



Decision by Trevor A Croft, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-140-2068
- Site address: Land north-west of Gilston Farm, Heriot, Scottish Borders
- Appeal by Forsa Energy Services Limited against the decision by Scottish Borders Council
- Application for planning permission 17/00226/FUL dated 15 February 2017 refused by notice dated 2 October 2017
- The development proposed: Erection of a windfarm comprising of 7 turbines 126.5 metres to tip, associated infrastructure, ancillary buildings and temporary borrow pits
- Application drawings - as listed in schedule at the end of this notice
- Date of site visits by Reporter: 6 February 2018 (unaccompanied), 20 March 2018 (accompanied)

Date of appeal decision: 7 February 2019

Decision

I allow the appeal and grant planning permission subject to the 34 conditions listed at the end of the decision notice. Attention is drawn to the four advisory notes and three informatives at the end of the notice.

Preliminary matters

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

In January 2012 two applications were submitted for seven and nine turbines respectively on adjacent sites at Gilston Farm within the Scottish Borders and Fala Moor in Midlothian. Although effectively one scheme, with one environmental statement and other duplicated material, this necessitated the two applications. Both were refused and subsequent appeals (PPA-140-2043 and PPA-290-2022) were dismissed. The appeal now under consideration is for a revised proposal entirely within the Scottish Borders.



Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. Taking into account the provisions of the development plan, my site inspections and the submissions before me I consider the main issues in this appeal to be the landscape and visual impacts of the proposed development, the impact of noise on nearby properties, and the operation of radar at Edinburgh airport.

The appeal proposal

2. The appeal site covers 183 hectares and despite being named Gilston Hill Windfarm occupies approximately the northern half of Brotherstone Hill, which lies to the west of Gilston Farm and reaches an altitude of 418 metres above ordnance datum (AOD) at its summit. The site area is on the lower northern slope of the hill dropping gradually towards the Brothershiels Burn at an altitude of 300 metres AOD. The burn defines the boundary between Midlothian and Scottish Borders in this locality. To the north of it lies Fala Moor, a relatively level area of heather moorland within Midlothian. There are several coniferous woodland plantations forming shelterbelts to the east and west of the appeal site. The A68 trunk road lies 2.5 kilometres to the north and the A7 road some three kilometres to the south-west. There would be seven turbines at a height of 126.5 metres to blade tip, set out in two lines of three rising up the slope in a west-east direction with the seventh turbine to the south, closer to the summit of the hill.

3. As well as the turbines themselves and associated foundations, hard standings and laydown areas there would be approximately 3.9 kilometres of new access tracks connecting with the B6368 road (which links the A68 and A7 roads), to the north of Makimrich Wood. Underground cabling under the access tracks would link the turbines to a sub-station located at the northern end of the site. There would be two borrow pits, one adjacent to Makimrich Wood and the other to the south of Gilston Farm.

4. Brotherstone Hill represents the north-eastern extent of the Moorfoot Hills and joins the Lammermuir Hills to form the northern edge of the Southern Uplands, at this point adjoining the appeal site and the remainder of the lower lying plateau that includes Fala Moor. North of Fala Moor the landform steps further downwards towards rolling farmland of Midlothian and East Lothian, to the north and north-east respectively.

5. To the east and north-east of the appeal site stands Dun Law wind farm. With its two extensions, to the north-east and south-west, this totals 61 turbines. It lies 2.1 kilometres from the appeal site at its closest point. To the north-east of the northerly Dun law extension the six turbine Pogbie windfarm is nearing completion.

The development plan

6. The development plan consists of two documents: SESplan, which is the strategic development plan for South-east Scotland approved by the Scottish Ministers in June 2013; and Scottish Borders Local Development Plan 2016.

7. The Energy section of the SESplan includes policy 10: Sustainable Energy Technologies. The policy confirms that the plan seeks to promote sustainable energy sources. It states, amongst other things, that local development plans will “set a framework for the encouragement of renewable energy proposals that aims to contribute towards achieving national targets for electricity and heat, taking into account relevant economic, social, environmental and transport considerations, to facilitate more decentralised patterns of energy generation and supply and to take account of the potential for developing heat networks.”

8. A replacement SESplan has now been through an examination and the report of that is before Ministers. I have not however been made aware of any potential modifications that are likely to affect my determination of the appeal.

9. Policy ED9 of the adopted local development plan supports renewable energy development, including commercial windfarms, provided there are “no relevant unacceptable significant impacts or effects that cannot be satisfactorily mitigated” unless these impacts or effects are considered to be outweighed by the wider economic, environmental and other benefits of the proposal.

10. The application of these qualifications to the assessment of the principle of any wind energy development requires the detail of the specific proposal to be fully considered to establish: (i) whether or not any significant adverse impacts would be liable to arise in the first place; (ii) whether or not any such impacts would be unacceptable in terms of their effects upon the environment and/or amenity of the surrounding area; and (iii) whether or not any such impacts would be capable of being satisfactorily mitigated in some way, or would otherwise be offset by the delivery of some greater economic, environmental or other benefit to the area.

11. The potential for any or all of these matters to affect the assessment of whether or not a specific wind energy development proposal might be considered to comply in principle with Policy ED9, establishes very directly, the need for the specific proposal to be assessed in relation to a robust set of criteria that would allow all relevant aspects of the proposal to be fully considered. To this end, Policy ED9 features a list of eleven considerations, which it requires to be taken into account within the assessment of wind energy proposals. It further requires prospective wind energy developers to demonstrate that they have considered options for minimising the operational impact of their wind energy proposals, including any ancillary development such as access tracks.

Landscape Impacts

12. No part of the appeal site is covered by any regional, national or international landscape designations. There are two National Scenic Areas within the surrounding 35 kilometre radius study area in the environmental statement. These are at Eildon and Leaderfoot and at Upper Tweeddale to the south and south-west respectively. Both of these are in excess of 25 kilometres from the appeal site. The Pentlands Hills Regional Scenic Area is located around 30 kilometres to the west of it.

13. The appeal site is located close to and clearly visible from the Fala Moor and Fala Flow Special Protection Area (SPA) and Site of Special Scientific Interest, just across the

adjacent border with Midlothian. The Soutra Aisle and Dere Street Scheduled Ancient Monuments, east of Fala Moor, are also close to the proposed windfarm site. At present for these two monuments there is a degree of separation and screening from the appeal site provided by the intervening plantation of commercial forestry. There is however no guarantee that this would be maintained for the life of the proposal.

14. The Landscape and Visual Assessment (LVIA) put forward by the appellant has been based largely on the appropriate guidance provided nationally on such matters. The process followed includes reference to the establishment of baseline conditions against which any landscape and visual change can then be assessed. In particular, the assessment is intended to identify the extent and significance of change arising from the turbines and associated infrastructure of the proposed windfarm that could affect the physical landscape of the development site, the surrounding landscape character and visual amenity from particular viewpoints.

15. The environmental statement and the design and access statements emphasise the proposed development addresses the criticisms of the previous reporter in refusing the earlier appeal as well as the council's reasons for refusal of the original application. These include:

- The location of development in relation to upland landscape characteristics;
- Visual effects from the A7 and A68;
- Visual effects from Fala Moor and the area of great landscape value;
- Visual effects from Fala, North Middleton and Edgehead; and
- Cumulative effects in relation to existing windfarms on the skyline.

16. The design statement sets out technical, environmental, landscape and visual considerations that were taken into account, as exposed in the environmental statement. These include (page 12 of the design and access statement) physical constraints on the ground, both man-made and natural, and landscape and visual issues.

17. The appeal site is identified in Scottish Natural Heritage's national landscape assessment as being within the Lauder Common area of the Plateau Grassland Landscape Character Type (LCT). The LCTs are sub-divided geographically into Landscape Character Areas (LCAs). There are a total of 35 LCAs within the study area that has been assessed as part of the LVIA.

18. The environmental statements visualisations provide montages from 26 locations. These range from important viewpoints close to the appeal site, notably 1 to 8, to more distant ones on high ground and close to communities. The most distant is Arthur's Seat in Edinburgh just over 22 kilometres distant. A detailed assessment of the impact was carried out for 18 of the sites, those omitted being considered to have no or limited impact that would not be significant. I visited 13 of the sites during my unaccompanied site inspections as well as a number of locations not specifically covered by the assessment. Viewpoints 1 – 6, those closest to the appeal site are particularly relevant to my consideration.

19. Viewpoint 1 – B6368, Kings Inch Access The B6368 is a relatively narrow undulating secondary road that connects the A68 with the A7 and passes the eastern wedge of the appeal site. To the east and south-east the Dun Law windfarm and its two extensions, just over a kilometre distant to the nearest turbines, dominate the skyline with

over 60 turbines visible, many close to full height. Farther east the new Pogbie windfarm is visible, albeit against a backcloth of more distant hills. In contrast the appeal proposal's turbines would be appear closer and more dominant because of their greater height. A high voltage power line crosses the viewpoint and proposed turbine locations. One pylon would be seen against a backcloth of the northernmost turbines.

20. A coniferous plantation would mask the base of some of the turbines but this would not have a significant impact on the overall visibility as they are seen mainly above the trees. Similarly in the event of the plantation being felled there would not be a significant impact on the visibility of the turbines. The landscape and visual assessment ranks the magnitude of change as medium and the effect as significant. Given the proximity of the existing turbines I accept these judgements.

21 Viewpoint 2 – Fala Moor Right of Way This viewpoint is reached by walking along a track that runs from Fala to Brothershiels Farm. The middle two kilometres or so cross the relatively level Fala Moor, with the viewpoint located at a central point. At the time of my site inspection the surrounding country was snow covered, which brought the topography into stark relief compared with the somewhat softer appearance during normal conditions. The moor itself is largely heather covered with areas of rough grass and has a sense of remoteness with few buildings visible to detract from this. In this respect the viewpoint is perhaps the most important in assessing the impact of the proposal on the landscape.

22. To the north and west the view looks towards the developed areas of Midlothian with settlements generally screened by trees or at such a distance as to have little impact on the overall scene. To the south Brotherstone Hill is some 1.5 kilometres away and is clearly seen as part of the northern edge of the southern uplands. That said it is not a dominant landscape feature and appears to merge with Dun law to the east. The skyline at that point is dominated by the Dun Law turbines.

23. The proposed turbines would be seen partly against the hill but all seven hubs would be above the skyline. Whilst clearly prominent in the view they would clearly be seen in close association with Dun Law and this would serve to mitigate to some extent their potential impact. That said, the proposed turbines would be closer and much more dominant than the existing ones and the landscape and visual assessment gives the magnitude of change as high, and the effect as significant, both of which I accept.

24. Viewpoint 3 – Soutra Isle This viewpoint is also on the B6368 about a kilometre north-east of viewpoint 1. Its importance lies in Soutra Isle, the location of a major trading settlement in mediaeval times. All that remains is a very small chapel but interpretation explains the significance of the site's location and importance of the settlement. Again the views to the south and east are dominated by Dun Law, although because of the height of the viewpoint compared to viewpoint 1 more of the turbines would be seen against a backcloth of trees or hills.

25. At present views of the proposed windfarm site are screened entirely by coniferous plantation so there would be no visibility. In the event of the trees being felled, a possibility in around 10 years according to the landscape and visual assessment, the turbines would be opened up to view. At a distance of some 1.8 kilometres they would clearly be a prominent feature, although seen mainly against the hillside. In these circumstances the

assessment says the magnitude of change would be medium-high with a significant effect, which I accept.

26. Viewpoint 4 – A68, south of B6368 Travelling north the A68 crosses the northern border hills and passes through the Dun Law windfarm which is clearly visible, especially to the west of the road. To the east there is some screening from coniferous plantations. The road then drops down Soutra Hill, descending the northern edge of the hills, before taking a sweeping turn to the right to pass viewpoint 4 just before the junction with the B6368. The significance of the viewpoint lies in its position on a major access and tourist route to Edinburgh and its proximity, at some 2.9 kilometres, to the appeal site.

27. Visibility of the site would, however, be minimal, screened by landform and vegetation. As a result of the limited views travellers' attention is likely to be focussed on the road and opening vista to the north. As a consequence the assessment rates the magnitude of change as low and the effect as not significant. I accept these judgements.

28. Viewpoint 5 – Heriot Core Paths Network near Shoestanes This is significant being on the core path network linking the Borders and Midlothian as well as being close to the A7 and Borders Railway. The viewpoint is on the hillside on the west side of the valley of the south flowing Gala Water. It overlooks the hamlet of Nettlingflat on the east side of the valley. Standing above the valley floor the viewpoint has very limited visibility of the turbines, restricted to blade tips only. At a distance of 3.5 kilometres these would be noticed only under the most favourable lighting conditions. None of the turbines would be visible from the road or railway below at this point.

29. The landscape and visual assessment puts the magnitude of change as medium. For the reasons given above I judge medium to low to be a more realistic assessment. It is considered to be not significant and I accept this judgement.

30. Viewpoint 6 – B6368, north of Crookston From the A7 the B6368 runs generally north-north-east towards Gilston. It is contained within a fairly broad valley but with rolling hills on each side that restrict visibility to relatively short distances. The viewpoint is just over a kilometre into the valley where there is a reasonable view north towards the appeal site. Even this is restricted by landform however so that only two hubs and four blade tips would be seen 3.6 kilometres away.

31. Within the same field of vision to the north-east the existing Toddlieburn turbines (marked Hartside Hill on the Ordnance Survey 1:50,000 map) would be clearly seen 1.7 kilometres away. Six hubs would be visible with three have virtually full rotors in view. Four additional blade tips would just be see. Although not clearly associated with the proposed site the turbines establish the area as one already subject to windfarm development.

32. The landscape assessment and visual assessment give the magnitude of change as medium to high. Although the proposed turbines would have restricted visibility this would be in the direct line of sight from the road and I accept this judgement. The effect is judged to be significant and the assessment notes that the viewpoint is within close proximity to proposed construction activities. These would also be significant albeit for a relatively short duration. Again I accept these comments.

33. Of the remaining viewpoints that were assessed fully only five, numbers 9, 10, 12, 18 and 23, have a medium magnitude of change. The remainder are medium to low or negligible. None are considered significant. From those I visited I find these to be accurate. In general they are some distance from the proposed site, in many cases with intervening topography, buildings and vegetation, at least in part.

34. Sequential assessments are also carried out for the A68 main road and the B6368 and B6458 secondary roads. The A68 is noted as a major artery between the Borders and Edinburgh and Newcastle. Despite this it is not nationally or regionally recognised for its scenic importance. Nor is it part of the network of National Tourist Routes. The two secondary roads provide connections between the A7 and A68 and are of local importance.

35. Neither the A68 nor the B6458 have assessments above medium for magnitude of change and for the greater part of their assessed length and low or low to negligible in both directions. Neither had a significant effect. I drove along both roads in each direction and found that for most of their lengths the distance from the proposed site, land form, vegetation and direction of view minimised visibility. Where visibility was evident the greater numbers of turbines of the Dun Law site drew the attention. I therefore accept these assessments.

36. In contrast the B6368 receives a magnitude of change assessment that differs according to the visibility of the proposed windfarm. This varies from low through medium-low to medium high. The latter generally occur in the vicinity of viewpoints 1, 3 and 6 where the turbines would be most exposed to view. Similarly there are significant effects in the vicinity of these viewpoints that lead to the whole of the B6368 being classed as significant in this regard. This is not surprising given that the road passes adjacent to the proposed site and I accept these findings.

37. The main cumulative impacts are seen from the west in the vicinity of viewpoint 2. Also from brief sections of the A68 as well as from farther afield where the impact is much diminished by distance. I have referred above to the prominence of the Dun Law turbines with reference to viewpoint 2. These, together with the associated Keith Hill, so dominate the skyline that the proposed turbines are largely absorbed as part of that development despite being located slightly to the south and obviously closer to the viewpoints.

38. The assessment also refers to more distant windfarms such as Fallago Rig II and I have already referred above to Toddleburn. The former is some distance away with visibility largely restricted to turbine blades, whilst the latter is seen fleetingly. The assessment concludes the overall cumulative magnitude of change to be negligible with no further significant effects and I accept this conclusion.

Residential visual impacts

39. The environmental statement identifies 17 residential properties within a two kilometre distance from the proposed turbines. Of these five, numbers 13, 14, 15, 16 and 17, would not have any visibility of the turbines and were discounted from further study as experiencing no change or effect. They are located at Brotherstone to the south of the proposed site and are the most distant from the turbines at around 1,900 metres and are detached from them by the topography. I have no evidence to doubt this conclusion.

40. A further five properties, numbers 1, 2, 3, 5, and 10 would have medium-low to negligible magnitude of change that would not be significant. These are closer to the turbines and two of them, 1 Gilston Cottages and Gilston Farm Bungalow have an involvement with the property so that potential adverse impacts can be relaxed.

41. The remaining seven properties, 4, 6, 7, 8, 9, 11 and 12 were given a high or medium high magnitude of change assessment and all were judged to have significant effects. I visited all seven of these on an accompanied site inspection.

42. Gilston Farm (4). The principal views from the front of the house are to the east where Dun Law turbines can be seen above the skyline. From the rear of the house only two turbines would be seen at hub-height and above. There is some screening at the rear of the property from vegetation within the garden including trees and shrubs. The assessment rates the magnitude of effect as medium and not significant. I think these may be on the high side given the restricted visibility but as this is an involved property it does not affect my determination.

43. Upper Brotherstone (6). At 780 metres distant this is the closest property to the proposed turbines by some 160 metres. It is also involved and so a higher potential impact is considered tolerable than from non-involved occupants. All seven towers would be visible and given added prominence by being viewed slightly uphill. The assessment gives a high magnitude of effect that would be significant. I accept this.

44. Brothershiels Farmhouse (7). This is one of five potentially affected properties at Brothershiels Farm, all standing relatively close together. At 1.13 kilometres from the nearest turbine site this is the closest of the group. The principal views from the property are to the east along the Brothershiels Burn valley. There are upper windows in the east elevation that would have oblique views of all seven turbines leading to a medium high and significant visual effect. Six towers would be seen, one close to full height. Six hubs would be visible and one turbine tip. Because of the distance involved the effect would not be overwhelming.

45. Brothershiels Steading (8). This property is adjacent to Brothershiels Farmhouse some 20 metres south. The same considerations and conclusion apply and the views of the turbines would be almost identical. As well as upper floor windows a raised decking area in the garden would have oblique views of the turbines.

46. The Boorach (9) lies to the west of the first two Brothershiels properties, 1.19 kilometres distant from the proposed site and at a slightly higher elevation. All seven towers would theoretically be visible. In practice two would be obscured by vegetation and two more partially screened. The magnitude of effect is therefore given as medium with a significant visual effect. The principal views are however to the south with the house orientated to take advantage of views over the Brothershiels Burn valley. From the east side of the house and from deck and gardens areas turbines would be seen but the overall impact would be less than from the farmhouse and Steading.

47. Brothershiels House (11). This is a modern house and at 1.25 kilometres the most distant from the proposed turbines of the properties I visited. It is the highest and most

westerly of the housing group at Brothershiels. Orientated north-west to south-east views to the proposed turbines from the house would only be from front elevation windows at a very oblique angle. From the garden ground all seven turbines would be visible and the overall magnitude of effect is rated as medium high with a significant effect. This is mitigated to some extent by distance and whilst seen from the garden this would be away from the principal direction of view towards the south-east. Theoretically one Toddleburn blade tip would be visible but this would not be significant.

48. Mulberry House (12). At 1.22 kilometres distant seven turbines could potentially be seen from the property, one being a blade tip. The blades of turbines 2 and 6 would overlap and 4 and 5 would be stacked, creating a possible confused picture. Views from the garden and lower house windows on the northern, front, side would take in the turbines but foliage would interrupt this. Views from upper windows would be uninterrupted with the magnitude of change given as high with a significant effect. As with Brothershiels House one Toddleburn blade tip would be visible but this would not be significant. Arguable this would be the most affected of the Brothershiels properties in terms of turbine visibility but the distance from them would provide some mitigation. I do not consider the impact would be overwhelming.

49. Taking all the visited properties into account there would not be any cumulative impact visibility issues arising.

Overall visual assessment

50. As with any wind turbines there would be significant effects close to the turbines and this would be no different from the proposed windfarm. In this case the main visual impacts would be from the north across the open ground of Fala Moor. There would be only a very minor topographical impact from viewpoint two to mitigate this significance. From other directions the impact would be lessened either by the intermittent views of the turbines when seen from the north-east round to the south because of the hilly ground and from the west vegetation, topography and distance would lessen the impact.

51. Taking all these points into account, together with the presence of the Dun Law windfarm in views from the west and north-west and acknowledging the close up significant impact, I do not consider the overall landscape and visual impact to be such as to justify the refusal of planning permission.

Noise

52. The noise assessment is dealt with in chapter 13 of the environmental statement. It is supported by an operational noise report produced by TNEI, a specialist energy and noise consultancy.

53. The council's environmental health department accepted the assessment subject to clarification on turbine type and rotor size. This was subject to the imposition of conditions to ensure, among other things, the rating level of noise immissions from the combined effects of the proposed turbines. This includes noise levels specified for individual named properties. These were included in the council's proposed list of conditions.

54. Stow and Fountain Hall and Heriot Community Councils were highly critical of the assessment. In particular it noted that part of the assessment relied on data recorded as part of the study for the initial application, which it considered to be flawed. It requested the release of the raw data used in the assessment for this appeal. In response to a further information request from me this data was released by the appellant.

55. On 28 March 2018 the community council's issued a joint critique of the assessment. This claimed that the appellant put a gloss on a profoundly unsatisfactory set of noise measurements. It claims that the full extent of the problems with the exercise only arose when it was possible to analyse the dataset which was used. Particular criticisms include how noise levels were established at nearby windfarms and the background average noise levels measured at five specific sites. It concluded that correcting the assumptions made by TNEI shows that there would be systematic and substantial exceedances of ETSU noise limits for at least four locations.

56. On 25 April 2018 TNEI responded to the community councils' comments. This set out in detail an explanation of the points raised in the critique, addressing the credibility of its assessment and explaining how detailed measurements had been arrived at. It considers the community council's criticisms had been based on misinterpretation of guidance and inappropriate comparisons with other baseline datasets. It considers its own report to be robust using a transparent approach in line with ETSU guidance deriving robust and appropriate site specific noise limits to provide appropriate protection to local residents. It finds no substantial reason why planning permission should be refused on noise grounds.

57. I accept that the community councils' criticisms are sincerely held. From my own experience at windfarm inquiries noise is frequently one of the most contentious issues and it is not uncommon to find differences of opinion between experts in this field. In this case I find the TNEI response to provide a credible explanation of the points raised by the community councils. I note the acceptance of the original assessment by the council. Given that noise emission levels can be controlled by conditions I am not persuaded that there is any justification for the refusal of planning permission on noise grounds.

Airport radar

58. Edinburgh airport objected to the proposals on the grounds that turbines of the proposed height and location would appear to air traffic controllers as clutter on their radar screens. This would result in a detrimental effect on the operations of air traffic control and present a significant risk of mis-identification with real aircraft returns.

59. I found it difficult to establish the detailed basis of the airport's objection. It was proposed that National Air Traffic Services (NATS) should carry out an assessment and negotiations were in place between it and the appellant.

60. However progress was slow and I decided to hold an inquiry session so that I could establish from expert witnesses the extent of the problem and possible solutions. The calling of the inquiry, which had reached the stage of receiving statements, galvanised parties into meeting and trying to resolve the issue. It was then agreed between the airport and the appellant that provided appropriate suspensive conditions were put in place to ensure appropriate mitigation, if necessary, then the airport would withdraw its objection.

61. Subsequently conditions were agreed between the airport and the appellant and submitted to me. The council suggested some amendments but full agreement between all parties on the detailed wording was not reached. I decided that I would take comments from parties into account and decide on the most appropriate wording. The airport's objection was withdrawn so radar is no impediment to the granting of planning permission.

Other relevant impacts

62. Historic Environment Scotland did not object to the proposals in line with its now established stance of not doing so unless nationally important issues are raised. It accepts that the proposed development would impact on the scheduled ancient monument at Soutra Isle. Together with other developments in the area it could lead to an erosion of the remoteness that can be experienced at the monument. The impact could be further affected by the felling of trees between the monument and the appeal site that I have already referred to above.

63. During my unaccompanied site inspections I took particular note of the monument's relationship to the proposal and to other developments in the area. The most notable is Dun Law windfarm which dominates the existing near views from Soutra Isle towards the east. Taking this into account I do not consider the additional impact of the proposed turbines would be so significant as to refuse planning permission.

64. No objections have been raised on ecological grounds. Advice was received from Scottish natural heritage, the Royal Society for the Protection of birds and the Scottish Wildlife trust on a number of detailed matters including peat and birds. A habitats management plan is recommended, which can be secured by condition.

65. Scottish Natural Heritage said that the proposal was not considered liable to have a significant effect upon the qualifying interests of the River Tweed Special Area of Conservation or the Fala Flow Special Protection Area/Site of Special Scientific Interest. An appropriate assessment was therefore not required in either respect.

66. The environmental statement considers a wide range of other matters including socio-economic, shadow flicker, carbon balance, highways and transport and mitigation. None of these are referred to in the council's reasons for refusal and there are no outstanding concerns from relevant agencies subject to the imposition of appropriate conditions.

Assessment against the development plan

67. Support for the proposal comes from SESplan policy 10 which promotes renewable energy provision. It is left to local development plans to put flesh on the policy and develop local criteria for specific schemes.

68. Scottish Borders Local Development Plan Policy ED9 is the only policy quoted in the two reasons for refusal. This relates to the proposal's landscape impact and visual amenity. Any windfarm development, by virtue of the height of the turbines, is going to have a significant adverse impacts when seen close up, unless the viewer sees them as

structures of beauty to be admired. The defining test in the policy therefore becomes whether or not these adverse impacts are unacceptable, can be satisfactorily mitigated or are outweighed by wider benefits.

69. The reasons for refusal refer to unacceptable only in the context of cumulative landscape and visual impacts. This is clearly a matter of individual judgement but I have found above, based on my site inspections, the photomontages and submissions before me, that the cumulative impact would be acceptable. This is because of the extent of the existing Dun Law windfarm, both in its appearance above the skyline and the number of turbines. As set out above the proposed development would be seen in association with Dun Law and the combined impact would be acceptable. None of the other criteria listed in the policy provide any justification for the refusal of planning permission.

70. Taking all these points into account I find the proposal would accord with the development plan.

Other material considerations

71. National planning policy, both through the National Planning Framework 3 and Scottish Planning Policy contains strong presumptions in favour of renewable energy development. Whilst this is qualified by the need to avoid damage to the environment I have found in this case that significant adverse impacts would be localised and acceptable. There would also be a relatively small but significant contribution over the lifetime of the scheme to the Scottish government's renewable energy targets.

72. In total there were 35 representations from the general public to the council. Of these 21 were in support of the proposal, 12 against and two advising general of concerns about the proposal.

73. I have referred above to the previous application and appeal for a similar development on the site, which were dismissed by the council and a reporter. It may seem unusual to now grant planning permission for a development on the same site but each proposal must be assessed on its own merits and there are a number of differences between the two schemes. Although the proposed turbines are higher than the previous scheme there is a different layout which is arguably more sensitive to the topography. Notably the previous scheme was part of a larger development extending into Midlothian and the assessments for both applications were combined, leading to different assessments for some aspects of the development.

Conditions

74. The council has proposed 36 conditions to be imposed in the event of planning permission being granted. These have not been challenged. I am satisfied that those conditions largely meet the tests for conditions set out in Circular 4/1998: The use of conditions in planning permissions.

75. Conditions 18, 19 and 20 refer to aviation matters. I have replaced proposed condition 18 with the one agreed following discussions between parties. There was debate about whether the condition should restrict all development or just that of the turbines until

the necessary assessments and approvals have been given. I have finalised this to restrict it to turbines only as given the time assessments could take it would be unreasonable to restrict activities such as the laying out of access tracks or laying of cables that have no impact on the airport's activities.

76. I have retained conditions 19 and 20 which refer to notifications and turbine lighting and do not affect condition 18.

77. A representation was received by the council when the original application was being submitted asking for a condition to be imposed that woodland on the site would not be felled during the lifetime of the windfarm. The only woodland within the appeal site are three relatively small coniferous blocks on the north-east shoulder of Brotherstone Hill. From my site inspection I find these would not block views of the turbines to any significant extent and I therefore do not consider such a condition would meet the test of planning necessity.

Overall conclusions

78. I therefore conclude, for the reasons set out above, that the proposed development accords overall with the relevant provisions of the development plan and that there are no material considerations which would still justify refusing to grant planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

Trevor A Croft

Reporter

Conditions

Operation of Consent

1. This consent - subject to compliance with all other conditions attached to it – permits the construction of the development hereby consented, and the operation of this same development on site for a continuous period of no longer than 27 years starting on, and from, the date of the day of final commissioning of the first of the turbines hereby consented. At the conclusion of the aforementioned 27-year period at latest, the development shall have been decommissioned unless a further planning consent to extend its operation beyond this period has first been approved by the planning authority.

Reason: to define the duration of the consent in the interests of maintaining effective control over the development.

2. The wind farm operator shall provide written confirmation to the planning authority of the exact date of the day of first commissioning of the first of the turbines hereby consented, by no later than one calendar month after the day on which this first commissioning occurs.

Reason: to ensure that the operation of the consent under Planning Condition No. 1 is capable of being effectively monitored.

3. This consent shall not be assigned, alienated or transferred (including by the land owner and/or by the wind farm operator) without the prior written authorisation of the planning authority. The written details to be provided to the planning authority at the time of any such request for such authorisation, shall include (but not necessarily be limited to): the name of the assignee; and the name and the contact details of the principal contact of the assignee.

Reason: to safeguard the obligations of the consent in the event of any transfer of the development to another company.

Conformity

4. Excepting only those specific matters that are regulated under any other conditions attached to this same planning consent, and unless otherwise agreed in writing by the planning authority in advance of the commencement of development, the development hereby permitted shall not be carried out otherwise than in complete accordance with the application, drawings, Environmental Statement (as supplemented or amended by any further or additional environmental information) and other documentation lodged in support of the application and approved by the planning authority.

Reason: to ensure that the development is carried out in accordance with the approved details, without any significant variation from the details that were before the planning authority at the time of the determination of the planning application.

Appearance and Operation of Wind Turbines

5. Unless otherwise agreed in writing by the planning authority and in advance of the commencement of development, none of the wind turbines hereby consented shall exceed a height of 126.5 metres above the natural ground level of the land on which that same turbine is erected, and the overall generating capacity of the development shall not exceed 21 Megawatts (MW).

Reason: in the interests of ensuring that the development does not have any impacts upon the amenity of the surrounding area that would be greater than any of those impacts that were reasonably considered at the time of the assessment of the planning application; that is, based upon the description of the development that was before the planning authority at that time.

6. No development shall commence on any wind turbine hereby approved, until full and precise details of the specific proposed wind turbine model - including, but not limited to, precise details of its power rating and sound power levels; its design; size; dimensions; external finish and colour (which should be non-reflective pale grey semi-matt) – and all associated apparatus, have all first been submitted to, and approved in writing by, the planning authority. Unless otherwise agreed in writing by the planning authority, the development shall thereafter be constructed and operated in accordance with the approved details and each turbine shall be maintained in the approved colour, free from external rust,

staining or discolouration, until the point in time when that same turbine is dismantled and removed from the site.

Reason: to ensure that the specific model of turbine is compatible with the locality in terms of its appearance and noise output, in the interests of protecting the residential amenities of surrounding properties and the visual amenities of the surrounding area.

Appearance and Operation of Substation and Ancillary Development

7. No development shall commence until precise details of the external appearance, dimensions and external materials of the substation building, associated compounds, any construction compound boundary fencing, external lighting and parking areas have all first been submitted to, and approved in writing by the planning authority. The substation building, associated compounds, fencing, external lighting and parking areas shall then only be constructed in accordance with the approved details.

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

Signage

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

Reason: to safeguard visual amenities.

Turbine Failure/Removal

9. Any wind turbine hereby consented that fails to produce electricity supplied to the local grid for any continuous period of 12 months after its erection (and not as any consequence of it being under repair) shall be deemed to have ceased to be required, and unless otherwise agreed in writing with the Planning Authority, that same wind turbine (including its foundation to a depth of 1.2 metres below ground level) and its ancillary equipment, shall all be dismantled and removed from the site within no more than two months of any such direction having been issued by the planning authority, and the land shall be restored to a condition that shall first have been agreed in writing by the planning authority. The restoration of the land shall then be completed within no more than 6 months of the date of the removal of the turbine from the site, unless any longer period is first agreed in writing by the Planning Authority.

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

Road Safety, Traffic Flow and Management of Dust Migration

10. No development shall commence until details of:

- (a) the proposed route and timetable for the transport of abnormal loads and movement of all HGV traffic to, and from, the site along the public road network;
- (b) any and all measures required along the public road network to accommodate the operation of this routing (including any street furniture removals, junction widening and/or traffic management);
- (c) any additional signing or temporary traffic control measures deemed necessary along this route, due to the size or length of loads being transported; and
- (d) a programme of monitoring the condition of the public roads serving the site during the construction phase of the development, including arrangements for addressing any issues identified and remediation works, have all first been submitted to, and approved in writing by, the planning authority in consultation with both the trunk roads authority and the local roads authority. These details shall be prepared by a recognised Quality Assured traffic management consultant approved by the planning and roads authorities. Following approval of these details, all work within the public road boundaries shall be completed by a contractor first approved by the relevant roads authority ahead of the commencement of development. Thereafter, the transport of abnormal loads and heavy goods vehicle movements generated by the construction, operation and dismantling of the development shall be progressed and accommodated in accordance with the approved details. The monitoring of the roads' condition and any and all measures required to address any issues identified by that same monitoring, shall all be progressed in accordance with the approved details.

Reason: in the interests of road and pedestrian safety on and around the trunk and local road networks required to accommodate HGVs and abnormal load transportation relating to the development, and to minimise disruption to the free flow of traffic on the trunk and local road networks.

11. No development shall commence until the following have first been submitted to, and approved in writing by, the planning authority:

- (a) engineering drawings showing all proposed accesses off the B6368 (including those required to service the operation of the borrow-pits) with geometry and construction make-up designed to cater for the swept path of the largest associated vehicles; and junction sight-lines to the required standard;
- (b) details of the measures to be implemented at the entrances of these same accesses, to prevent dust and mud entering the public road. Following approval, and ahead of the commencement of any other construction works on the site and ahead of the commencement of the operation of any of the borrow pits, the accesses shall first have been constructed in accordance with the approved details and shall thereafter be operated at all times, in accordance with the approved details for the duration of construction works.

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

Noise

12. No development shall commence until a construction method statement has first been submitted to, and approved in writing by, the planning authority. Thereafter, the development shall then only be carried out in accordance with the approved details.

Reason: To safeguard residential amenity.

13. The rating level of noise immissions from the combined effects of the wind turbines forming part of the development (including the application of any tonal penalty) shall not exceed the values for the relevant integer wind speed set out in, or derived from, the tables attached to this condition (Tables 6.9 & 6.10 of the TNEI Report 11972-005 dated 30 August 2017) at any dwelling which is lawfully existing or has planning permission at the date of this consent. The turbines shall be designed to permit individually controlled operation or shut down at specified wind speeds and directions in order to facilitate compliance with noise criteria and:

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

proposed noise limits selected from those listed in the tables to be adopted at the complainant's property for compliance checking purposes. The proposed noise limits are to be those limits selected from the tables specified for a listed location which the independent consultant considers as being likely to experience the most similar background noise environment to that experienced at the complainant's property. The rating level of noise immissions resulting from the combined effects of the wind turbines shall not exceed the noise limits approved in writing by the planning authority for the complainant's property.

f. The company shall provide to the planning authority the independent consultant's assessment of the rating level of noise immissions within 2 months of the date of the written request of the planning authority for compliance measurements to be made under paragraph e, unless the time limit is extended in writing by the planning authority.

Certificates of calibration of the instrumentation used to undertake the measurements shall be submitted to the planning authority with the independent consultant's assessment of the rating level of noise immissions.

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

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

Location (including Coordinates) within the site averaged over 10 minute periods	Standardised wind speed at 10 metre height (m/s)											
	1	2	3	4	5	6	7	8	9	10	11	12
New Salvandi (343970 659830)	35	35	37 1	37 5	38 5	40 0	41 9	44 1	46 4	48 8	51 0	53 1
Dere Street Farm (344781 658280)	32 3	32 3	32 3	32 3	34 1	36 3	38 6	41 1	43 3	45 2	47 2	49 1
Gilston (344242 656219)	43 4	43 4	43 4	43 4	43 4	43 4	42 4	42 4	46	49 2	52	54 3
Nether Brotherstone (343219 654658)	33 2	33 2	33 2	33 2	35	37 2	39 3	41 9	44	46	47 7	49 4
Brothershiels (342114 655953)	35	35	35	35 1	36 9	39 3	41 9	44 7	47 6	50 3	52 7	52 7
Upper Brotherstone (342652)	45	45	45	45	45	45	45	46 8	50 1	53 5	53 5	53 5
Gardeners Cottage	35	35	35	35	36	39	41	42	44	46	48	49

Eagle Rise Cottage (345296)	25	25	25	25	26 8	29	31	32 9	34 7	36 4	38	39 6
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Table 2 – Between 23.00 and 07.00 Noise limits expressed in dB LA90,10-Minute as a function of the standardised wind speed (m/s) at 10 metre height as determined within the site averaged over 10 minute periods.

Location (including Coordinates) within the site averaged over 10 minute periods	Standardised wind speed at 10 metre height (m/s)											
	1	2	3	4	5	6	7	8	9	10	11	12
New Salvandi (343970 659830)	43 0	43 0	43 0	43 0	43 0	43 0	43 0	43 0	44 9	48 2	51 9	51 9
Dere Street Farm (344781 658280)	42 1	42 1	42 1	42 1	42 1	4 12	41 6	41 3	42 6	45	47 7	50 6
Gilston (344242 656219)	43 4	43 4	43 4	43 4	43 4	43 4	42 4	42	43 9	47 6	50 2	51 5
Nether Brotherstone (343219 654658)	42	42	42	42	42	42	42	42	43	45	48	50
Brothershiels (342114 655953)	43 0	43 0	43 0	43 0	43 0	43 0	43 0	43 0	44 0	45 9	47 3	47 3
Upper Brotherstone (342652)	45 0	45 0	45 0	45 0	45 0	45 0	45 0	45 0	46 0	50 0	50 0	50 0
Gardeners Cottage	43 0	43 0	43 0	43 0	43 0	43 0	43 0	43 0	44 2	46 2	48 4	51 0
Eagle Rise Cottage (345296)	33 0	33 0	33 0	33 0	33 0	33 0	33 0	33 0	34 2	36 2	38 4	51 0

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

14. No development shall commence until documentary evidence has first been provided to, and approved in writing by, the planning authority, which demonstrates in respect of any property for which the higher noise limit has been set, that the persons residing within these properties are receiving a financial benefit from the operation of the development.

Reason: to help protect nearby residents from unacceptable noise and disturbance, principally by requiring the wind farm operator to corroborate the advice given at the time of the planning application that those properties that would otherwise be significantly affected by noise impacts would all be households that would derive a financial benefit from the scheme's operation.

15. Construction work which is audible from any noise-sensitive receptor shall only take place on the site between the hours of 07.00 to 18.00 on Monday to Friday inclusive and 08.00 to 14.00 on Saturdays, with no construction work taking place on a Sunday or on any national public holidays. Outwith these specified hours, development on the site shall be limited to concrete pours, turbine erection, maintenance, emergency works, dust suppression and the testing of plant and equipment, unless otherwise approved in advance in writing by the planning authority. Heavy good vehicle movements to and from the site (excluding abnormal loads) during construction of the wind farm shall be limited to 07.00 to 18.00 Monday to Friday and 08.00 to 14.00 on Saturdays, with no HGV movements to or from site taking place on a Sunday or on national public holidays.

Reason: to safeguard residential amenity.

Shadow Flicker

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

Reason: to offset impacts of shadow flicker on residential amenity.

Television Interference

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

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

Air Traffic Safety

18. No part of any turbine shall be erected above ground unless otherwise agreed in writing by the planning authority and the operator, until:

- (a) a primary radar assessment has first been submitted to, and approved in writing by, the planning authority and the operator in consultation with NATS which outlines the impacts on the operator's primary radar and/or air traffic management operations; and
- (b) if the primary radar assessment discloses an unacceptable impact on the operator's primary radar and/or air traffic management operations (or the operator's air navigation services provider advises the operator (whether based on its review of the primary radar assessment or on its own technical assessment (which it will share with the development's operator and NATS) that there is an unacceptable impact or impacts of the development on the operator's primary radar and/or air traffic management operations), a primary radar mitigation scheme has been submitted to, and approved in writing by, the planning authority and the operator in consultation with NATS; and
- (c) the primary radar mitigation scheme so approved, has first been fully implemented in accordance with the approved details.

The primary radar mitigation scheme submitted and agreed in accordance with criterion (b) of this planning condition, shall include:

- (i) measures for the monitoring and identification of any and all unacceptable impacts upon the operation of the operator's primary radar and/or upon the operation of the operator's air traffic management functions, which are liable to be generated by the operation of the development hereby consented; and
- (ii) a binding contractual obligation by the said development's operator (and its successors) in favour of the operator, should there be a requirement identified through the operation of the primary radar mitigation scheme, to shut down any or all of the turbines hereby consented, for the purpose of arresting any unacceptable impacts upon the operation of the operator's primary radar and/or upon the operation of the operator's air traffic management functions.

Following approval of the primary radar mitigation scheme, the development shall thereafter, and at all times, be operated in accordance with the approved primary radar mitigation scheme. Following the shutdown of a turbine or turbines in accordance with the requirements of the approved primary radar mitigation scheme, the operation of that same turbine/those same turbines, shall not resume at all, without the express written authorisation of the operator first having been given. This authorisation will be given within the shortest possible timescales and in accordance with the primary radar mitigation scheme.

For the purposes of this condition:-

"NATS" means NATS (Services) Limited incorporated under the Companies Act (04129270) whose registered office is at 4000 Parkway, Whiteley, Fareham, Hants, PO15 7FL.

“Operator” means Edinburgh Airport Limited incorporated under the Companies Act (SC096623) whose registered office is at Edinburgh Airport, Edinburgh, EH12 9DN or any future owner of Edinburgh Airport.

“Primary radar assessment” means a further and detailed assessment by NATS of the impact or impacts of the development on the operator’s primary radar and/or air traffic management operations at Edinburgh Airport, including the identification of any mitigation that may be required, and which will take into account NATS Technical and Operational Assessment for the development – NATS reference SG13204-Issue 3, the report by the applicant’s consultant, Aviatica dated November 2016 (Report no16/740/TWT/3) and the results of any further discussions between NATS, the operator, the operator’s air navigation services provider, the applicant and its consultants.

Reason: in the interest of aviation safety, to ensure that the siting and operation of the development has no unacceptable impacts upon the management of air traffic.

19. No development shall commence until the developer has provided written confirmation to the planning authority and the Ministry of Defence of the:
- Anticipated date of commencement of each stage of construction;
 - The maximum height above ground level of construction equipment, each turbine and any anemometry mast and
 - The position of each turbine (in latitude and longitude).

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

Reason: in the interests of aviation safety.

20. No wind turbines shall not be erected until a scheme of aviation lighting for the wind farm has first been submitted to, and approved in writing by, the planning authority in consultation with the Ministry of Defence. The turbines shall then only be erected with the approved lighting installed, and this lighting shall thereafter, and at all times, be maintained fully operational in accordance with the approved details, for as long as the turbines are in situ. Please see Informative Note 1 for clarification.

Reason: in the interests of aviation safety.

Access Tracks

21. No development shall commence until details of:
- the position, length, width, materials and drainage of the new and upgraded tracks within the site; and
 - all watercourse crossings, culverts and alterations to existing crossings (position and design)

have all first been submitted to and approved in writing by the planning authority in consultation with SEPA. These details shall address in full the concerns of Informative Note 2. Thereafter, the development then to be completed in accordance with the approved details.

Reason: to safeguard areas of ecological interest, watercourses and visual amenities by ensuring there is no increased flood risk to downstream receptors and ensuring that all construction operations are carried out in a manner that minimises their impact on the water environment and thereby minimising residual impacts on the River Tweed Special Area of Conservation.

Public Access

22. No development shall commence until: (a) a detailed scheme for enhancing public access within and around the site upon completion of the development and (b) a timetable for the implementation of the measures identified within this aforementioned scheme, have all first been submitted to, and approved in writing by, the planning authority. This scheme shall take full account of the advice of Informative Note 3, and following its approval and that of the associated timetable for its delivery, it shall be implemented in accordance with the approved details and timetable, and thereafter maintained in accordance with the approved details.

Reason: to enhance public access and to assist with the safe management of the site in the interests of conserving the amenity of the area to visiting members of the public.

Private Water Supplies

23. No development shall commence until:
 (a) a Scheme of Mitigation in respect of the protection of private water supplies; and
 (b) documentary evidence of the agreement of the owners of the private water supply identified within Chapter 10.73 of the Environmental Statement, to contingency plans to remediate any adverse impacts upon their private water supply, have all first been submitted to, and approved in writing by, the planning authority. Thereafter, no construction activities nor borrow pit operations shall take place other than in accordance with the approved scheme.

Reason: to protect the amenity and health of residents.

Borrow Pits

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

- a. A detailed working method statement based on site survey information and ground investigations;
- b. Details of the handling of any overburden (including peat, soil and rock);
- c. Drainage, including measures to prevent surrounding areas of peatland, water dependant sensitive habitats and ground water dependant terrestrial ecosystems (GWDTE) from drying out;
- d. A programme of implementation of the works described in the scheme; and
- e. Full details of the reinstatement, restoration and aftercare of the borrow pit(s) at the end of the construction period, to include topographic surveys of pre-construction profiles, and details of topographical surveys to be undertaken of the restored borrow pit profiles; and a

timetable for the implementation of the restoration and aftercare works. The approved scheme shall thereafter be implemented in full in accordance with the approved details.

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

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

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

Archaeology

26. There shall be no commencement of development unless the planning authority has approved, and the developer has secured, the implementation of a written scheme of investigation (WSI) outlining a scheme of archaeological mitigation, which shall specify:

- An archaeological evaluation in advance of development where known or suspected archaeology exists;
- A programme of mapping known heritage assets prior to development impacts;
- An archaeological watching brief on relevant excavations where there is archaeological potential;
- Archaeological investigations of features, finds or deposits where discovered through evaluation or watching brief;
- Undertaking paleo-ecological sampling and assessment where appropriate;
- A post-excavation research and dissemination strategy in the event of significant discoveries determined as such by the archaeological chief of works and planning authority. All post-excavation research and dissemination shall be completed within 3 years of the completion of on-site investigations;
- The erection of suitable fencing around known archaeological assets, to be determined by the archaeological chief of works and planning authority, where there is potential damage during development;
- Advising the developer on adequate protection of archaeological interests on the site;
- Checking for new records of archaeological interests for which additional mitigation may be required;
- Directing the micro-siting and placement of turbines and tracks away from known assets and discovered assets of archaeological significance where in situ preservation is warranted;
- Monitoring the compliance with mitigation, reinstatement and restoration measures approved in this consent;

- l. Reporting any breaches of the mitigation, reinstatement and restoration measures approved in this consent to the planning authority in writing;
- m. Reporting all archaeological work to the planning authority in the form of data structure report(s) as necessary within three months of the completion of those elements requiring reporting. Following approval of the WSI, both the development and the programme of archaeological work it describes shall thereafter only proceed in accordance with the approved details. The preparation of the WSI, and the implementation of the archaeological works and reporting it describes, shall only be carried out by a contracted archaeological organisation working to the standards of the Chartered Institute for Archaeologists (CIfA), whose appointment shall first have been approved in writing by the planning authority in advance of the submission of the WSI. The results of the archaeological investigation shall be submitted to the planning authority for its approval in the form of a data structure report (DSR) within no more than one month of the date of completion of all on-site archaeological works. Following approval, the DSR shall then be submitted to:
- (a) the National Monuments Record of Scotland and
 - (b) Discovery and Excavation in Scotland, all within no more than two months following the date of the Planning Authority's approval of the DSR.

Reason: to conserve for future generations an appropriate record of archaeological information that would otherwise be lost, were development to proceed without appropriate provision first having been secured for the investigation, recording and reporting of the site's archaeology.

27. No development shall commence until a detailed scheme of cultural heritage enhancement setting out a programme of publication, interpretation, outreach and education relating to the archaeological investigations of Soutra Aisle (including a timetable for the implementation of the same), has first been submitted to, and approved in writing by the planning authority. The approved scheme shall then to be implemented in full in accordance with the approved details and timetable.

Reason: to improve the public's understanding, appreciation and experience of a heritage asset whose setting and historic landscape context is to be adversely impacted by the development.

Ecology

28. No development shall commence until an Ecological Clerk of Works (ECoW) has first been appointed to carry out pre-construction ecological surveys, to inform a construction environmental management Plan (CEMP) and to oversee compliance with the Construction Environment management plan, species protection plan, ecological monitoring plan and decommissioning, restoration and aftercare plan ("the ECoW works"). The terms of the appointment shall be submitted to, and approved in writing by, the planning authority in consultation with SEPA and SNH. The terms shall include the requirements to:

- a. Impose a duty to monitor compliance with the ecological and hydrological commitments provided in the environmental statement and other information lodged in support of the application, the construction environmental management plan and other plans; and
- b. Require the ECoW to report to the company's nominated construction project manager, the planning authority and SEPA any incidences of non-compliance with the ECoW works.

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

29. No development shall commence until a construction environment management plan (CEMP) has first been submitted to, and approved in writing by, the planning authority, in consultation with SEPA. The CEMP shall include:

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

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

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

30. No development shall commence until a species protection plan, including measures for the protection and conservation of otter, badger, breeding birds (including black grouse) and reptiles, has first been submitted to, and approved in writing by, the planning authority. This shall be informed by precommencement surveys carried out no more than eight months prior to the commencement of any construction works. The development and all measures required by the approved Species Protection Plan, shall then all be implemented and carried out in accordance with the approved details.

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

31. No development shall commence until a habitat management plan – including measures to compensate for habitat loss; safeguard and enhance existing habitats, including blanket bog, wet modified bog, acid grassland and marshy grassland and woodland habitats to benefit black grouse, breeding waders and large heath butterfly – has first been submitted to, and approved in writing by, the planning authority. The development and all measures required by the approved habitat management plan shall then all be implemented and carried out in accordance with the approved details.

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

32. No development shall commence until an ecological monitoring programme - including proportionate post-construction monitoring of protected mammals (bats, otter and badger, as appropriate), black grouse and habitats - has first been submitted to, and approved in writing by, the Planning Authority. The development and all measures required by the approved ecological monitoring programme, shall then all be implemented and carried out in accordance with the approved details.

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

Decommissioning and Financial Guarantee

33. No development shall commence until a decommissioning, restoration and aftercare plan has first been submitted to, and approved in writing by, the planning authority in consultation with SEPA and Scottish Natural Heritage. This same plan shall detail measures for the decommissioning of the development, restoration and aftercare of the site and shall include proposals for the removal of the above ground elements of the development, the treatment of ground surfaces, the management and timing of the works and environmental management provisions. Unless otherwise agreed in writing by the planning authority in advance of the implementation of the decommissioning of the development:

- (a) the decommissioning, restoration and aftercare of the site shall be implemented in accordance with the approved decommissioning, restoration and aftercare plan; and
- (b) the site shall have been fully restored within a period of not more than three years starting from the date at which the development is decommissioned, despite the requirement for any approved aftercare measures to continue beyond this time.

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

34. No development shall commence until the developer/wind farm operator has first delivered a bond or other form of financial guarantee, which:

- (a) secures the cost of the performance and undertaking of all decommissioning, restoration and aftercare obligations detailed in the approved decommissioning, restoration and aftercare Plan; and
- (b) is acknowledged in writing by the planning authority as being acceptable for these purposes.

The delivered and approved bond/financial guarantee shall thereafter be maintained in favour of the planning authority until the date of the completion of all decommissioning, restoration and aftercare obligations detailed in the approved decommissioning, restoration and aftercare Plan. The value of the bond/financial guarantee shall be determined by a suitably qualified independent professional as being sufficient to meet the costs of all decommissioning, restoration and aftercare obligations. The value of the financial guarantee shall be reviewed periodically by a suitably qualified independent professional proposed by the developer/wind farm operator and approved in writing by the planning authority, and shall be reviewed no less than every five years starting from the date of the first delivery of the bond/financial guarantee. Upon the occasion of these reviews, the value

of the financial guarantee shall be increased or decreased to take account of any variation in costs of compliance with restoration and aftercare obligations and best practice prevailing at the time of each review. A record of each such review of the bond/financial guarantee, and the proposed subsequent adjustment to the value of the bond/financial guarantee in response to it, shall be provided to, and approved in writing by, the planning authority on the occasion of the conclusion of the review, and within no more than one month of the date of the conclusion of the review. The approved adjustment to the value of the bond/financial guarantee shall then be made within one month of the planning authority's written approval of the same.

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

DPEA advisory notes

- 1. The length of the permission:** This planning permission will lapse on the expiration of a period of three years from the date of this decision notice, unless the development has been started within that period (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).
- 2. Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).
- 3. Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended)).
- 4. Display of notice:** A notice must be displayed on or near the site while work is being carried out. The planning authority can provide more information about the form of that notice and where to display it (See section 27C of the Town and Country Planning (Scotland) Act 1997 Act (as amended) and Schedule 7 to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013).

Council informatives

Informative Note 1: Aviation Lighting

In respect of planning condition 20 attached to this same planning consent, the aviation lighting should either be Ministry of Defence accredited 25 candela omnidirectional red aviation lighting or infrared warning lighting with an optimised flash pattern of 60 flashes per minute of 200ms to 500ms duration at the highest practicable point on the perimeter turbines. The turbines should be erected with this lighting installed.

Informative Note 2: Public Access

The scheme of details required to address the information requirements of planning condition 21 attached to this same planning consent, should address the following concerns:

- Consideration should be given to creating a circular access route around the site utilising existing tracks, new access roads and where necessary creating a new link path between Turbines T4 and T7 suitable for use by walkers, cyclists and horse riders; and
- The developers should work with Scottish Borders Council Access Team to create a new connection between Fala Moor Road and Dere Street through the site.

Informative Note 3: Access Tracks

The scheme of details required to address the information requirements of planning condition 22 attached to this same planning consent, should address the following concerns:

- The formation of any newly formed hard surfaces such as access roads should be attenuated to at least existing greenfield runoff rates so that there is no increased effect on downstream receptors. Likewise, any discharges from SUDS and other drainage should be kept to existing greenfield runoff rates.
- If there are to be any culverts, watercourse crossings or alterations to crossings, these must not reduce the flow conveyance of the watercourse.
- Details of the silt traps and any other functions that the applicant proposes to minimise the amount of sediment entering the water course should be submitted;
- SNH has expressed concerns with respect to inadequate and inconsistent information being provided with respect to the potential for peat slide risk, and the details provided should seek to mitigate these concerns appropriately; and
- There should be a 50 metre buffer zone between the access tracks and any watercourse. In one instance identified by SEPA in its consultation responses, it is not in fact clear whether or not such a buffer would in fact be established, and the applicant requires to clarify whether or not this is the case, and if not, propose appropriate mitigation.

Schedule of drawings

Plan Ref	Plan Type
1.1	Location Plan
1.2	Location Plan
1.3	Location Plan
6.1B	Site Plan
3.2	TURBINES Foundations
3.3	ACCESS TRACK Other
3.4	COMPOUND Other
3.5	TURBINES Foundations
3.7	TURBINE DESIGN Elevations
3.8	SUBSTATION Elevations