	Letter dated 29 January 2004 from Jane Cecil (Countryside Agency) to ODPM enclosing a submission from the Agency commenting on draft PPS 22: Renewable Energy
CWP/0/33 (18/5)	The Countryside Agency's Research notes entitled “Understanding tranquillity” (CRN 92 March 2005)
CWP/0/34 (18/5)	Chalmerston Wind Power Ltd comments arising out of and response to Inquiry Document EDC/0/23
CWP/0/35 (19/5)	Additional information from Neil Harris following cross-examination on Friday 29 April (dated May 2005 ref: CWP/3/4)
CWP/0/36 (19/5)	DEFRA decision letter dated 17 February 2005 re. Proposed Additions to the New Forest National Park at Fawley
CWP/0/37 (24/5)	Exchange of letters between Bond Pearce dated 4 April 2005 and ICOMOS UK dated 27 April 2005
CWP/0/38 (25/5)	Extract (pages 31-33) from “Cumulative Effects of Wind Turbines Volume 2: Report on Qualitative Public Attitude Research in Mid-Wales”
CWP/0/39 (25/5)	News article: “Huge radioactive leak closes Thorp nuclear plant” from SocietyGuardian.co.uk
CWP/0/40 (25/5)	Copy from NWW website of “Introduction by Kyle Blue, Chairman, nowhinashwindfarm Committee”
CWP/0/41 (25/5)	Copy of letter dated 5 April 2005 from Sedley Place to Lake District National Park Authority re Full Planning Application for conversion of the Cumbria Tourist Board's new headquarters
CWP/0/42 (26/5)	Note by Jeffrey Stevenson re. Pylons dated 26.05.05
CWP/0/43 (26/5)	Note from Jeffrey Stevenson in response to Inquiry Document EDC/0/34 (Peter Winter 24/5 for Lake District National Park Authority)
CWP/0/44 (26/5)	Note by Jeffrey Stevenson on behalf of CWP entitled “Visibility of Certain Elements” dated 26 May 2005 enclosing copy of Inquiry Document CA/0/9 and JS note dated 19 May 2005 on visibility of certain elements
CWP/0/45 (26/5)	Exchange of letters between Casella Stanger and the Botanical Society of the British Isles during April and May 2003 re. botanical information at proposed windfarm site
CWP/0/46 (07/6)	Outline Legal Submissions on behalf of the Applicant (3 June 2005)
CWP/0/47 (07/6)	“Advancing Sustainable Energy – a Sustainable Energy Strategy for the North West Part 1: Energy Efficiency, Renewables and Combined Heat & Power” Consultation Draft, October 2004 (North West Regional Assembly)
CWP/0/48 (07/6)	“Wind Power in the UK – A guide to the key issues surrounding onshore wind power development in the UK” (Sustainable Development Commission)



CWP/0/49 (07/6)	Extract from "The Link" (The Parish Magazine for Orton, Tebay and Ravenstonedale with Newbiggin-on-Lune) re. support letters under title "The Whinash Inquiry, Shap Wells 19 <sup>th</sup> April, 2005"
CWP/0/50 (07/6)	Manuscript annotated copy of "Figure 6. Threshold levels after Watanabe and Moller (1990b)" from the Report to DEFRA May 2003 "A Review of Published Research on Low Frequency Noise and its Effects" (Appendix 2 of the Appendices to Noise Evidence (Inquiry Document CWP/7/3))
CWP/0/51 (08/6)	Paper: "Effects of the wind profile at night on wind turbine sound" (G.P. van den Berg) (2003)
CWP/0/52 (08/6)	Note to the Inquiry – Jeffrey Stevenson – re. views of Whinash (Whinfell) Ridge from Whernside in the Yorkshire Dales National Park
CWP/0/53 (09/6)	Response to Sir Donald Miller (Inquiry Document SDM/1/2) on Noise by Malcolm D Hayes
CWP/0/54 (14/6)	Note to Inquiry entitled "Alan Edwards response to Document DN/1/1" 10 <sup>th</sup> June 2005
CWP/0/55 (14/6)	Note to Inquiry entitled "Kyle Blue's Balloons" (Jeffrey Stevenson 10 <sup>th</sup> June 2005)
CWP/0/56 (14/6)	EA/EN Proposed Ecological Conditions – Comments prepared by CWP (14/06/05)
CWP/0/57 (14/6)	EA/EN Proposed Ecological Conditions - Proposed amendments prepared by CWP
CWP/0/58 (16/6)	Note on Concrete Mix Design to address leaching issues
CWP/0/59 (17/6)	Closing Submissions on behalf of the Applicant
CWP/0/60 (17/6)	Amendments to the Applicant's closing submissions noted during reading on Friday 17/6/05

## E. OBJECTORS AND SUPPORTERS DOCUMENTS

### (i) OBJECTORS

#### Consortium of Local Authorities

EDC/1/1 (S)	Summary Proof of Evidence – Robert Evans (Wardell Armstrong)
EDC/1/2 (P)	Proof of Evidence – Robert Evans (Wardell Armstrong)
EDC/1/3 (A)	Appendices to Proof of Evidence – Robert Evans (Wardell Armstrong)
EDC/1/4 (SuppP)	Supplementary Proof of Evidence – Robert Evans (Wardell Armstrong)
EDC/1/5 (SuppA)	Appendices to Supplementary Proof of Evidence – Robert Evans (Wardell Armstrong)
EDC/1/6 (SuppP2)	Second Supplementary Proof of Evidence – Robert Evans (Wardell Armstrong)
EDC/2/1 (S)	Summary Proof of Evidence (Landscape) – Jonathan King (Wardell Armstrong)
EDC/2/2 (P)	Proof of Evidence (Landscape) – Jonathan King (Wardell Armstrong)
EDC/2/3 (A)	Appendices A and B to Proof of Evidence (Landscape) – Jonathan King (Wardell Armstrong)
EDC/2/3 (A1)	Revised edition of JK44 Photoview 35 in Appendix B (see above)
EDC/2/4 (A)	Appendices C and D (Photomontages) to Proof of Evidence (Landscape) – Jonathan King (Wardell Armstrong)
EDC/2/4A (Add)	Replacement prints of Photomontages Q, R and S for those contained in EDC/2/4
LDNPA/1/1 (P)	Proof of Evidence – Peter Winter
LDNPA/1/2 (SuppP)	Supplementary Proof of Evidence – Peter Winter
LDNPA/1/2/1	Duties on relevant authorities to have regard to the purposes of National Parks, Areas of Outstanding Natural Beauty (AONBs) and the Norfolk and Suffolk Broads – Guidance Note (DEFRA)
LDNPA/1/2/2	Wildlife and Countryside – Landscape Protection: National Parks (DEFRA web-pages)
YDNPA/1/1 (P)	Proof of Evidence – Andrew McCullagh
YDNPA/1/2 (A)	Appendix to Proof of Evidence – Andrew McCullagh
EDC/0/1 (19/4)	Opening Submissions: Planning Authorities – Anthony Crean of Counsel
EDC/0/2 (19/4)	Court of Appeal: Secretary of State for the Environment v. Edwards (P.G.) – March 17 1994
EDC/0/3 (19/4)	Extract from Planning Law Encyclopaedia re. "(13) The availability of alternative sites" (pages 2-3287 to 2-3290)
EDC/0/4 (20/4)	Extract from "Wind Directions" Bimonthly Magazine (EWEA), March/April 2005 (pages 13, 40 & 41)
EDC/0/5 (20/4)	Letter dated 23 <sup>rd</sup> August 2004 from the North West Regional Assembly re. Draft RSS

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EDC/0/6 (21/4)	Response from Baywind Energy Co-operative Ltd to the stage 2-3 report by AXIS to Cumbria County Council on the prospects for renewable energy in Cumbria
EDC/0/7 & 7b (26/4)	Opportunities Map: Onshore Wind Farms 3MW plu – Cumbria County Council, with further extract headed Appendix 3
EDC/0/8 (26/4)	Extract from South Lakeland Planning Committee (11/11/03) – Minute 531 & Resolution
EDC/0/9 (26/4)	Extract from Scheme of Delegation for South Lakeland District Council (January 2005)
EDC/0/10 (21/4)	Extract of Lake District National Park Authority Development Control Committee: 3 May 2005 (Agenda Item 1, Page 2, section 1199)
EDC/0/11 (28/4)	Note of replies arising during Cross-Examination of Bob Evans – Questions from A Newcombe and Inspector
EDC/0/12 (29/4)	Letter dated 29 April 2005 to Programme Officer confirming number of objections received to Date
EDC/0/13 (29/4)	Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (done at Aarhus, Denmark, on 25 June 1998)
EDC/0/14 (29/4)	Landscape Character Assessment – Guidance for England and Scotland paper entitled “TOPIC PAPER 3: Landscape Character Assessment – how stakeholders can help” (Scottish Natural Heritage and The Countryside Agency)
EDC/0/15 (10/5)	Letter dated 12 November 1998 from Government Office for the North East to the Yorkshire Dales National Park Authority enclosing a copy of DETR's decision letter of same date with a copy of the Inspector's Report on Appeal re Land at Cocker Hill, Co. Durham and application re. development at High Moor Farm on parts of Arkengarthdale & Barningham Common
EDC/0/16 (10/5)	National Assembly for Wales appointed Inspector's Appeal Decision on Site at Werfa, Nant-y-Moel, Bridgend dated 25-08-2004 (The Planning Inspectorate, Cardiff)
EDC/0/17 (10/5)	Copy of web page (npower renewables) re. possibility of Middlemoor Wind Farm, Nr. Alnwick, Northumberland
EDC/0/18 (10/5)	Note to Anthony Crean from Andrew McCullagh re. Paragraph 4.5.4 of Supplementary Environmental Information Volume 1, February 2005
EDC/0/19 (10/5)	Landscape Sensitivity to Wind Energy Developments in Lancashire (Lovejoy for Lancashire County Council dated 25/02/2005)
EDC/0/20 (10/5)	Annotated copy of Figure 14a from the Environmental Statement Volume 3 (CD 3 CWP)
EDC/0/21 (12/5)	Large Scale (100,000 scale) copy of “Figure 3. The Section 3 Conservation Map” page 20 of the Lake District National Park Management Plan 2004 (see Core Document CD209 LDNPA)
EDC/0/22 (12/5)	Draft YDNPA Minute, Item 11, 29-3-05 (No. 1247. Yorkshire Dales National Park Boundary Review) with Officer's Report dated 29 March 2005
EDC/0/23 (13/5)	Document entitled “Estimate of Settlement Populations within 5 miles of Site” with attached plan showing the settlements within 5 miles
EDC/0/24 (13/5)	Quotations used by A McCullagh in verbal evidence to the Public Inquiry on Tuesday 26 <sup>th</sup> April 2005
EDC/0/25 (13/5)	Local Authority Consideration of Alison Farmer Report February 2005
EDC/0/26 (13/5)	Statement on behalf of the Lake District National Park Authority re. “Countryside Agency Report ‘Area of Search for land worthy of National landscape designation between the Lake District and Yorkshire Dales National Parks 2005’ (see also CA/0/2 & CA/0/3 below)
EDC/0/27 (17/5)	Minutes of Development Plan Working Group meeting held on Monday 25 April 2005
EDC/0/28 (17/5)	Extract from “The Landscape of William Shakespeare” (Michael Justin Davis)
EDC/0/29 (17/5)	List of companies using “Resoft”
EDC/0/30 (20/5)	EDC Letter to Bond Pearce dated 5 April 2005 re. Draft Planning Obligation by Agreement
EDC/0/31 (20/5)	EDC Letter to Bond Pearce dated 25 April 2005 re. Whinash Windfarm Inquiry – Authorisation
EDC/0/32 (20/5)	EDC Letter to Bond Pearce dated 31 March 2005 re. Statement of Common Ground
EDC/0/33 (20/5)	Eden DC letter to the Programme Officer dated 16 May 2005 re. Eden District Council's formal position upon the proposed extension of the National Parks including the Whinash site enclosing copy of the Council Minutes No. CI/182 dated 16 December 2004

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EDC/0/34 (24/5)	Additional Statement By Lake District National Park Authority (produced following questions to Mr Winter during his cross-examination on Friday 22 April 2005) with attachments EDC/0/34 (1) entitled "The Durban Accord" (V <sup>th</sup> World Parks Congress 2003); EDC/0/34 (2) entitled "The Durban Action Plan – Revised Version, March 2004" (Action Plan from V <sup>th</sup> World Parks Congress 2003); EDC/0/34 (3) entitled "Management Guidelines for ICUN Category V Protected Areas Protected Landscapes/Seascapes" (Best Practice Protected Area Guidelines Series No. 9) (WCPA); and EDC/0/34 (4) "The Snowdonia Declaration 2002" (Europarc 2002)
EDC/0/35 (14/6)	Legal Submissions – Anthony Crean of Counsel
EDC/0/36 (14/6)	1:250,000 plan entitled "ZVI – Hub Height & Public Rights of Way" (Ref: JK66 Drawing No. NL07126/66 dated 23.05.05) (Wardell Armstrong)
EDC/0/37 (14/6)	1:250,000 plan entitled "ZVI – Blade Tip & Public Rights of Way" (Ref: JK66 Drawing No. NL07126/67 dated 23.05.05) (Wardell Armstrong)
EDC/0/38 (14/6)	Minutes of Cumbria County Council's Development Control and Regulation Committee of 27 May 2005 re. prematurity ground of objection (para.10)
EDC/0/39 (14/6)	Closing Submissions on behalf of the Consortium of Local Authorities

### Countryside Agency

CA/1/1 (P)	Proof of Evidence – Jane Cecil
CA/1/2 (S)	Summary Proof of Evidence – Jane Cecil
CA/1/3 (A)	Appendices to Proof of Evidence – Jane Cecil
CA/1/4 (SuppP & A)	Supplementary Proof of Evidence – Jane Cecil
CA/2/1 (P)	Proof of Evidence – Alison Farmer
CA/2/2 (S)	Summary Proof of Evidence – Alison Farmer
CA/2/3 (A)	Appendices 1-6 (excl. 2) to Proof of Evidence – Alison Farmer
CA/2/4 (A)	Appendix 2 to Proof of Evidence – Alison Farmer (Report by Ray Woolmore)
CA/2/5 (A)	Appendix 8 to Proof of Evidence – Alison Farmer
CA/2/6 (SuppP & A)	Supplementary Proof of Evidence – Alison Farmer
CA/3/1 (P)	Proof of Evidence – Julie Martin
CA/3/2 (S)	Summary Proof of Evidence – Julie Martin
CA/3/3 (A)	Appendices 1 and 2 to Proof of Evidence – Julie Martin
CA/3/4 (A)	Appendices 3, 4 and 5 to Proof of Evidence – Julie Martin
CA/3/5 (SuppP)	Supplementary Proof of Evidence – Julie Martin
CA/0/1 (19/4)	Opening Statement on behalf of the Countryside Agency – Richard Honey of Counsel
CA/0/2 (29/4)	Countryside Agency Board Paper AP05/18 (For meeting on 5 <sup>th</sup> May 2005) Title: Recommended Areas of Search for Land Worthy of National Landscape Designation in NW Region
CA/0/3 (29/4)	Countryside Agency Board Paper AP05/17 (For meeting on 5 <sup>th</sup> May 2005) Title: Tests to guide the decision making process when considering suggestions for protected landscape boundary modifications
CA/0/4 (05/5)	View Information for Julie Martin's Photomontages and Videomontages (CA/3/4, Appendices 4 and 5)
CA/0/5 (05/5)	Map showing the application site in relation to the Lake District National Park and the Countryside Agency's Countryside Character Areas.
CA/0/6 (06/5)	The Countryside Agency news release entitled "National Parks Boundary Review – Countryside Agency Board gives go ahead to tackle 'unfinished business' in the North West"
CA/0/7 (17/5)	Note concerning errors in document CA/2/1 (Proof of Evidence – Alison Farmer (see above))
CA/0/8 (25/5)	Note regarding the assessment of Natural Beauty and opportunities for Open Air Recreation (Alison Farmer 24 May 2005) with extract (paras. 45-48) from the South Downs National Park (Designation) Order 2002 Inquiry – Position Paper 1 (Countryside Agency) [Note produced following cross-examination on 19 May 2005]
CA/0/9 (26/5)	Note entitled "Disputed facts regarding views of Shap Blue Quarry" (Alison Farmer/Jeffrey Stevenson dated 23 May 2005) [NB. Inquiry Document CWP/0/44 also refers]
CA/0/10 (27/5)	Note regarding Core Document CD42 Technical Paper 6 – Planning for Renewable Energy Development in Cumbria (the Axis Report) (Jane Cecil, Countryside Agency, May 2005) [Note produced following cross-examination on 18 May 2005]

## Whinash Wind Farm: Inspector's Report

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CA/0/11 (27/5)	Letter dated 25 May 2005 from Margaret Clark, Chief Executive of the Countryside Agency to the Executive Director, Friends of the Earth
CA/0/12 (27/5)	Note from Jane Cecil entitled "Land removed from National Park Designation"
CA/0/13 (27/5)	Note from Jane Cecil entitled "Common Land Issues"
CA/0/14 (15/6)	Closing Submissions on behalf of the Countryside Agency – Richard Honey of Counsel

### Friends of Bretherdale

FLD/1/1 (P)	Proof of Evidence – Graham Hale (Friends of the Lake District/CPRE Cumbria)
FLD/1/2 (A)	Appendices to Proof of Evidence – Graham Hale
FLD/1/3 (SP)	Summary Proof of Evidence – Graham Hale
FLD/2/1 (P)	Proof of Evidence – Ian Brodie (Friends of the Lake District/CPRE Cumbria)
FLD/3/1 (P)	Second Proof of Evidence – Ian Brodie (Friends of the Lake District/CPRE Cumbria)
CNP/1/1	Proof of Evidence – Ruth Chambers (The Council for National Parks)
ICOMOS/1/1 (P)	Proof of Evidence – Susan Denyer (International Council on Monuments & Sites, UK (ICOMOS, UK))
MH/1/1 (P)	Proof of Evidence – Sir Martin Holdgate
MH/1/2 (SP)	Supplementary Proof of Evidence – Sir Martin Holdgate (20/4/05)
MH/1/3 (Add)	Erratum to Proof of Evidence – Sir Martin Holdgate (MH/1/1)
MH/0/1(16/6)	Response to questions posed by Mr Andrew Newcombe regarding Cumbria Wildlife Trust's decision making process – Sir Martin Holdgate
MJD/1/1 (P)	Proof of Evidence – Martin John Dodds
MJD/1/2 (A)	Appendices to Proof of Evidence – Martin John Dodds
MJD/1/3 (S)	Summary Proof of Evidence – Martin John Dodds
MJD/1/4 (Add)	Corrections/Adjustments Schedule re. documents MJD/1/1; /2; & /3
RA/1/1 (P)	Proof of Evidence – Robert Hawkins (Ramblers' Association, Lake District Area)
RA/1/2 (A)	Appendices to Proof of Evidence – Robert Hawkins (Ramblers' Association, Lake District Area)
RA/1/3 (S)	Summary Proof of Evidence – Robert Hawkins (Ramblers' Assoc., Lake District Area)
YDS/1/1 (P)	Proof of Evidence – Dr Malcolm Petyt (The Yorkshire Dales Society)
FoB/0/1 (28/4)	Extract (page 278) from "Renewable Energy – Power for a Sustainable Future" (2 <sup>nd</sup> Edition) (Godfrey Boyle)
FoB/0/2 (28/4)	Extract from "Planning" magazine re. article headed "Experts point to potential of waste energy"
FoB/0/3 (28/4)	Copy of objection letter dated 9 February 2004 from Ruth Chambers, Deputy Chief Executive, Council for National Parks to DTI
FoB/0/4 (28/4)	Friends of Bretherdale Note (re. Martin Dodds evidence) entitled "Progress towards UK renewables target for 2010"
FoB/0/5 (29/4)	Friends of Bretherdale Note (re. Martin Dodds evidence) entitled "Re Approval Rates"
FoB/0/6 (29/4)	Extract (page 1) from "Emission Reduction of Greenhouse Gases from the Cement Industry" (IEA Greenhouse Gas R&D Programme, Cheltenham, UK) (Greenhouse gas control technologies conference paper, 2004)
FoB/0/7 (11/5)	Appeal Decision Ton Mawr Farm, near Margan and Castle Farm, near Llangynwyd dated 23 January 2004 (A-PP185-98-002)
FoB/0/8 (11/5)	Friends of Bretherdale Note (Martin Dodds) entitled "Wind sites in Scotland by size, type and progress." (11 May 2005)
FoB/0/9 (12/5)	A Response to Matters raised by Mr Pike during cross-examination of Ruth Chambers (Council of National Parks) on 27 <sup>th</sup> April 2005
FoB/0/10 (24/5)	UNESCO Convention concerning the protection of the World Cultural and Natural Heritage (October to November 1972)
FoB/0/11 (24/5)	Extract from "Operational Guidelines for the Implementation of the World Heritage Convention (UNESCO World Heritage Centre 2005)
FoB/0/12 (24/5)	<i>DOCUMENT WITHDRAWN</i>
FoB/0/13 (24/5)	Landscape Features near Whinash application site (note with Cumbria Classification and Character area 8 plan (extract), plan of viewpoints, and four accompanying photographs) (Martin Dodds 23 May 05)
FoB/0/14 (24/5)	Two notes entitled "Relevance of the Pylons" and "Note by R Hawkins on behalf of Friends of Bretherdale 18/05/2005" with copies of five photographs
FoB/0/15 (27/5)	"Local Sites System – Guidance on their Development and Management" (DEFRA)

FoB/0/16 (14/6)	Smith v Secretary of State for the Environment, Transport and the Regions (Court of Appeal (Civil Division) March 5 2003)
FoB/0/17 (16/6)	Closing Submissions on behalf of Friends of Bretherdale – Robert McCracken QC

### **Friends of Eden, Lakeland and Lunesdale Scenery**

FELLS/1/1 (S&P)	Summary Proof & Proof of Evidence – Sir Christopher Audland (The Energy White Paper)
FELLS/2/1 (P)	Proof of Evidence – Dr Mike Hall (The UK Energy Gap)
FELLS/3/1 (S&P)	Summary Proof & Proof of Evidence – Dr Mike Hall (Global Warming and Climate Change)
FELLS/4/1 (P)	Proof of Evidence – Sir Christopher Audland (Kyoto, Greenhouse gases & Govt targets)
FELLS/5/1 (S,P&A)	Summary Proof & Proof of Evidence – David White (CO <sub>2</sub> emissions, wind farms & other abatement strategies) (including hard copy of Powerpoint presentation to Inquiry)
FELLS/5/2 (A)	Appendices (additional supporting evidence) to Proof of Evidence – David White (21/04/05)
FELLS/5/3 (A)	Amended version of hard copy of Powerpoint presentation (annotated in manuscript)
FELLS/6/1 (S&P)	Summary Proof & Proof of Evidence – Dr Brian Jones (Firm & non-firm renewables in UK)
FELLS/7/1 (P)	Proof of Evidence – Hugh Sharman (Strengths/weaknesses of wind as delivery vehicle)
FELLS/8/1 (P)	Proof of Evidence – Hugh Sharman (Lessons for UK from European experience)
FELLS/9/1 (A)	Appendices to all Proofs (FELLS/1/1 to FELLS/8/1)
FELLS/10/1	Opening Statement of Tim Kimber (on opening of case)
FELLS/0/1 (19/4)	Opening Statement for FELLS – Geoffrey Sinclair (Environment Information Services)
FELLS/0/2 (19/4)	Three letters dated 4 <sup>th</sup> April 2005 (Bond Pearce); 11 <sup>th</sup> April 2005 (Dr Hall, FELLS) and 15 <sup>th</sup> April 2005 (Mr Sinclair)
FELLS/0/3 (22/4)	Gazetteer of wind power in Scotland – The Scottish Wind Assessment Project, January 2005
FELLS/0/4 (22/4)	Renewables Trends in Scotland Statistics & Analysis – Scottish Natural Heritage 2004
FELLS/0/5 (22/4)	July 2003 ROC (Renewables Obligation Certificate) Register – End user guide
FELLS/0/6 (26/4)	Reduction in Carbon Dioxide Emissions: Estimating the potential contribution from wind-Power
FELLS/0/7 (26/4)	Extracts from “Renewable Energy – 2005/6 Review of the Renewables Obligation – Preliminary Consultation” (DTI)
FELLS/0/8 (27/4)	Renewable Energy – The Need for Balance and Quality – Manifesto 2005 (Renewable Energy Foundation)
FELLS/0/9 (27/4)	Memorandum by The Royal Academy of Engineering – Written Evidence to the House of Lords Select Committee on Science and Technology
FELLS/0/10 (27/4)	Wind in Western Denmark's Energy System (Incotec (Denmark) Aps)
FELLS/0/11 (27/4)	Why the UK should build no more than 10 GW of Wind Capacity (ICE Article Part 2)
FELLS/0/12 (27/4)	Extracts (Summary and Conclusions) from Powerpoint presentation of Mr Hugh Sharman (See also FELLS/7/1 (P) and FELLS/8/1 (P))
FELLS/0/13 (28/4)	EU Directive 2003/87/EC of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community
FELLS/0/14 (09/5)	Letter dated 4 May 2005 from David White of David J. White & Associates, Energy Consultants, to Mr Andrew Newcombe re. cross-examination on Energy White Paper matters on 27 <sup>th</sup> April 2005
FELLS/0/15 (11/5)	Covering note and extracts (pages 309 and 311) from Joint Memorandum from the Regional Development Agencies to the House of Lords Science and Technology Select Committee, 2003-4 ( <i>see also FELLS/0/9 above</i> )
FELLS/0/16 (07/6)	Supplementary Evidence (Dr Mike Hall) on attached copy of Council for Science & Technology Report (May 2005) entitled “An Electricity Supply Strategy for the UK”
FELLS/0/17 (07/6)	Rebuttal by FELLS of Friends of the Earth evidence – SL/1/1 (S&P) and Ronald Stirzaker evidence (RS/1/3)
FELLS/0/18 (08/6)	Copy of the Minutes of the Inaugural Meeting of the Cefn Croes Wind Farm Environmental Management Committee held on 6 <sup>th</sup> April 2004
FELLS/0/19 (09/6)	Closing Submissions for ‘Friends of Eden, Lakeland and Lunesdale Scenery’ (FELLS) – Geoffrey Sinclair

## No Whinash Windfarm

### Landscape and Miscellaneous

NWW/1/1 (P)	Proof of Evidence – Geoffrey Sinclair (Advocate & Principal Witness)
NWW/1/2 (A)	Text Appendices to Proof of Evidence – Geoffrey Sinclair (Advocate & Principal Witness) (Revised & updated Appendix B at 1 May 2005 submitted 10/05/05)
NWW/1/3 (A)	Technical Appendices 1 to 4 to Proof of Evidence – Geoffrey Sinclair (NOTE: Revised edition of Appendix 1a (CD Rom) (“Revision 01 (including turbine tracks”) submitted and new Appendix 4 added 09/05/05.) (New Appendix 3(a) submitted 25/05/05.)
NWW/1/4 (S)	Summary Proof of Evidence – Geoffrey Sinclair (Advocate & Principal Witness)
NWW/2/1 (P)	Proof of Evidence – Professor Keith Beven (Hydrology)
NWW/3/1 (P)	Proof of Evidence – Dr Eve Borrino (Landscape & Wildlife Conservation)
NWW/4/1 (P)	Proof of Evidence – Richard Challenor (Fish & Fisheries)
NWW/4/2 (A)	Appendices to Proof of Evidence – Richard Challenor (Fish & Fisheries)
NWW/5/1 (P)	Proof of Evidence – Dr Mike Hall (Environmental Statement quality issues)
NWW/5/2 (A)	Appendices to Proof of Evidence – Dr Mike Hall (Environmental Statement quality issues)
NWW/6/1 (P)	Proof of Evidence – Adrian Todd (Tebay Anglers)
NWW/6/2 (A)	Appendices to Proof of Evidence – Adrian Todd (Tebay Anglers)

### Tourism and Economic Impact

NWW/7/1	Statement on behalf of Cumbria Chamber of Commerce – Viv Dodd
NWW/8/1	Statement – Charles Woodhouse: Rural Regeneration Cumbria
NWW/9/1 (P)	Proof of Evidence – John Dunning: Westmorland Motorway Services Ltd.
NWW/10/1	Joint Statement – Eric Robson and Ian Stephens (Cumbria Tourist Board)
NWW/10/2	Appendices to Joint Statement – Eric Robson and Ian Stephens (Cumbria Tourist Board) ( <i>Note: NWW/10/1 &amp; 2 previously CTB/1/1</i> )
NWW/11/1	Statement – John Beaumont
NWW/12/1 (P)	Proof of Evidence – Jamie Birley
NWW/12/2 (A)	Appendices to Proof of Evidence – Jamie Birley
NWW/13/1 (P)	Proof of Evidence – Jane Brook (Orton Farmers Ltd)
NWW/14/1 (P)	Proof of Evidence – Steven J Burgess
NWW/15/1	Statement – Christine Evans
NWW/16/1	Statement – Jon Hartley
NWW/17/1 (P)	Proof of Evidence – John Hatt
NWW/18/1	Statement – Pauline Henderson
NWW/19/1 (P)	Proof of Evidence – Wendy Higgins
NWW/19/2 (A)	Appendices to Proof of Evidence – Wendy Higgins
NWW/20/1	Statement – Helen Jones
NWW/21/1	Statement – Margaret Kellas (Orton Hall Limited)
NWW/22/1	Statement – David Kennedy
NWW/23/1 (P)	Proof of Evidence – Don McClen
NWW/24/1	Statement – David Metcalfe
NWW/25/1	Statement – Joanne Nugent & Steven Dunkinson
NWW/26/1 (P)	Proof of Evidence – Wendy & Neil Perkin
NWW/27/1	Statement – Chris Smith
NWW/28/1	Statement – David Smith
NWW/29/1 (P)	Proof of Evidence – Alun Taplin
NWW/62/1	Statement – David Brockbank (Cumbria Vision)

### Local Reaction

NWW/30/1	Statement – Orton Parish Council
NWW/31/1	Statement – Ravenstonedale Parish Council
NWW/32/1	Statement – Tebay Parish Council
NWW/33/1 (P)	Proof of Evidence – South Tebay Residents Association
NWW/33/2 (A1)	Appendices (Maps 1 & 2) to Proof of Evidence – South Tebay Residents Association
NWW/33/3 (A2)	Appendix (Survey Results) to Proof of Evidence – South Tebay Residents Association

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NWW/34/1	Statement – Don Brown
NWW/35/1 (P)	Proof of Evidence – Michael & Catherine Bult
NWW/36/1	Statement – Sharon Coates
NWW/37/1 (P)	Proof of Evidence – Paul & Rhonda Edmendsen
NWW/37/2 (A)	Appendices to Proof of Evidence – Paul & Rhonda Edmendsen
NWW/38/1 (P)	Proof of Evidence – Felicity Lawler
NWW/39/1	Statement – Allan Mawson
NWW/40/1 (P)	Proof of Evidence – Judith McKendrey (see also 145/W1, 145/W2 & 145/W3)
NWW/41/1	Statements – Ann and John Walker
NWW/42/1	Statement – Sir Christian Bonington CBE DL
NWW/43/1	Statement – Sir John Boyd
NWW/44/1	Statement – Melvyn Bragg
NWW/45/1	Statement – Ben Chapman MP
NWW/46/1	Statement – Lord Chorley
NWW/47/1	Statement – Lord Clark
NWW/48/1 (P)	Proof of Evidence – Professor Michael Dower
NWW/48/2 (P)	Supplementary Proof of Evidence (with record of oral evidence given at Inquiry) – Professor Michael Dower
NWW/49/1 (P)	Proof of Evidence – John Dunning
NWW/50/1	Statement – Dame Jennifer Jenkins
NWW/51/1	Statement – Sir John Johnson
NWW/52/1	Statement – Lord Jopling
NWW/53/1	Statement – Lord Marlesford
NWW/54/1	Statement – Lord Inglewood
NWW/55/1	Statement – Lord Parkinson
NWW/56/1	Statement – Colin Pickthall MP
NWW/57/1	Statement – Sir John Quicke
NWW/58/1	Statement – Michael Taylor
NWW/59/1	Statement – Professor Michael Hulme
NWW/60/1	Proof of Evidence – Kyle Blue
NWW/60/2	Appendix (Video-Evidence) to Proof of Evidence – Kyle Blue
NWW/60/3	Commentary to DVD (Video-Evidence – Inquiry doc. NWW/60/2)
NWW/60/4 (25/5)	Statement to the Inquiry – K K C Blue MRICS
NWW/61/1	Statement – Bernard Thornborrow
NWW/62/1	<i>(see under “ Tourism and Economic Impact” above)</i>
NWW/63/1	Statement – James Cropper, Lord Lieutenant of Cumbria
NWW/64/1	Submission by The Rt Hon David Maclean MP and Tim Collins MP
NWW/0/1 (19/4)	Opening Statement for The No Whinash Windfarm Committee – Geoffrey Sinclair
NWW/0/2 (20/4)	North West Regional Development Agency – Report by John Litt (to establish the Agency's Policy on Renewable Energy (10/12/04 NWDA/63/08)
NWW/0/3 (27/4)	Extracts from “M6 Cumbria – England's Scenic Motorway Short Journey Breaks” (Peter Johnson)
NWW/0/4 (27/4)	Copy of citation on bronze plaque alongside the M6 (Civic Trust Award 1971)
NWW/0/5 (27/4)	Extracts from “A Lune Sketchbook” (A Wainwright, 1980)
NWW/0/6 (27/4)	Extracts from “Westmoreland Heritage” (A Wainwright, 1975)
NWW/0/7 (27/4)	Extracts from “Odd corners around the Howgills” (Gareth Hayes, 2004)
NWW/0/8 (27/4)	Extracts from “Bretherdale: A Childhood Odyssey” (Don McClen, June 1999)
NWW/0/9 (12/5)	Extract from Lambrigg ES (Tables 6.1 to 6.3)
NWW/0/10 (25/5)	Statement by Eric Robson on behalf of Cumbria Tourist Board outlining details of surveys upon which CTB's evidence is based in answer to Rebuttal Proof of David Stewart (CWP)
NWW/0/11 (26/5)	Scottish Natural Heritage Technical Guidance Note entitled “Windfarms and Carbon Savings”
NWW/0/12 (27/5)	Extracts (Contents, Executive Summary, and pages 9, 24 and 25) from "Cumbria Rural Action Zone 'Next Steps' Strategy" (June 2002)
NWW/0/13 (27/5)	Extracts from map (Ordnance Survey) entitled “Wainwright's Coast to Coast Walk” (Michael Joseph)
NWW/0/14 (09/6)	Press cuttings and website extract on the W2W (Walney to Wear) long-distance cycle route
NWW/0/15 (09/6)	Closing Submissions on behalf of ‘No Whinash Windfarm’ (NWW) – Geoffrey Sinclair

### **Open Spaces Society**

OSS/1/1 (P)	Proof of Evidence (section 194 issues) – Steve Byrne
OSS/1/1 (Add)	Addendum to OSS/1/1 - Appended Documents List, Core Documents & Core Documents Survey
OSS/1/2 (S)	Summary Proof of Evidence (section 194 issues) – Steve Byrne
OSS/1/3-1/25 (A)	Appendices to Proof of Evidence – Steve Byrne
OSS/1/26 (19/5)	Response to the applicant's "Report on Common Land Issues" (Inquiry doc: CWP/0/1)
OSS/1/27 (SuppP)	Supplementary Proof of Evidence – Steve Byrne
OSS/1/28 (S2)	Combined Summary of Proofs of Evidence – Steve Byrne
OSS/1/29(a) to (c)	Three decision letters of January 2005 (Ref. Nos. CLI 131; CLI 1/3/66; and CLI172) on Applications under section 194 of the Law of Property Act 1925
OSS/1/30	Leaflet produced by Federation of Cumbria Commoners entitled "Cumbria Commons – A Living Heritage and Workplace"
OSS/1/31	Copy letters & e-mail correspondence (concerning supply by DEFRA to OSS of documents covering representative sample of previous s194 applications)
OSS/1/32	Letter from DEFRA indicating intention to abolish s147
OSS/1/33	Email from OSS HQ on textual revisions related to s194 (based on advice received from DEFRA)
OSS/0/1 (20/5)	Opening Statement on behalf of the Open Spaces Society (with letter of authority) – Steve Byrne
OSS/0/2 (14/6)	Closing Submissions on behalf of the Open Spaces Society – Steve Byrne
OSS/0/3 (14/6)	Full list of OSS documents submitted to the Inquiry
OSS/0/4 (14/6)	Note in clarification (Scout Moor Wind Farm)

### **Francis Melford**

FM/1/1 (P)	Proof of Evidence – Francis Melford (Note: Superseded on 31/5/05 by FM/1/2 (P) below)
FM/1/2 (P)	Revised & updated Proof of Evidence - Francis Melford

### **Andrew Duff** *[Note: Did not appear - statement treated as written representation]*

HD/1/1 (P)	Statement Proof – Andrew Duff (Hugh Andrew Scott Duff)
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### **National Air Traffic Services** *[Note: Did not appear, objection withdrawn – see NATS/0/3 and /4]*

NATS/0/1	Letter of dated 17 March 2005 from Mark Asquith (NATS)
NATS/0/2	Attachment A to NATS/0/1 - Statement of Case
NATS/0/3	Letter received 1 June 2005 from Mark Asquith informing Inquiry that agreement reached with CWP Ltd to mitigate effects of windfarm and withdrawing previously submitted evidence
NATS/0/4	Letter dated 3 June 2005 from NATS to Steve Molly (West Coast Energy Ltd) confirming no safeguarding objections remain

### **Dr Kaye Little**

KL/1/1 (P&A)	Proof of Evidence and Appendices – Dr Kaye Little
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### **Sir Christopher Audland**

SCA/1/1(P & A)	Proof of Evidence & Appendices– Sir Christopher Audland
SCA/0/1 (08/6)	"The Cost of Generating Electricity" A Commentary on a study carried out by PB Power for The Royal Academy of Engineering
SCA/0/2 (08/6)	"The Cost of Generating Electricity" A Study on a study carried out by PB Power for The Royal Academy of Engineering (March 2004)
SCA/0/3 (14/6)	Text copy of evidence as presented on 8 June 2005



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SCA/0/4 (15/6)	Note and extracts from the "Report of the United Nations Scientific Committee on the Effects of Atomic Radiation to the General Assembly"
SCA/0/5	Letter dated 24 <sup>th</sup> June 2005 enclosing (as agreed by the Inspector on Inquiry Day 27) copy extract of NIA Newsletter "Industry Link" re. article by Gordon MacKerron, Chair, CoRWM

### **Sir Donald Miller**

SDM/1/1(S,P&A)	Summary Proof, Proof of Evidence & Appendices – Sir Donald Miller
SDM/1/2 (Add)	Addendum to Precognition (re. further evidence by Hayes Mackenzie) – Sir Donald Miller
SDM/0/1 (08/6)	Press cutting (page 1) from Highlands and Islands Press and Journal dated May 31 2005
SDM/0/2 (08/6)	Extract – page 14 – of Appendix 5 to Whinash Wind Farm: Noise Impact Assessment (Hayes Mckenzie Partnership)
SDM/0/3 (08/6)	Extracts (pages 5 and 33 and page 1 to Appendix D) from the "Toora Wind Farm – Review of the Environmental Noise Monitoring Program" (Graeme E. Harding & Associates Pty. Ltd., 2005 Jan. 27)

### **Ruth McChesney**

RM/1/1 (P)	Statement Proof – Ruth McChesney
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### **Communities Opposing Lamonby Turbines (COLT)**

COLT/1/1 (P)	Statement Proof – Ruth Walsh, Chair, COLT
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### **Roundthwaite and Bretherdale Commoners' Association**

RBCA/1/1 (P) (18/5)	Proof of Evidence (Common Land Issues) – Peter Graveson
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### **Felicity Lawler**

FL/1/1 (P) (18/5)	Proof of Evidence (Common Land Issues) – Felicity Lawler
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### **Alun Lewis**

AL/1/1 (P) (18/5)	Statement Proof (Common Land Issues - Walker's Perspective) – Alun Lewis
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### **David Natrass**

DN/1/1 (P) (8/6)	Statement Proof
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### **Colin Simms**

CS1/1 (P) (14/6)	Statement Proof with appendices
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## **(ii) SUPPORTERS**

### **Anita Stirzaker**

AS/1/1 (P)	Proof of Evidence – Anita Stirzaker
AS/1/2 (A)	Appendices A to I to Proof of Evidence – Anita Stirzaker
AS/1/3 (SuppP&A)	Supplementary Proof of Evidence with Appendices 1 and 2 – Anita Stirzaker

### **Friends of the Earth – South Lakeland**

FOE-SL/1/1 (S&P)	Summary Proof & Proof of Evidence – Jill Perry
FOE-SL/1/2 (A)	Appendices to Proof of Evidence – Jill Perry

## Whinash Wind Farm: Inspector's Report

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FOE-SL/1/3 (SuppP)	Supplementary Proof of Evidence – Jill Perry
FOE-SL//0/1 (14/6)	Extract from letter from Professor Nesterenko (written 15 <sup>th</sup> January 2005) and article from The Independent dated 29 <sup>th</sup> May 2005
FOE-SL/0/2 (15/6)	Article from The Militant (May 22 <sup>nd</sup> 1995) entitled “Chernobyl Nuclear Plant Again Scheduled To Close
FOE-SL/0/3 (17/6)	Letter dated 16 <sup>th</sup> June 2005 from Margaret Sanders, Co-ordinator, South Lakeland FOE
FOE-SL/0/4	Letter dated 20 <sup>th</sup> June 2005 from Margaret Sanders enclosing CoRWM website attachment not enclosed with letter of 16 <sup>th</sup> June 2005 (as agreed with the Inspector on Inquiry Day 27)

### **Marianne Bennett**

MB/1/1 (P)	Statement/Proof of Evidence – Marianne Bennett
MB/1/2 (A)	Appendices to Statement/Proof of Evidence – Marianne Bennett

### **Ronald Stirzaker**

RS/1/1 (P)	Proof of Evidence – Ronald Stirzaker
RS/1/2 (A)	Appendices A to K to Proof of Evidence – Ronald Stirzaker
RS/1/3 (SuppP&A)	Supplementary Proof of Evidence with Appendices A to D – Ronald Stirzaker

## **F. WRITTEN STATEMENTS**

*(Note: numbers quoted below refer to the Supporters or Objectors correspondence number)*

### **Supporters**

S150/W1	Envirolink Northwest (Chris Shearlock)
S167/W1	Friends Against Contaminated Environments (Ian S. Dixon)
S/180/W1	Ms J L Glover
S353/W1	Renewables Northwest (Julian Carter)
S516/W1	Scientists for Global Responsibility (Dr Stuart Parkinson)
S520/W1	M L Tahermia (14/3/05)
S520/W2	M L Tahermia (09/6/05)
S521/W1	Energy4All - Baywind Energy Co-operative Limited
S530/W1	Greenpeace (with associated Appendix “Wind Power in the UK – A guide to the key issues surrounding onshore wind power development in the UK”

### **Objectors**

15/W1	Miss Pauline Baseley
72/W1	Mr David Fallowfield
138/W1	Mr Dave Major
145/W1	Judith McKendrey (relating to original Proof of Evidence NWW/40/1 (taken as written))
145/W2	Judith McKendrey (re. Commonsers' Association matters and planning conditions)
145/W3	Lever-arch file entitled “Mainly a Pictorial Portrait of Tebay and surrounding areas: compiled during and inspired by the Inquiry” (containing over 180 photographs plus press cuttings, newsletters, magazine extracts, articles, leaflets etc.) – Judith McKendrey
156/W1	Mr Malcolm J Mullett
198/W1	Mrs V H Spragg
336/W1	The National Trust - North West Region
347/W1	Tebay Community Primary School - Governing Body
482/W1	Statement of Case - Colin Pickthall MP (West Lancashire)
1059/W1	Mr Michael Moss
1403/W1	Mr John Walton
1453/W1	Mr B Moon and Miss G M Haythornthwaite

**Other Representations** (No objections in principle)

1248/W1&1249/W1 English Nature & the Environment Agency Joint Statement  
1248/W1&1249/W1 Letter dated 15<sup>th</sup> June 2005 to Eden District Council from the Environment Agency, on behalf of both the Agency and English Nature, concerning draft Planning Conditions

**F. REBUTTAL PROOFS – DISCRETE LIST**

*This section highlights the Rebuttal Proofs submitted by Chalmerston Wind Power Ltd which are listed within Section D “Applicants Documents” (sub-section (i) “Proofs of Evidence and associated witness documents”).*

CWP/1/4 (R)	Rebuttal Proof to Cumbria Tourist Board (NWW/10/1 & /2) – David Ian Stewart
CWP/2/4 (R & RA)	Rebuttal Proof (with Appendices) to objectors' documents (various) – Jeffrey Stevenson <ul style="list-style-type: none"><li>(i) The Local Authorities Consortium (re: EDC/2/2; LDNPA/1/1 &amp; YDNPA/1/1)</li><li>(ii) The Friends of Bretherdale (re: FLD/1/1; FLD/2/1; CNP/1/1; ICOMOS/1/1; MH/1/1; MJD/1/1; RA/1/1; YDS/1/1)</li><li>(iii) Open Spaces Society (re: OSS/1/1)</li><li>(iv) The Countryside Agency (re: CA/1/3;CA/2/1; CA/3/1)</li><li>(v) No Whinash Windfarm (re: NWW/1/1; NWW/9/1; NWW/17/1; NWW/30/1; NWW/35/1 to NWW/42/1 inclusive; NWW/46/1; NWW/47/1; NWW/58/1 NWW/59/1; NWW/61/1)</li></ul>
CWP/3/3 (R)	Rebuttal Proof to objectors' documents (various) – Neil Harris <ul style="list-style-type: none"><li>(i) No Whinash Windfarm (re: NWW/2/1; NWW/4/1; NWW/40/1)</li><li>(ii) Friends of Bretherdale (re. MH/1/1)</li></ul>
CWP/5/4 (R)	Rebuttal Proof to objector's documents (various) – Stewart Lowther <ul style="list-style-type: none"><li>(i) Friends of Bretherdale (re: MH/1/1)</li><li>(ii) No Whinash Windfarm (re: NWW/3/1; NWW/4/1 &amp; /2; NWW/61/1)</li></ul>
CWP/7/4 (R)	Rebuttal Proof to objectors' documents (various) – Malcolm David Hayes <ul style="list-style-type: none"><li>(i) Friends of Bretherdale (re: MJD/1/1)</li><li>(ii) Sir Donald Miller (SDM/1/1)</li></ul>

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## Appendix C

### Summary of Planning Obligation by Unilateral Undertaking relating to land at Whinash

1. The Planning Obligation is given by Chalmerston Wind Power Limited and the owners (4 parties) of the site. It would take effect on commencement of the development. Its main provisions provide for:-
  - i.* the appointment, and funding, of a Management Group, comprising representatives of the Applicant and the owners, advised by the Applicant's Environmental Officer and Site Manager, which will meet not less than once every month during the construction period and less frequently thereafter;
  - ii.* meetings of the Management Group may be attended by representatives of the Secretary of State, Eden District Council, English Nature and the Environment Agency;
  - iii.* the role of the Management Group will be to advise on matters of land management with the aim of preventing further deterioration of existing areas of blanket bog, and enhancement, where appropriate and possible; to restore such areas which have high potential for recovery; enhance the habitats of important and/or protected species; and manage the area as a catchment to wetlands and environmentally sensitive watercourses;
  - iv.* the Management Group shall restrict sheep grazing on Common Land Unit 108; undertake a programme of grip blocking on that area and agree the detail, and implement, habitat restoration measures where blanket bog and/or flush habitats are affected during construction works;
  - v.* a monitoring programme for the presence of water voles, habitat condition, and hydrology (including fisheries) and to implement appropriate remedial or mitigation measures if monitoring indicates unforeseen adverse impacts attributable to the development;
  - vi.* the appointment of an Environmental Officer whose duties shall include the co-ordination of *iv* and *v* above.
2. Additionally, prior to the commencement of the development the Company will establish a Trust with the objectives of:- achieving favourable management of the features of the Shap and Birkbeck Fells Site of Special Scientific Interest and improving habitats through appropriate measures. Funding will be provided on an annual basis, for the duration of the operation of the wind farm, in the sum of £20,000/year (index linked).
3. In terms of television reception, the Company will, prior to the commencement of development, commission a survey of the quality of existing domestic services; and, in the event of any subsequent complaint within 12 months of first generation, will undertake a further survey and use reasonable endeavours to eliminate any degradation arising from the existence or operation of the development, subject to a maximum cost of £25,000.
4. The obligation also provides for:- the removal of turbines, ancillary buildings and related plant down to ground level; the removal of turbine plinths to a depth of one metre below final ground profile; and restoration of the site, as far as reasonably possible, to pre-development condition. As security a letter of credit will be obtained for a sum of £135,000, to be updated annually by index linking, which will be reviewed for adequacy at the end of 10 years and amended as necessary.

## Appendix D

### Recommended Planning Conditions

If the Secretary of State does not accept my recommendation to refuse consent for the Section 36 application, it is recommended that the following conditions be imposed on the deemed planning permission, for the reasons given in paragraphs 15.53 – 15.57 of my conclusions.

- (1) The development hereby permitted shall be begun before the expiration of five years from the date of this permission.
- (2) This permission shall expire no later than 25 years from the date that electricity from the development is first exported to the grid. Within 12 months of the expiration of the permission, all elements of the development above ground level, excluding the access tracks, shall be removed and the land restored, in accordance with the Decommissioning Method Statement required by Condition (3).
- (3) Within a period of at least 12 months preceding the expiration of this permission, a Decommissioning Method Statement, including details of site restoration, soil replacement, landscaping, creative conservation and a timetable for its implementation and maintenance, shall be submitted to the relevant local planning authorities. The scheme shall be implemented and maintained in accordance with the approved details.
- (4) If any turbine ceases to be operational for a continuous period of 12 months it shall, unless otherwise agreed in writing by the relevant local planning authority, be dismantled and removed from the site. That part of the site shall be restored in accordance with a scheme, including a timetable for its implementation, to be submitted to the relevant local planning authority within 2 months after the said 12 month period and which is subsequently approved in writing by that authority.
- (5) No development shall take place until details of the size, design, external appearance and colour of the turbines have been submitted to and approved in writing by the relevant local planning authority. The development shall be carried out in accordance with the approved details.
- (6) The turbine blades shall rotate in the same direction.
- (7) Notwithstanding the details submitted with the application, the turbines and access tracks shall be sited within +/- 50 metres of the positions indicated on Figure 27 of the Supplementary Environmental Information (February 2005) in positions to be agreed in writing by the relevant local planning authority.
- (8) No development shall take place until details of the materials to be used for the construction of the turbine foundations, hardstandings and access tracks have been submitted to and approved in writing by the relevant local planning authority. The development shall be carried out in accordance with the approved details.
- (9) No development shall take place until details of the design, external appearance, materials, colours and surface finishes of the substation and its means of enclosure have been submitted to and approved in writing by the relevant local planning authority. The development shall be carried out in accordance with the approved details.
- (10) No development shall take place until details of the site compound, including its surfacing and drainage and any temporary structures to be erected, has been submitted to and approved in writing by the relevant local planning authority. The compound shall be removed and the land restored within a period of 6 months from the first generation of electricity from the site in accordance with a scheme previously agreed in writing by the relevant local planning authority.
- (11) No development shall take place until details of the connection to the electricity grid, including the framework to be attached to the existing pylon, have been submitted to and approved in

- writing by the relevant local planning authority. The development shall be carried out in accordance with the approved details.
- (12) All cabling, with the exceptions of the connections to the substation and the electricity grid, shall be laid underground.
  - (13) No development shall take place until details of the colour and finish of the anemometry masts have been submitted to and approved in writing by the relevant local planning authority. The development shall be carried out in accordance with the approved details.
  - (14) The turbines, anemometry masts and substation shall not carry any form of external illumination.
  - (15) No development shall take place until a Construction Method Statement, covering all construction and access works and all works of land disturbance (including reinstatement where those works are temporary) has been submitted to and approved in writing by the relevant local planning authority. The Statement shall include measures to protect wildlife, habitats and hydrology; an ecological survey investigation and monitoring scheme to oversee and direct construction works; and details of soil and peat handling, storage and restoration. The development shall be carried out in accordance with the approved Statement.
  - (16) The Construction Method Statement required to be approved and implemented under Condition (15) shall restrict construction activities to a period outside the bird nesting season (1 March to 31 July) unless the Statement provides alternative safeguards to keep such activities away from nesting birds.
  - (17) No development shall take place until a check survey to establish the presence or absence of water voles in the areas to be affected by construction activities has been undertaken. If water voles are found, the Construction Method Statement required to be approved and implemented under Condition (15) shall include mitigation measures to avoid any damaging effects on the water voles.
  - (18) No development shall take place until a scheme for the monitoring of water quality and pollution has been submitted to and approved in writing by the relevant local planning authority. The approved scheme shall be implemented in accordance with the agreed monitoring regime.
  - (19) No development shall take place until an Environmental Management Plan, including a programme for its implementation, has been submitted to and approved in writing by the relevant local planning authority. The Plan shall make provision for the management of the site throughout its operation and set targets for habitat restoration. It shall, in particular, provide for the improvement of the blanket bog within habitat units 1 – 23 and 80, 82 and 89, shown in Figure 50 of the Supplementary Environmental Information Volume 2 (February 2005). The Environmental Management Plan shall be implemented in accordance with the approved details.
  - (20) No development shall take place until a scheme of archaeological investigation and any subsequent programme of work has been submitted to and approved in writing by the relevant local planning authority. The approved scheme shall be implemented in accordance with the approved programme of work.
  - (21) No works, other than those in connection with the construction of the vehicular access to the site, shall commence until that access has been provided in accordance with plans and specification that have first been submitted to and approved in writing by the relevant local planning authority. The plans and specifications shall include details of its width; surfacing; gradient; positioning of gates (or other means of enclosure); and visibility splays which shall be retained until such time as the site has been fully decommissioned.
  - (22) No development shall take place until details of the arrangements for the parking and loading/unloading of vehicles, and the provision of vehicle wheel cleaning facilities, within the site has been submitted to and approved in writing by the relevant local planning authority. The development shall be carried out in accordance with the approved details.

- (23) A Traffic Plan relating to the management of traffic movements to and from the site associated with the construction of the development shall be submitted to and agreed in writing by the relevant local planning authority before the development is commenced. Traffic movements shall be undertaken in accordance with the approved Plan.
- (24) No development shall take place until details of the arrangements for the storage of hydrocarbons, chemicals or similar liquids within the site has been submitted to and approved in writing by the relevant local planning authority. The development shall be carried out in accordance with the approved details.
- (25) No development shall take place until details of the arrangements for the disposal of foul and contaminated water and sewage from the site has been submitted to and approved in writing by the relevant local planning authority. The development shall be carried out in accordance with the approved details.
- (26) No development shall take place until a Pollution Incident Response Plan has been submitted to and approved in writing by the relevant local planning authority. The approved Plan shall be followed to effectively prevent, contain and/or remove any accidental spillage that may lead to contamination of land or water during the construction of the development hereby approved.
- (27) No construction works shall be carried out on the site before 0700 hours on weekdays and 0800 hours on Saturdays, nor after 1900 hours on weekdays and 1800 hours on Saturdays, nor at any time on Sundays or Bank or Public Holidays unless:-
- (a) such work is in an emergency; or,
  - (b) such work is agreed in writing by the relevant local planning authority; and
  - (c) noise levels from the construction works do not exceed the ambient noise levels set out in Table 7.3 of Volume 1 of the Supplementary Environmental Information (February 2005).
- (28) Noise from activities involved in the construction of the development hereby permitted shall be limited to a level of 70 dB  $L_{Aeq\ 1hr}$  at any time, at any residential property lawfully in existence as at the date of this permission.
- (29) When in operation, noise from the turbines hereby permitted shall be limited to a rating level (measured under free-field conditions) of 40 dB  $L_{A90}$ , or 5 dB above the pre-established prevailing background daytime noise level (0700 hours to 2300 hours) whichever is the greater; and 43 dB  $L_{A90}$ , or 5 dB above the pre-established prevailing background night-time noise level (2300 hours to 0700 hours) whichever is the greater; at any residential property lawfully in existence at the date of this permission.
- (30) The rating levels in Condition (29) shall be calculated from the measured noise level plus a correction to account for any tonal components, to be derived from the procedures in *The Assessment and Rating of Noise from Wind Farms (ETSU-R-97)*. Noise measurements shall be carried out according to the procedures in ETSU-R-97 (pages 87 - 90), with the results correlated to wind speed measurements at a height of 10 metres on the site. The pre-established prevailing background noise levels in Condition (30) shall be those set out in Table 7.3 of Volume 1 of the Environmental Statement submitted with the application for the nearest representative location or such other locations as may be agreed with the relevant local planning authority.
- (31) No development shall take place until a Noise Audit Scheme has been submitted to and approved in writing by the relevant local planning authority which specifies the provisions to be made for measuring noise emissions from the site when the turbines are in operation. The scheme shall, in particular, provide for the frequency of monitoring, the manner in which the measurements are to be taken and the means of implementation.