Planning and Environmental Appeals Division
Hadrian House, Callendar Business Park, Falkirk, FK1 1XR
E: dpea@gov.scot T: 0300 244 6668

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Appeal Decision Notice – EIA Development

Decision by David Buylla, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-170-2156
- Site address: land at Garcrogo Hill and Barmark Hill, Corsock
- Appeal by Energiekontor UK Ltd against the failure of Dumfries and Galloway Council to determine an application for planning permission 21/0371/FUL dated 22 October 2021 within the statutory period
- The development proposed: the erection, 35 year operation and subsequent decommissioning of a wind farm comprising of up to 9 wind turbines and associated development
- Date of site visits by Reporter: 25 March and 4 April 2022

Date of appeal decision: 18 August 2022

Decision

I dismiss the appeal and refuse planning permission.

Preliminary matters

This appeal is against the failure of the council to determine a planning application within the statutory period. The council has not provided a response to this appeal indicating how it would have determined the proposal had the matter still been before it. It has also not responded to the appellant's additional environmental information. Therefore, its views on the proposal are unknown.

Some comments from council officers have been provided, which I have taken into account.

Despite the absence of a formal resolution from the council as to how it would have determined the planning application that has led to this appeal, I am satisfied that the responses from statutory and other consultees and the representations that have been made by interested parties, together with the appellant's EIA report and additional environmental information, provide sufficient information to reach a reasoned conclusion on the significant environmental effects of the proposed development and to determine this appeal. I am also satisfied that the public's ability to participate in the decision-making procedure has not been materially impaired by the absence of a council response.

Upon receipt of the planning application, the council amended the description of development to include the maximum height of the proposed turbines. The council believes this more accurately, clearly and precisely describes the nature and scale of development being applied for and also enables all interested parties, particularly members of the public, to more easily understand the intended nature and scale of the development being applied for without the need for further research through accompanying application documents. It cites the case of *Cumming v Secretary of State for Scotland* [1992] in support of its position, where it was held that *"any description in an application, and advertisement of the*

application, for planning permission should be accurate, convey the substance of what was applied for, and of itself give full and fair notice to the planning authority, to interested parties upon whom the application might be served, and to the general public, of the grant which the applicant hoped to obtain".

In response, the appellant has requested that I consider the proposal on the basis of the description of development that it originally opposed, which omitted any reference to maximum turbine height and that, if planning permission is granted, turbine height be controlled by a planning condition.

I agree with the council that its revised application description would be more informative for interested parties. However, I am conscious that the decision in *Finney v Welsh Ministers [2019]*, by confirming that the description of a development cannot be amended by a subsequent application to develop the site without complying with a condition (under section 42 of the Town and Country Planning (Scotland) Act 1997), might make such a description unduly restrictive. For example, the option for a subsequent application under section 42 to increase the turbine height to say 205 metres would appear to be ruled out by *Finney*, regardless of whether such a minor change might have a materially different impact.

On balance therefore, I have retained the description of development as the appellant originally proposed it.

Environmental impact assessment

The proposed development is described as above, and at Chapter 3 of the EIA report. It is EIA development. The determination of this appeal is therefore subject to the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 ("the 2017 EIA regulations").

I am required to examine the environmental information, reach a reasoned conclusion on the significant environmental effects of the proposed development and integrate that conclusion into this decision notice. In that respect I have taken the following into account:

- the EIA report submitted on 22 October 2021;

- additional information on peat management and red kite collision risk modelling, submitted on 22 December 2021 and a revised peat management plan, submitted on 27 May 2022. This was publicised in accordance with regulation 27 of the 2017 regulations;

- consultation responses from Corsock & Kirkpatrick Durham Community Council; Balmaclellan Community Council; SEPA, Historic Environment Scotland; RSPB Scotland; Galloway Fisheries Trust; Scottish Water; Transport Scotland; NatureScot; NATS Safeguarding; Ministry of Defence; and Police Scotland

- representations from members of the public.

I am required by the 2017 EIA regulations to include information in this decision notice in regard to opportunities for the public to participate in the decision-making procedure. I set that information out in Schedule 1 below. My conclusions on the significant environmental effects of the proposal are set out at paragraphs 27-142 below.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The development plan comprises the Dumfries and Galloway Local Development Plan 2, 2019 (the LDP) and statutory supplementary guidance which includes *Wind energy development – development management considerations* (the Wind Energy SG) and its appended landscape capacity study 2020 (the LCS).

2. The proposals would include nine turbines (up to 200 metres to blade tip), associated turbine transformers and turbine foundations, hardstanding areas for erecting cranes at each turbine location, on-site tracks connecting each turbine, underground cables linking the turbines to the substation, new watercourse crossings, borrow pits for the extraction of stone on-site, a temporary construction compound, an on-site substation, a battery storage facility, and off-site access works.

3. Having regard to the provisions of the development plan, the main issue for an assessment of this proposal's acceptability is whether the adverse effects it would introduce would be outweighed by any benefits it could be expected to deliver. Due to the nature of the proposal and the submissions raised by interested parties, I have paid particular attention to landscape and visual effects (including cumulative effects), ornithology, ecology, the water environment, socio-economic effects, and effects on residential amenity.

Policy framework

4. There are two renewable energy policies in the LDP: IN1, which applies to all such proposals; and IN2, which relates specifically to wind energy. I agree with the appellant that, although there are other relevant development plan policies that require to be considered, these two policies (particularly IN2) are so comprehensive that they duplicate most other policy requirements.

5. Policy IN1 provides a general framework for the assessment of renewable energy proposals. It offers support to all forms of renewable energy and/or storage, provided that it is deemed to be acceptable when assessed against the following criteria:

- landscape and visual impact;
- cumulative impact;
- impact on local communities and individual dwellings, including visual impact, residential amenity, noise and shadow flicker;
- the impact on natural and historic environment (including cultural heritage and biodiversity);
- the impact on forestry and woodlands;
- the impact on tourism, recreational interests and public access.

6. The policy confirms that acceptability is to have regard to any benefits the proposal would deliver and the extent to which any environmental and cumulative impacts could be satisfactorily addressed.

7. The LDP provides the spatial framework for wind energy in Dumfries and Galloway. In accordance with Scottish Planning Policy (SPP), it divides the council area into three areas: those where wind farms will not be acceptable; areas of significant protection; and those with potential for wind farm development. The appeal site is identified in LDP Map 8 as falling within the latter area, although the LDP is clear that Map 8 must be read in

conjunction with the LCS. The Wind Energy SG also points out that no area within the region can be regarded as completely unconstrained, and highlights that, in some locations, the potential for further wind energy development is becoming increasingly limited by cumulative effects.

8. Policy IN2 offers support to wind energy proposals that are located, sited and designed appropriately. This policy, along with the Wind energy SG, sets out the issues that will be taken into account in the assessment of wind energy proposals. These include the full range of impacts that are likely to arise (both positive and negative). It is stated that the acceptability of a proposal will require an assessment of a proposal's benefits and the extent to which environmental and cumulative impacts can be addressed satisfactorily. The Wind Energy SG provides additional detail to policy IN2 but does not add any additional policy requirements.

9. The considerations that policy IN2 requires to be taken into account when assessing the acceptability of a wind energy proposal include: its renewable energy benefits; its socio-economic benefits; its landscape and visual impacts; any cumulative impact; the impact on local communities and residential interests; the impact on infrastructure; the impact on aviation and defence interests; along with any other impacts and considerations such as biodiversity effects, flood risk and the historic environment. The Wind Energy SG confirms that not all of these will be relevant to all proposals and that there may be other site-specific considerations that also require assessment. It also confirms that a proposal that is found to be detrimental in terms of one or more of these factors will not necessarily be refused; rather, it will be necessary to consider all of its positive and negative implications in the planning balance.

10. My assessment of the appeal proposal, later in this notice, broadly follows the order in which the considerations listed in policy IN2 are set out.

11. LDP policy NE2 deals with Regional Scenic Areas (RSAs). Development within, or which would affect an RSA may be supported by this policy where the factors taken into account when designating the area would not be significantly adversely affected or there is a specific need for the development at that location. Effects on the Thornhill Uplands, Galloway Hills and Terregles Ridge RSAs are discussed later in this notice.

12. I have considered other development plan policies that have been referred to in submissions. These include policies: OP1; OP2; HE1; HE2; HE3; HE4; HE6; NE3; NE4; NE5; NE6; NE7; NE8; NE11; NE12; IN6; IN7; IN8; and T1. There is significant overlap between the requirements of these policies and those of policies IN1 and IN2 and I am satisfied that a proposal that satisfies IN1 and IN2 will also meet the requirements of these policies.

13. The LCS considers the capacity of the different landscapes of Dumfries and Galloway to accommodate additional wind energy development. The Stroan unit of the Foothills with Forest landscape character type (LCT 18a), where the appeal site is located, is one of a small number of locations where the LCS identifies potential scope for additional 'large' (80 to 150 metre) turbines. What is now proposed would fall into the 'very large' typology (turbines exceeding 150 metres) for which the LCS identifies no capacity. However, the LCS is no substitute for a site- and proposal- specific assessment and I accept the appellant's point that its recognition that turbines up to 150 metres could be acceptable, confirms that this landscape is one of the less sensitive landscapes in Dumfries and Galloway to wind energy development.

14. In addition to the development plan policies and guidance set out above, other planning policy documents that require to be taken into account include: National Planning Framework 3 (NPF3); Scottish Planning Policy; and draft NPF4, which will replace NPF3 and SPP when adopted.

15. SPP and NPF3 offer high-level support to renewable energy development including on-shore wind, recognising its importance in making Scotland a low carbon place. SPP sets out a presumption in favour of development that contributes to sustainable development and lists a number of principles that should guide decision making. Factors to be taken into account when assessing energy infrastructure proposals are also set out. These are essentially the same as in LDP policy IN2. It is stressed that the support that is given to development that would contribute to sustainable development requires the planning system to balance the economic, environmental and social consequences of a proposal in order to achieve the right development in the right place, and does not allow development at any cost.

16. The spatial framework for onshore wind that is set out in SPP would place the appeal site within Group 3: Areas with potential for wind farm development, where wind farms are likely to be acceptable, subject to detailed consideration against identified policy criteria. This is consistent with the approach taken by the LDP.

17. Draft NPF4 was published for consultation in November 2021. Until that consultation process is complete and the framework is approved by the Scottish Parliament and adopted by Ministers (which will probably be later this year), the weight it can be given is very limited. However, it is useful as an indicator of the Scottish Government's future planning policy intentions.

18. Draft NPF4 has a very clear focus on achieving the target of net zero emissions by 2045, and states that significant progress towards this must be made by 2030. It is confirmed that this will require new development and infrastructure across Scotland. Support is given to diversified and expanded renewable energy generation and it is proposed to designate Strategic Renewable Electricity Generation and Transmission Infrastructure, as a National Development. This confirms that a large increase in electricity generation from renewable sources will be essential for Scotland to meet its net zero emissions targets and that generation should be for export as well as domestic consumption.

19. Policy 2 in draft NPF4 confirms that, when considering all development proposals, significant weight should be given to the global climate emergency. Continued expansion of low-carbon and net zero energy technologies is described as a key contributor to net zero emissions by 2045. Although there is a wide range of renewable technologies, draft NPF4 predicts that it is likely that the onshore wind sector will play the greatest role in the coming years. As with existing policy however, development should not be permitted at any cost and it will remain necessary to carry out site-specific assessments of the adverse and positive impacts of each scheme.

20. The appellant contends that, in some respects, published planning policy in SPP and NPF3, both of which date from 2014, has been overtaken by subsequent development in our understanding of climate change, international agreements and obligations including the 2015 Paris Agreement, the publication in 2017 of the Scottish Government's Onshore Wind Policy Statement (the OWPS) and Scottish Energy Strategy (SES), the declaration by the Scottish Government of a climate emergency in 2019, and the introduction of

challenging legally-binding emissions reduction targets by both UK and Scottish Governments.

21. The OWPS recognises the vital role played by onshore wind in meeting Scotland's energy needs and its material role in growing the economy. It also confirms that Scotland will continue to need more onshore wind development and capacity, in locations where it can be accommodated. The landscape's ability to accommodate the technology shift towards larger turbines is identified as a challenge. However, it confirms that this needs to be balanced against the benefits of improved electricity generating capacity and the possibility (presumably in the context of repowering proposals) that fewer but larger machines might present an opportunity for landscape improvement.

22. The SES set a 2030 target for the equivalent of 50% of the energy for Scotland's heat, transport and electricity consumption to be supplied by renewable sources.

23. The Scottish Government's declaration of a climate emergency and the subsequent adoption of the world's most stringent target for decarbonising the economy – net zero by 2045, confirm the importance that the Scottish Government attaches to this issue.

24. The Planning (Scotland) Act 2019 made a number of changes to The Town and Country Planning (Scotland) Act 1997. Of potential relevance to this proposal is the confirmation that anything which contributes to sustainable development is to be considered as being in the long term public interest.

25. The Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 gives legal effect to the Scottish Government's commitment to net zero by 2045. It also sets interim targets of 75% by 2030 and 90% by 2040. According to the Climate Change Committee in its December 2020 publication 'The Sixth Carbon Budget – The UK's path to Net Zero', the pathway for Scotland towards achieving the 2045 target appears to be achievable. However, it is not anticipated that the 2030 interim target will be achieved, even in the most favourable of the modelled scenarios. The National Audit Office publication "Achieving Net Zero" (December 2020) describes achieving net zero by 2050 (the UK deadline, which is later than that for Scotland) as "*a colossal challenge and significantly more challenging than government's previous target to reduce emissions by 80% by 2050*." The report notes that the costs of this transition are predicted to be hundreds of billions of pounds, but that this will be far less than the economic cost of not achieving the target.

26. The UK Energy White Paper 'Powering our Net Zero Future' (December 2020) identifies the importance of electricity in moving away from fossil fuels and decarbonising the economy by the 2050 UK deadline. To cope with the electrification of cars and vans and the transition to electric heating of buildings, it forecasts a doubling of electricity demand in the UK over that time period, and identifies the deployment of clean electricity generation though the 2020s as a key objective. Particular importance is given to offshore wind farms, nuclear plants and new hydrogen technologies.

<u>Renewable energy benefits</u>

27. The first issue that policy IN2 requires to be taken into consideration is the scale of contribution a proposal would make to renewable energy generation targets, its effect on greenhouse gas emissions and any opportunities for energy storage.

28. The Wind Energy SG recognises that the generation of renewable energy will be vital to reducing greenhouse gas emissions and that the extent to which a proposal would help to achieve renewable generation targets will be a material consideration.

29. The appellant estimates that the proposed development would have an installed capacity of up to 50 Megawatts and could generate approximately 150 Gigawatt hours of renewable energy per year. The capacity factor (average power generated divided by rated peak power) is predicted to be 34%, which the appellant states compares favourably to the UK average of 26.6% over the period 2012-2016. This would equate to the power requirements of 38,500 homes and a CO_2 saving of up to 64,500 tonnes per annum.

30. Chapter 3 of the EIA report makes reference to the provision within the scheme of "a battery storage facility" and the proposed location of such a facility and the typical layout of a battery storage compound are set out in Volume 2 of the EIA report. These suggest a facility with limited storage capacity so I have not assigned any significant weight to that aspect of the proposal in my assessment of its compliance with the first requirement of policy IN2.

31. Returning to the two other aspects that this part of the policy requires to be considered, I find this proposal would provide a valuable contribution towards the achievement of renewable energy generation targets and a consequent contribution towards reducing greenhouse gas emissions. These are important considerations in its favour when considering the proposal against policy IN2.

Socio-economic benefits

32. In addition to being one of the assessment criteria in policy IN2, socio-economic effects are one of the issues that SPP paragraph 169 confirms are likely to be relevant to the assessment of any proposal for energy infrastructure development. The appellant argues that this issue has gained heightened importance in the drive for a 'green' recovery at a time of severe post-Covid economic recession.

33. I accept that the economic context within which a development proposal would take place (and the consequent potential for it to make a more perceptible positive impact) is a relevant consideration. However, as the adverse effects of a proposal such as this could be expected to endure for 35 years, I believe that only limited additional weight can be given to current (and presumably short-term) macroeconomic factors.

34. Chapter 14 of the EIA report sets out predicted socio-economic effects. This confirms that the appeal proposal is one of the first to progress to application since the withdrawal of Renewable Obligation Certificates, and that its development is likely to be subsidy-free. The appellant argues that this would help to minimise consumers' electricity bills.

35. The EIA report calculates that the proposal would involve an investment of more than £60 million. During the construction phase, it has potential to support an additional 172 man-years in Scotland including 83 man-years in the Dumfries and Galloway area. In GVA terms the construction phase would inject approximately £25.5 million and £12.3 million into the Scottish and Dumfries and Galloway economies respectively.

36. Following construction, the operation and maintenance of the proposal could support an additional eight jobs in Scotland, of which four could be in Dumfries and Galloway. In

GVA terms, the operational phase has the potential to inject £384,700 per annum into the Dumfries and Galloway economy and £875,000 to the Scottish economy as a whole.

37. I regard these levels of construction and post-construction economic activity to be significant.

38. The EIA report confirms the appellant's willingness to develop a shared ownership scheme, which would allow the community to invest in the scheme and obtain an annual return to invest in community projects. However, as no firm proposals for that appear to have been drawn up, I can give it little weight.

39. Taking all matters into account, I find the likely level of socio-economic benefits that would arise from this proposal to be an important consideration in its favour when considering the proposal against policy IN2.

40. Some objectors believe the proposal would cause harm to tourism, from which the Dumfries and Galloway economy greatly benefits. I agree that any plausible evidence of such harm would need to be weighed against the forecast socio-economic benefits I have identified. However, there is no such evidence. Studies that have investigated this issue in the past have not found onshore wind development to have a negative effect on tourism and the fact that Dumfries and Galloway remains a popular tourist destination whilst having accommodated a relatively large level on wind energy development over recent years, does nothing to support the objectors' fears.

Landscape and visual effects

41. Landscape and visual effects were reported in chapter 6 of the EIA report. This considered effects on landscape fabric, landscape character and visual amenity within a 35 kilometre radius study area.

42. Landscape fabric changes would involve the removal of trees from the plantation forestry that covers much of the site and the physical works required to form turbine bases, ancillary structures, borrow pits and the site access roads. None of these works would be of significant scale in comparison with the size of the site and I agree with the EIA report that landscape fabric effects would be minor (not significant) adverse.

43. Turning to landscape character effects, there are no landscape designations applying to the site. There are three National Scenic Areas within the appellant's study area, but all are approximately 22 kilometres from the site. The appellant's Zone of Theoretical Visibility (ZTV) confirms virtually no visibility of the proposed turbines from two of those areas. From the highest ground within the third (the Nith Estuary NSA) long distance views might be achievable, but at that distance, I agree with the EIA report that there would be no potential for significant effects on the character of the NSA.

44. There are four Regional Scenic Areas (RSAs) within the EIA report's study area. The closest is the Galloway Hills RSA, which is located approximately six kilometres south-west of the site at its closest point. The Thornhill Uplands RSA is a similar distance to the north-east of the site at its closest point. The Terregles Ridge RSA is located approximately nine kilometres to the east of the site and the Torthorwald Ridge RSA is located in the same direction but approximately 27 kilometres away. The EIA report considered effects on landscape character for only the three nearest RSAs, which I find to be appropriate, given the significant distance to Torthorwald Ridge.

45. LDP policy NE2 confirms that development within, or which affects RSAs, will be supported where the factors taken into account in designating the area would not be significantly adversely affected or where there is a specific need for the development at that location.

46. An assessment of this proposal against the first of these tests is not assisted by the apparent absence of any definitive statement of the factors taken into account in designating each RSA. Therefore, on the basis that these designations relate to scenic qualities, I have considered the scenic qualities of each RSA and how they might be affected by the proposal.

47. Thornhill Uplands RSA includes three units of LCT 18 *Foothills*, and the Nithsdale unit of LCT 19: *Southern Uplands*. The character of all of these landscapes is assigned high sensitivity in the EIA report, but due to the magnitude of change being (at most) medium, no significant landscape character effects are predicted. I agree with that assessment. The proposed turbines would only be visible from higher ground within this RSA (and then not to the extent that a significant visual amenity effect would result). From the valleys within the RSA, which I consider to be essential to their scenic qualities, the proposal would have no effect.

48. The EIA report's assessment of effects on the landscape character and visual amenity of the Galloway Hills RSA found no likelihood of any significant effect due to the patchy visibility and separation distances involved. I agree with that assessment except (as I describe below) in respect of the view from Viewpoint 17 within New Galloway, where I predict there would be a significant visual effect. However, as that is the only location within this RSA where I predict the RSA to be significantly affected and as it is not a location where the highest qualities of the RSA are found, I agree with the EIA report's overall prediction of no significant effects on the RSA.

49. The closest point of the Terregles Ridge RSA is approximately nine kilometres to the east of the appeal site and theoretical visibility of the proposal is limited to the highest summits, some distance further away. I agree with the EIA report that at no point would there be significant landscape character or visual amenity effects and that the overall effect on this RSA would also be not-significant.

50. The Merrick Wild Land area (WLA) lies approximately 25 kilometres to the north west of the site. Although the ZTV predicts there could be theoretical visibility of the site from the highest peak within the WLA, I agree that, at that distance, there is no likelihood that the key attributes and qualities of the WLA would be materially, let alone significantly, affected.

51. Two separate landscape character studies have considered the character of the different landscapes in the study area. A national study, updated by Scottish Natural Heritage (now NatureScot) in 2019, places most the site within the 176: *Foothills with Forest – Dumfries and Galloway* Landscape Character Type (LCT). The remaining (south eastern) part of the site is within the 172: *Upland Fringe – Dumfries and Galloway* LCT.

52. The Dumfries and Galloway Wind Farm Landscape Capacity Study (the LCS) 2020 places most of the site, including the proposed turbines and associated infrastructure, within the Stroan unit of LCT18a: *Foothills with Forest*. South-eastern parts of the site lie within the Corsock Fringe unit of LCT16: *Upland Fringe*.

53. As is to be expected, these two studies into the character of the landscape within the vicinity of the appeal site reach very similar conclusions.

54. Key characteristics of the 176: *Foothills with Forest – Dumfries and Galloway* LCT are described in the 2019 study as: a dark green blanket of forest covering undulating foothills; a changing landscape with areas with large and medium scale forestry operations and wind farm development; forested areas dominated by Sitka Spruce, interspersed with mixed conifers and broadleaf planting, undergoing felling and replanting in large coupes with tall mature conifers at roadsides. Also identified are areas of more complex, locally distinctive and smaller-scale landscapes, with semi-improved pasture with walled enclosures on open ground, occasional lochs and estate policies, distinctive ridges and landmark summits, areas of relict landscape with remains of pre-improvement settlement and agriculture clustered in burn valleys. Wind farms are described as becoming a characteristic of the Stroan and Ae parts of this LCT.

55. LCT 172 is characterised by: elevated rolling pastures, improved and rough grassland in close proximity, hedgerow banks and treelines along roads in some lower areas, dry stone dykes, squared areas of forestry, a contrast between wide open areas and more intimate landform, panoramic views over valley and coastal lowlands, small bridges over incised burns, notable landmark features, including Iron Age fortifications, designed landscapes and grand houses.

56. The LCS describes the Stroan unit of LCT18a: *Foothills with Forest* as: a dark green blanket of forest covering undulating foothills, various stages of forest rotation evident in the landscape – young plantation, clear fell and deep ploughing, tall mature conifers at roadsides, semi improved pasture with walled enclosures on open ground and some evidence of archaeological remains.

57. The Corsock Fringe unit of LCT16: *Upland Fringe* is described as having elevated rolling pastures, improved and rough grassland in close proximity, hedgerow banks and treelines along roads in some lower areas, dry stone dykes, squared forest blocks with increasing afforestation evident. A contrast is observed between wide open areas and more intimate landform. Panoramic views are available over valley lowlands with small bridges over incised burns and Iron Age fortifications.

58. These descriptions of the landscape around the appeal site, with which I concur, confirm a medium-scale working landscape that has very strong signs of human activity including, in places, operational wind turbine development, but which also contains pockets of smaller-scale and higher-value landscape that is likely to be more susceptible to harm from further wind turbine development.

59. The EIA report looked at landscape character effects within the site and a 20 kilometre radius. This identified the potential for such effects within the Rhinns of Kells unit of LCT18a: *Foothills with Forest*, the Deeside, Milton and Urr Water units of LCT 13: *Drumlin Pastures*, the Dalmacallan, Keir, Tynron and Fleet units of LCT 18: *Foothills*, the Rhinns of Kells unit of LCT 21: *Rugged Granite Upland*, the Nithsdale unit of LCT 19: *Southern Uplands* and the Ken Valley unit of LCT 8: *Flooded Valley.*

60. The sensitivity of any landscape to effects from a development proposal depends upon both its susceptibility to change and its inherent value. My inspection of the site and its surroundings revealed this to be a location where there are quite extensive areas that are potentially well suited to carefully designed wind energy proposals – being already dominated by large-scale plantation forestry, having a relatively simple form (due primarily to the extensive forest plantations) and having no landscape designations or other evidence of any recognised landscape value.

61. However, because that relatively low sensitivity has led to a number of wind turbine developments taking place locally (some of which have yet to be built), it is essential to consider whether the point has been reached where there is no longer any capacity for further such development. It is also critical to an assessment of landscape character effects to consider whether this medium scale landscape is able to accommodate turbines of the size (200 metres to blade tip) that is now proposed.- Some machines of that size have been permitted locally, but not yet built, but each case must be considered on its merits and the capacity of the landscape to accommodate further 'very large' typology machines may be lower than for smaller turbines.

62. These points are spelled out clearly in the LCS as justifying a 'high' sensitivity rating for the Stroan unit of LCT18a *Foothills with Forest* for turbines exceeding 150 metres to blade tip. The appellant accepts this sensitivity assessment and has adopted it for the entire study area. I find this to be an appropriately cautious approach.

63. In accordance with best practice, the baseline against which landscape character effects were considered in the EIA report included other wind farms which are operational or under construction, but not those which are consented (but not as yet built) or those in planning.

64. The EIA report predicts significant effects on the character of LCT 176 *Foothills with Forest – Dumfries and Galloway* and LCT 172 *Upland Fringe - Dumfries & Galloway (Corsock Fringe unit)* out to a radius of approximately three kilometres. For LCT 160: *Narrow Wooded River Valley – Dumfries and Galloway (Urr Water unit)*, such effects are predicted to extend to four kilometres and for LCT 175: *Foothills - Dumfries & Galloway (Dalmacallan unit)* to five kilometres. Beyond that distance, I agree that topography and tree cover would shelter the turbines sufficiently for landscape character effects to be reduced to below a significant level.

65. It is virtually inevitable that introducing man-made development of significant scale into a rural environment will have a significant adverse effect on the character of the local landscape. Therefore, given the in-principle policy support for onshore wind energy development that is found in local and national policy, it would be unrealistic to expect a proposal such as this to avoid such harm altogether.

66. However, this does not mean that such development must be supported at any cost. Looking at the extent of the adverse landscape character effect that this proposal is predicted to cause, particularly in terms of the distance from the site where such effects would be perceptible, I find this proposal would have a greater adverse effect that the number of proposed turbines might suggest. This is a consequence of the height of the proposed machines and the nature of the landscapes in question – which are not vast, empty upland moors, but medium-scale places (albeit dominated in the main by plantation forestry) that are close to smaller and more sensitive settled landscapes. This adverse landscape character effect is a negative aspect of the proposal that I must weigh in the planning balance when I draw together my conclusions on the proposal.

67. The EIA report's consideration of visual effects analysed 19 viewpoints. I visited each of these as well as other locations that the ZTV suggested might offer a potential view of the proposed development. At six of the viewpoints, the EIA report predicts a significant visual effect. These include:

Viewpoint 2 - A712 near minor road to Blackcraig;

Viewpoint 3 - Minor Road near Monybuie Burn Bridge;
Viewpoint 4 - Minor road near Nether Glaisters;
Viewpoint 5 - A712 near Caldow Bridge;
Viewpoint 7 - Minor road near Black Burn; and
Viewpoint 16 - A712, Drumhumphry Junction.

68. I agree that there would be significant visual effects at these locations. I also predict a significant visual effect at Viewpoint 17 in New Galloway. There are other locations where the proposed development would also be clearly visible. For example, Viewpoint 1 on the minor road east of Loch Urr. I have taken these effects into account in my evaluation of the proposal. However, I have focussed in this notice on the effects that I believe would be significant, as it is these that have the greatest potential to influence the outcome of this appeal.

69. As with landscape character effects, it is not surprising that a man-made development of this scale would, in certain views, become a prominent and incongruous feature. There is no policy requirement for development to be invisible or to have no significant adverse visual amenity effect. What is required is an assessment of whether any harm to visual amenity (along with any other harm the proposal might cause) is outweighed by the benefits it would deliver. This requires a more detailed consideration of the nature of the visual effect than simply a conclusion as to whether it would be significant. I have set this out below for each of the viewpoints where I believe significant visual effects would arise.

70. Viewpoint 2 is on the A712 close to the junction with a minor road to Blackcraig, approximately three kilometres to the west of the nearest turbine. All nine proposed turbines would be seen prominently to below hub height.

71. The EIA report's finding of a significant visual effect was based upon receptors here being of medium sensitivity (it being a national speed limit road that does not appear to be used primarily by recreational users). In my view this underplays the level of receptor sensitivity, as the view is also representative of the quiet minor road to Blackcraig and of the residential property Blackcraig Bungalow that is close to the junction. The proposed turbines are also likely to be visible (albeit not down to hub height) from Bread and Beer Cottage on the A712, about 280 metres south east of the junction. Taking all of these factors into account, I would assign the viewpoint a high level of sensitivity.

72. At this location, and from further west on the A712, there are already clear views of the Blackcraig Hill wind farm. The turbines in that development are an established part of the view and therefore could potentially lessen the visual intrusion of further similar development. There would also be sufficient separation between the two that the contrast in scale between the two turbine types would not add to the visual effect. Nevertheless, I find that what is now proposed would have a significant adverse effect on views from this location due to its far greater prominence and the way it would dominate the experience of receptors in this location, which is not the case with the Blackcraig Hill machines

73. Viewpoint 3 is from a minor road to the north of the site, close to a small bridge that crosses Monybuie Burn. The nearest turbine is approximately 1.1 kilometres away. This view is representative of users of a quiet rural road who are likely to include cyclists and others with a focus on their surroundings. In addition, there is a house – Monybuie Schoolhouse that would experience a similar view. I would regard receptor sensitivity here as high.

74. All nine proposed machines would be clearly visible, above fields and forestry. The nearest machines - Turbines 2 and 5 would be especially prominent. I believe the height of the proposed machines would make them appear closer to the road than they would actually be, and that they would dominate the experience of users of this road and of the residents of the nearby house. The Blackcraig Hill turbines can also been seen, but these are much more visually recessive from this location. Therefore, they have little effect (either positive or negative) on the likely impact of what is now proposed.

75. Viewpoint 4 is from a minor road approximately 2.8 kilometres to the east of the nearest turbine. It is representative of users of a quiet rural road and also residents of a property called Nether Glaisters. I would assign it a high level of receptor sensitivity. Blackcraig Hill turbines can be seen to the north on the horizon but not prominently. What is now proposed would be seen very conspicuously on the horizon above a relatively small-scale foreground comprising of undulating farmland, small copses, individual trees, drystone walls and small electricity poles. Views from this location are of a settled human-scale landscape in which the plantation forestry that characterises much of the locality is visually recessive. The proposed machines – all of which would be visible to well below hub height, would appear entirely out of scale with the foreground landscape. I believe the machines would be far enough from the road for them not to dominate the view in the way that they would at Viewpoints 3 and 7. However, their scale would appear highly incongruous and significantly harmful in this location.

76. From Viewpoint 5, on the A712, approximately 1.9 kilometres to the south of the nearest turbine, I also predict that the proposal would appear incongruously out of scale with its surroundings. There are several residential properties close to this viewpoint, the residents of which (who must be afforded the highest sensitivity rating) would experience a similar view to that shown in the visualisation. This is a view in which a vast blanket of plantation forest extends from the middle distance to the horizon. Between that and the viewer is a more intimate pastoral landscape. Although it is an obviously human-influenced landscape, what is now proposed is of such a scale that it would dwarf its surroundings, leading to a shortening of the apparent separation distance from the road and creating a very dominant and harmful focal point in the view.

77. Viewpoint 7 is from a minor road approximately 1.5 kilometres to the north of the nearest turbine, close to where it crosses Black Burn. Receptors on this quiet rural road could include those with a particular focus on their surroundings, and residents of nearby Blackcraig farmhouse would experience a similar view to that shown in the visualisation. Receptor sensitivity would, therefore, be high. This location has a very different character to the more enclosed landscape of the A712 corridor. It lies at the edge of an upland area on which the Blackcraig Hill wind farm has been constructed. The landscape has a larger scale and is dominated locally by rough and (to the south of the road) improved grazing land. To the south are vast blocks of plantation, above which all nine of the proposed turbines would rise very prominently on the skyline.

78. The experience of receptors at this location would change from one where the turbines of Blackcraig Hill were a noticeable but not intrusive element of the view to one side of the road, to the impression of being within a windfarm with the proposed machines on the southern side of the road being far more visually dominant. The proposed machines' increased scale over those opposite would be emphasised by their proximity to the trees and farm buildings, over which they would tower.

79. Viewpoint 16 is on the A712, south east of Corsock. Looking north, the nearest proposed turbine would be seen in the middle distance approximately 6.2 kilometres away.

The Blackcraig Hill machines can be seen at present on the horizon as elements of an open upland landscape. They are not prominent and do not appear visually incongruous in their location. The proposed machines would be noticeably more prominent and would tend to draw the eye of any users of either the A712 or the minor (apparently private) road that leads north to a number of farms and forest plantations. I agree with the EIA report's assignment of medium receptor sensitivity to this viewpoint and with its conclusion that there would be significant visual amenity effect at this location. However, it is not one that I consider to be particularly harmful.

80. Viewpoint 17 is from a minor road to the west of New Galloway at the point where it drops down into the town. It is approximately 10 kilometres to the south west of the nearest proposed turbine. This is the only centre of population where I would anticipate there being a significant visual effect. The viewpoint is close to a number of residential properties and, while those homes do not tend to face directly towards the appeal site, residents entering and leaving their properties on a daily basis would experience a similar visual effect. For this reason I regard receptor sensitivity here as high.

81. The Blackcraig Hill turbines can be seen clearly on the horizon, but they are not visually intrusive. The size of the proposed machines would, despite the considerable separation distance and partial screening by the foreground, have a more noticeable and visually intrusive presence – giving the impression of turbine encroachment towards the town, which I would categorise as a significant visual effect. While not especially harmful on its own, this adds to the disbenefits that I need to weigh against the proposal's positive aspects.

82. There are 26 residential properties or property groups located within two kilometres of the proposed turbines, the nearest being the isolated farm house "Blackcraig" – referred to in the discussion of Viewpoint 7 above, which is approximately one kilometre away. These properties were considered in particular detail in the EIA report due to the potential for visual effects to detract unacceptably from residential amenity. There are also numerous individual homes and farms within a wider radius of the site where visual effects were considered. The EIA report identified five settlements where views of the proposals might be seen. However, as stated above, I have focussed on New Galloway, located approximately 9.5 kilometres to the south-west of the site, as I believe this is the only settlement where significant visual effects are likely.

83. The EIA report predicts that 12 properties or property groups of the 26 would experience a significant visual effect from their house and a further seven from their garden / curtilage or from their access tracks. This gives a total of 19 residential properties or groups that would experience significant visual effects. As I have set out above, I predict significant effects at Blackcraig Bungalow and Bread and Beer Cottage, which do not feature in the EIA report's predictions.

84. Even at Blackcraig farm house, I am not convinced that the dominance of the proposed development would be so severe as to make the property an undesirable place to live. However, the proximity and scale of the proposed machines would certainly detract significantly from existing levels of residential amenity, particularly as the property would become encircled by turbine development. Residents of the other properties I have referred to above – Monybuie Schoolhouse, Blackcraig Bungalow and Bread and Beer Cottage would also experience a significant adverse effects on their residential amenity as a consequence of the proposal (albeit not to the same degree as Blackcraig farm house). These negative effects on residential amenity require to factored into my assessment of the planning balance.

85. Given the presence of existing wind energy developments in the locality and the recent approval of a number of further development proposals, I have considered the potential for there to be significant cumulative landscape or visual effects. However, I find the location of the appeal site to be sufficiently separate from other existing or approved sites that significant in-combination effects would be avoided and, while any further development could increase the potential for a receptor travelling through the landscape to experience successive or sequential effects, I am satisfied that the location of the site is such that these are unlikely to be significant.

Ornithology

86. Ornithology effects were reported in chapter 8 of the EIA report. Additional red kite collision risk modelling was submitted on 22 December 2021.

87. Survey and assessment work that fed into the EIA report took place between September 2018 and July 2020. I am satisfied that the ornithology evidence I have is up to date.

88. The ornithological studies considered the full range of potential effects:

- displacement effect during the construction, operational and decommissioning phases of the wind farm;
- direct loss of habitat used for foraging, nesting and shelter due to the proposed wind farm infrastructure;
- direct risk of injury or death through collision with the wind farm infrastructure, in particular the turbines;
- destruction and disturbance of nesting birds during the construction, operational and decommissioning phases of the wind farm; and
- indirect displacement through visual and noise disturbance from the proposed wind farm infrastructure

89. The study area was the site plus a buffer zone of up to two kilometres. None of the expert consultees has questioned this approach and I find no reason to regard it as insufficient.

90. The EIA report concluded that collision risk monitoring would not be required, as its analysis of flights within the "flight risk volume" (the area bounded by the outermost turbines at rotor sweep height) revealed very low levels of flight activity for any of the target species. However, in response to concerns expressed by the RSPB over the absence of adequate collision risk modelling for red kite, the appellant commissioned a further study into that issue. This reported in December 2021.

91. The appeal site itself has no designated ornithological interest, but this part of Dumfries and Galloway is known to provide habitat for a number of important species. The nearest designations of ornithological value are: Loch Ken and River Dee Marshes SPA and Ramsar site (8.5 kilometres to the south west), which is important for non-breeding Greenland white-fronted and greylag goose; the River Dee (Parton to Crossmichael) SSSI (also 8.5 kilometres to the south west), which is important for the same goose species and also whooper swan; Threave and Carlingwark Loch SSSI (14.4 kilometres to the south), important for a breeding water bird assemblage and non-breeding greylag goose; and Laughenghie and Aire Hills SSSI 11.1 kilometres to the south-west), which is important for a

breeding bird assemblage including osprey, curlew and raven, and a wintering site for hen harrier.

92. Based upon viewpoint surveys of flight activity across the site and other data sources, the EIA report found the site to be of county importance for goshawk (it having been used by a pair for breeding in both 2019 and 2020), local value for red kite (small numbers holding territory within two kilometres of the site and 61 fights being recorded during the study period), local value for woodcock (at least four pairs having used the study area for breeding during both 2019 and 2020), local value for long-eared owl (a small number of pairs being observed within one kilometre of the site in both 2019 and 2020), and local value for common crossbill (four pairs being observed during the 2020 survey).

93. During the construction and decommissioning phases, no significant effects are predicted for any avian species of interest. I agree with those conclusions, as the site itself appears to have little value as breeding habitat and the goshawk that have bred there have been observed to relocate nesting locations in response to changing patterns of human activity.

94. During the operational phase, considering the potential for disturbance and displacement, the EIA report again found no significant effects likely. Given the low value of the site for any of the species of interest, this conclusion seems reasonable.

95. The very low level of flight activity observed within the site also reassures me that collision risk for all species would be very low. The additional red kite collision monitoring exercise that was undertaken in December 2021 followed methodology developed by SNH (now NatureScot) in 2000. It relied upon the site survey work that was undertaken between September 2018 and July 2020, which (among other things) recorded the flight lines taken by birds across the site. Those red kite flights that occurred between 50 and 200 metres above ground level and within the site plus a 500 metre buffer, were considered to be within the flight risk volume and potentially capable of resulting in a collision.

96. The outcome of the analysis is a prediction of only one red kite collision every 200 years, which I would regard as, at most, a negligible effect. In response to the additional modelling, the RSPB confirmed that it does not object to this proposal and has no further comments to make.

97. Objectors to the proposal argue that collision risk modelling is inherently inaccurate and that wind farms are responsible for killing vast numbers of birds. However, no evidence is provided to substantiate those claims or to refute the conclusions of NatureScot and the RSPB that this proposal raises no cause for concern. Criticism is levelled at the collision monitoring study for not considering other potential effects such as disturbance and displacement. However, those matters were considered fully in the main EIA report. The collision monitoring is also criticised for focussing on an apex predator, but the main EIA report considered the full range of potential effects on all bird species of interest.

98. In addition to effects from the proposal in isolation, the appellant considered the potential for there to be significant cumulative effects with other wind energy developments. Its conclusion was that there would be no such potential. I find no reason to question that conclusion.

99. Taking all of the evidence into account, I am satisfied that the investigation into potential ornithological effects was undertaken in accordance with established best-practice

and I accept the appellant's conclusions that the proposal would have no significant effects (including cumulative effects) on ornithology.

Ecology

100. Chapter 9 of the EIA report looked at non-avian ecology. This reported on the findings of bat, mammal and habitat surveys (all concluded in 2020). There is no reason to regard these data as no longer up to date.

101. The site has no ecological designations and there are no statutorily designated ecological sites within five kilometres. However, Knowetop Lochs Nature Reserve (a non-statutory nature conservation site) lies a short distance to the south and is of interest for dragonfly and damselfly, scotch argus butterfly and otter.

102. No evidence was found of badger, pine marten or water vole either during the 2020 ecology site surveys or during the site visits carried out for the ornithology surveys between 2018 and 2020. The waterbodies within the site were found to be unsuitable for great crested newt. Therefore, no further consideration of potential effects on those species was undertaken. I agree with that decision.

103. The plantation forest that covers much of the appeal site is unsuitable for otter. However, watercourses that cross the site and open areas such as forest rides could potentially support the species. Therefore, I accept the EIA report's assignment to the site of 'moderate' value for otter.

104. Seven species of bat were found to use the site for foraging and commuting. However, there was considered be very low potential within the site for any bat roosting activity.

105. No evidence of red squirrel was found within the site, but the wider study area was assessed as having district value for this species, as a moderate red squirrel population is known to be present within the wider Garcrogo Forest.

106. One habitat within the site (a mire) was found to have high potential to be groundwater dependant (and therefore more susceptible to the potential dewatering effects of development), but is a habitat that is common within the region. Two other ground water dependent habitats (assessed as having moderate dependency) would be crossed by proposed access tracks. The loss of such habitat would be small and the habitats are common across the region. There would be some (albeit very limited) loss of three other notable habitats (upland heath, purple moor grass and rush pasture) due to the proposed construction works. However, I agree that the limited areas involved means the likely effect would not be significant.

107. Overall, given the limited value the site has as habitat for important species and the limited physical extent of the proposed construction works in proportion to the area of the wider site, I find no reason to disagree with the EIA report's prediction that there would no significant ecological effects during the construction and decommissioning phases of the development.

108. The operational phase has the potential to disturb or displace important species and, in the case of bats, to introduce a risk of collision and barotrauma. However, subject to the turbines being kept away from watercourses and the edges of plantations (where there is the greatest potential for foraging and commuting bats) and bearing in mind the moderate

level of bat activity that was detected within the site, the EIA report predicts a moderate / minor (not significant) effect. I am satisfied that this conclusion is supported by the evidence. For all other species, no significant effects are predicted due to a combination of low levels of activity within the site and the high proportion of the forest that would remain unaffected by the proposed development. I agree with that assessment.

109. No potential for cumulative effects with other wind energy development was identified. This seems plausible, given that none of the affected habitats is scarce across the region and the fact that none of the potentially affected fauna is likely to range far enough to be directly affected by other turbine developments.

110. Although no significant ecological effects are anticipated, the appellant proposes a construction environment management plan that would provide further mitigation.

111. Taking all of the evidence and submissions into account, I conclude that the proposal would have no significant effects (including cumulative effects) on ecology.

The water environment

112. Effects on hydrology, geology and hydrogeology were reported in Chapter 12 of the EIA report. This considered the site and a two kilometre buffer.

113. LDP policy NE11: *Supporting the Water Environment* seeks to protect the status of all waterbodies that are set out in the Solway Tweed River Basin Management Plan (2015) including any minor watercourses that drain into those waterbodies. It also expects culverting to be avoided whenever possible.

114. The assessment of likely effects on a particular water feature relied upon analysis of receptor value or importance and the predicted magnitude of change. The study considered groundwater, waterbodies, flood risk (to a limited extent), licensed abstractions, private water supplies, sites of conservation interest and groundwater dependent terrestrial ecosystems (the latter two being discussed under the ‘ecology’ section above). In considering the significance of each effect, regard was had to the potential effects of climate change on future baseline conditions.

115. Construction, operation and decommissioning phases of the project were considered. The main potential hydrological/hydrogeological impacts associated with the proposal relate to the construction phase, in particular from tracks and watercourse crossings causing silt-laden run off. I agree that, with appropriate controls in place (secured by the proposed construction environment management plan) there is no reason to suspect that operational phase effects on the water environment would be significant. Decommissioning effects are predicted to be similar but less significant. I find no reason to question that conclusion.

116. During site operation, the main risks to the water environment would come from contamination of watercourses and/or groundwater from chemical spills, concrete leaching and ongoing erosion and sediment deposition into watercourses from exposed ground. Mitigation for those potential effects would take the form of widely-employed best-practice operating procedures.

117. Effects on 31 licenced abstractions / discharges and 58 private water supplies were considered. For almost all, detailed investigation was scoped out of further study as the locations were not hydraulically connected to the development and could not, therefore, be

affected. I am satisfied for the small number where hydraulic connectivity could not be ruled out, there is no evidence to suspect that a significant effect would occur.

118. Four watercourse crossings are proposed; three would involve culverts due to the small size and indistinct nature of the channels. Provided that these adhered to the appropriate SEPA and CIRIA standards, this should pose no risk of significant effects.

119. Overall, I am satisfied that the proposal would not be likely to have a significant effect on the water environment and would comply with LDP policy NE11.

Effects on residential amenity

120. In addition to visual effects on residential amenity, which I discussed above, the EIA report considered noise (in Chapter 10) and shadow flicker (in Chapter 14).

121. The appellant's investigation of potential noise effects followed best practice (ETSU-R-97 and the subsequent good practice guide from the Institute of Acoustics). Effects from the appeal proposal individually as well as cumulative effects were considered, as was the potential for amplitude modulation (blade swish) to exacerbate any noise effect (although with the latter it was concluded that it is virtually impossible to predict in advance if this might occur and therefore necessary to address the possibility either with a planning condition or using statutory powers to address noise nuisance).

122. Construction noise effects were not investigated in any detail in the EIA report due to the distance between such works and any receptor, and their temporary nature. I agree with that approach as there is no likelihood of such works causing a significant effect.

123. Potential operational noise effects at 30 homes or residential groups were assessed. At all 30, predicted noise levels from just the appeal proposal in isolation are predicted to fall well below the limit of 40 dB which would apply to this location (given its low background noise levels). Adding the cumulative effects of the Blackcraig Hill and Fell windfarms found that all properties except Blackcraig farm house would remain below that noise level. And for that property (where a maximum level of 41.3 dB was predicted), it is pointed out that, as this property could not be simultaneously downwind of all turbines, this estimate of cumulative noise is likely to be an over-estimate.

124. Taking all of the evidence into account, I conclude that, subject to appropriate planning conditions, there would be no significant noise effects (including cumulative effects) as a consequence of this proposal.

125. Shadow flicker can potentially occur within 130 degrees either side of north and up to 10 rotor diameters (in this case 1.5 kilometres) away. There are six properties within that zone that could potentially be affected by this phenomenon. However, it is possible to mitigate this effect by regulating turbine operation through a planning condition. Had I been minded to allow this appeal, this would have avoided the potential for a significant effect to arise.

126. Overall, I find no reason to conclude that, with appropriate mitigation in place, significant noise or shadow flicker effects would arise.

Other matters

127. Concern has been expressed by some objectors about the effects of visible aviation lighting (necessary due to the height of the proposed machines) on the Galloway Hills Dark

Sky Park. The site is located within the 'Transitional Zone' for this area. Its 'Buffer Zone' lies approximately 10 kilometres to the south-west at its closest point, with the 'Core Zone' beginning at a distance of approximately 20.5 kilometres to the south-west. Most of the area is over 25 kilometres to the west of the site. At this range, and with a number of settlements and other light sources in the intervening landscape, I am satisfied that there is no likelihood of a significant effect on the dark skies for which the park has been designated.

128. I have considered whether such lighting might materially affect the predicted landscape character and visual amenity effects I discussed earlier, in locations closer to the proposed development. However, given the intention that such lights would be activated only when required (approximately 2% of the time) I find no reason to conclude that this lighting would materially alter those effects.

129. Chapter 11 of the EIA report looked at traffic and transport effects associated with the use of local roads by HGVs and abnormal loads during the construction phase. Over the anticipated 12 month construction period, it is anticipated that there would be 2,768 HGVs attending the site. This assumes a conservative output from the proposed on-site borrow pit, and would be reduced if more than 25% of the stone required by the project were supplied from that source.

130. Subject to mitigation measures being put in place, including a traffic management plan agreed with the council and police, the EIA report predicts no significant effects on severance, driver delay, pedestrian delay and amenity, accidents and safety, or dust and dirt. The council's Roads Planning Team Leader raises no objections subject to matters of detail being agreed. I find no reason to disagree with these conclusions.

131. Effects on peat were addressed in Chapter 12 of the EIA report and in further details of proposed peat management in a stage 1 peat management plan.

132. LDP policy NE15: *Protection and Restoration of Peat deposits as Carbon Sinks* potentially permits development on peat deposits that are not designated for conservation reasons where the peatland is degraded or (in the case of renewable energy proposals such as this) where it can be demonstrated that the balance of advantage in terms of climate change mitigation lies with the renewable energy proposal. In all cases, site restoration is expected.

133. The EIA report and the appellant's stage 1 peat management plan (the latter benefitting from additional peat depth data) estimate how much peat would need to be excavated from the site in order to construct the proposal, explain how this would be used and assess the overall environmental implications.

134. It is estimated that in the region of 16,000 cubic metres of peat would need to be excavated in order to construct the proposals. This is based upon turbine 3 being re-sited slightly so as to avoid very deep peat. The evidence I have does not suggest this would be a significant effect. Restoration could be secured by a planning condition. In terms of policy NE15, bearing in mind the significant contribution the proposal could make to climate change mitigation, I find no reason to doubt that the balance of advantage in these terms would lie with approving the proposal.

135. Effects on cultural heritage and the historic environment were considered in Chapter 7 of the EIA report. There are no designated heritage assets within the site, but 143 listed buildings, two conservation areas and 21 scheduled monuments within the 10 kilometre study area.

136. Direct effects on heritage assets could arise due to disturbance during construction of buried archaeology. There are a few non-designated (predominantly agricultural) remains within the site, one of which is predicted to be slightly affected. There is considered to be low potential for there to be any previously unrecognised remains of any value, as the site has long been used for agriculture and forestry so extensive ground disturbance has already occurred. I agree with the EIA report that there is no likelihood of significant direct cultural heritage effects.

137. Indirect effects on heritage assets would involve visual interference with the setting of the asset. The closest to the site – Rough Island Crannog lies on an artificial island in Loch Urr. Its setting is the loch and immediate surroundings, from where it is predicted that the blades of all of the proposed turbines would be seen. The nearest machine would be 4.6 kilometres away and I agree with the EIA report that the effect of seeing moving blades at that distance would not be significantly detrimental to the setting of this asset, as the development would appear as an element of another landscape rather than as an significant intrusion into the environs of the loch.

138. Auchenhay Settlement, a scheduled monument, is the remains of a prehistoric settlement, approximately 4.6 kilometres away from the nearest proposed turbine. Although the blades of all nine machines would be seen among the distant hills, there would be no sense of intrusion into the surroundings of the settlement and the effect would not impair a visitor's ability to understand the relationship between the remains and those surroundings. Again, I conclude there would be no significant effect on this asset.

139. Other historic assets that the EIA report considered were further from the site and affected to a lesser degree than the above two examples. No historic environment consultee has raised concerns over the proposal and my conclusion overall is that there would be no significant effects on cultural heritage and the historic environment

140. Effects on aviation were reported in Chapter 14 of the EIA report. This considered both civilian and military activities.

141. The area is used for military low flying, but the proposal would not intrude upon any of the routes that are taken by low flying aircraft.

142. The only issue of potential concern with this proposal is with the air traffic control radar on Lowther Hill, approximately 35 kilometres away. As the turbines would be visible to this radar and could create radar screen clutter, mitigation would be required. The appellant has had discussions with the operator and is confident that a technical solution could be provided. Subject to that, I am satisfied that there would be no significant effects on any aviation interest.

Conclusions

143. The EIA report found six viewpoint locations from where the proposal would have a significant visual effect. I accept that conclusion in respect of those locations and also identified an additional location where such an effect is likely. In addition, I have identified a small number of residential properties where significant visual (and consequent residential amenity) effects would arise.

144. The EIA report found significant effects on the character of four landscape character types, out to a maximum distance of five kilometres from the site. I agree with that assessment.

145. I am satisfied that my reasoned conclusions on the significant effects of the proposed development are up to date.

146. For the reasons I have set out above, I believe this proposal would, in many respects, avoid significant adverse effects. However, I am not satisfied that the design and scale of the proposal (specifically the size of the turbines) is appropriate to the scale and character of its surroundings, bearing in mind the visibility there would be of the proposed machines.

147. An assessment against LDP policies IN1 and IN2 requires a balancing of positive and negative effects, with consideration given to how the latter might be mitigated. As set out above, I appreciate that the avoidance of any landscape character and/or visual amenity harm from a commercial wind energy proposal would be an unrealistic expectation. However, that cannot imply that any level of such harm must be accepted. In this instance, I find the number and severity of significant adverse visual effects is not compensated for by the socio-economic, climate change and other benefits of the proposal.

148. Within the scope of this appeal, I can see no means of mitigating the proposal's adverse effects to a level that would be outweighed by its benefits. Consequently, I conclude that the proposal is contrary to LDP policies IN1 and IN2. Given the comprehensive coverage and importance of those policies, my conclusion is that it is contrary to the development plan overall.

149. The proposed development would contribute to net economic development, would support climate change mitigation and, in so far as they are relevant to a proposal of this kind, would be consistent with many of the other principles that are set out at paragraph 29 of SPP. However, due to its adverse effects on visual amenity, I do not believe it would be reasonable to describe the proposal as one that would support good design, avoid over-development or protect amenity. Consequently, I cannot conclude that the proposal is one that would 'contribute to sustainable development'.

150. I have had regard to the characteristics listed in paragraph 169 of SPP and find the proposal to be acceptable in many respects but, for the reasons already stated, to perform poorly in terms of landscape and (particularly) visual effects.

151. I therefore conclude, for the reasons set out above, that the proposed development does not accord overall with the relevant provisions of the development plan and that there are no material considerations which would still justify granting planning permission.

David Buylla
Principal Reporter

Schedule 1: Opportunities for public participation in decision-making

There is the following evidence before me of opportunities the public had to take part in decision-making procedures on the application before I was appointed to this appeal and subsequently:

- the appellant has provided a report on pre-application consultation, dated February 2021. This indicates the methods of engagement used to consult with the community during the preparation of the planning application that has led to this appeal. Due to the Covid-19 pandemic, an online public exhibition was displayed on the appellant's

website rather than an in-person event held locally. This provided the public the opportunity to review the proposals, provide feedback and ask questions. It was advertised in the Galloway Gazette on 4 December 2020 and comments were invited until 31 December 2020. An updated exhibition was advertised in the Galloway News on 28 January 2021, with comments invited until 11 February 2021;

- Publicity for the application and appeal was given in accordance with the 2017 EIA regulations including publicity for the additional environmental information.

- the planning authority received 129 public representations in respect of the application;

- those who made representations upon the application were treated as interested parties in the appeal and given the opportunity to make representations on matters that they raised, by written response to the appeal. DPEA received 72 such representations; and

- additional information was submitted with this appeal and the public had an opportunity to comment on that information. This led to a further four representations.