



Decision by Mike Shiel, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-140-2068-1
- 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 no. 17/00226/FUL, dated 13 February 2017, refused by notice dated 2 October 2017
- The development proposed: Erection of a windfarm comprising of seven turbines 126.5 metres high to tip, associated infrastructure, ancillary buildings and temporary borrow pits
- Date of site visits by Reporter: 5 September, 15 & 28 October 2019

Date of appeal decision: 6 February 2020

Decision

I dismiss the appeal and refuse planning permission.

Preliminary matters

1. On 16 May 2017, the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 came into force. The 2017 regulations revoked the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 with certain exceptions. The 2011 Regulations continue to have effect for an application (and any subsequent appeal) for planning permission where the applicant submitted an environmental statement in connection with the application before 16 May 2017. That was done in this case. I have therefore determined this appeal in accordance with the 2011 regulations as they applied before 16 May 2017.
2. This is the re-determination of an appeal decided on 7 February 2019, when the reporter allowed the appeal and granted planning permission for the development. Following an appeal to the Court of Session against that decision by Heriot Community Council, the decision was quashed, and returned to the Planning and Environmental Appeals Division for re-determination.
3. In reaching my decision on this appeal I have had regard to the environmental information that was submitted with the original application in 2017. In view of the time that has elapsed since then, I gave the opportunity for the appellant and the council to update their positions if they wished to do so, and I have had regard to the information which they have subsequently submitted. That has included information on the updated baseline of constructed and permitted windfarms, and the most recent policy considerations. The



further environmental information has been consulted upon and advertised as required by the EIA Regulations.

4. I also gave the opportunity for third parties to submit further comments if they so wished. I have had regard to the original submissions by consultees and other third parties in respect of both the original application and the appeal, as well as to any further comments they have made, including on the further environmental information.

5. I note that, in its original appeal submission, the appellant requested that an inquiry session should be held to consider the landscape and visual impact of the development and aviation safety matters, and that a hearing session be held to consider planning policy issues. In the event, the reporter who previously determined this appeal decided to hold an inquiry session to consider matters relating to aviation safety, but this proved to be unnecessary as agreement was reached between the relevant parties. I am satisfied that I have received sufficient information, along with information gained from my own site visits, to enable me to determine this appeal.

6. In carrying out my environmental impact assessment of this proposal, I have had regard to all of the environmental information and to the responses to it from consultees and other parties. As part of that process, I have considered direct and indirect effects of the proposed development on human beings, fauna and flora, soil, water, air, climate and the landscape, material assets and cultural heritage. However, in this decision notice I have focussed on those that are critical to the acceptability of the proposal.

Reasoning

7. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. Having regard to the provisions of the development plan the main issues in this appeal are:

- (a) the landscape and visual impact of the proposed windfarm, including any cumulative impacts in association with other existing or consented wind farms;
- (b) the impact of the windfarm on the amenity of residential properties in the locality, including through noise;
- (c) any other environmental effects of the development, including on ecological and cultural heritage interests;
- (d) the impact of the wind farm on aviation safety; and
- (e) the environmental and economic benefits associated with the development.

The appeal proposal

8. The appeal site covers 183 hectares and is located on the northern and north-western slopes of Brotherstone Hill, to the north-west of Gilston Farm and to the west of the B6368 road, which runs between the A68 and A7 trunk roads. On its north-western side the site is bounded by Brothershiels Burn which, at this point, forms the boundary

between the administrative areas of Scottish Borders and Midlothian Councils. Further to the north lies Fala Moor, a relatively level area of moorland within Midlothian. To the north-east of the site is an extensive area of coniferous plantation, whilst a further area of woodland (Makimrich Wood) to the east extends into the appeal site.

9. The proposed development consists of seven turbines with a maximum 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. 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 in the north-east corner of the site. Underground cabling under the access tracks would link the turbines to a sub-station located close to the northern end of the site. Two temporary borrow pits are proposed, one within the main site adjacent to Makimrich Wood and the other on a separate site to the south adjacent to the B6368.

The development plan

10. The development plan for this area comprises the South-east Scotland Strategic Development Plan 2013 (SESPlan) and the Scottish Borders Local Development Plan (LDP) 2016, together with its associated adopted supplementary guidance.

11. In SESPlan, policy 1B (The Spatial Strategy; Development Principles) requires local development plans to contribute to the response to climate change through mitigation and adaptation. Policy 10 (Sustainable Energy Technologies) states that local development plans should 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. It notes (paragraph 125) that concerns have been expressed about the cumulative effects of onshore wind farms in, amongst other places, the Scottish Borders. Thus, SESPlan provides broad support for renewable energy proposals, but contains no specific guidance on their location or siting.

12. The key policy in the Scottish Borders LDP is ED9 (Renewable Energy Development). Although there are a number of other policies covering topics relevant to the assessment of this proposal, their requirements are essentially encompassed in the renewable energy policy, and are therefore only referred to in passing.

13. Policy ED9 states that renewable energy developments, including wind energy proposals, will be approved providing that there are no relevant unacceptable significant adverse impacts or effects that cannot be satisfactorily mitigated. Where there are such unacceptable significant adverse impacts or effects that cannot be satisfactorily mitigated, the policy states that the development will only be approved if the council is satisfied that the wider economic, environmental and other benefits of the proposal outweigh the damage arising from it. Policy ED9 also indicates that the council will produce statutory Supplementary Guidance on wind energy and renewable energy, which it has now done (see paragraph 16 below).

14. The policy then sets out eleven considerations that will be taken into account in the assessment of wind energy proposals. In brief, these are:

- the onshore spatial framework;
- landscape and visual impacts, taking into account the report on Landscape Capacity and Cumulative Impact as an initial reference point;
- all cumulative impacts, including cumulative landscape and visual impacts;
- impacts on communities and individual dwellings (including visual impact, residential amenity, noise and shadow flicker);
- impacts on carbon-rich soils, public access, the historic environment, tourism and recreation, aviation and defence interests, seismological recording, telecommunications, and trunk roads/road traffic;
- effects on the natural heritage, hydrology, the water environment and flood risk;
- opportunities for energy storage;
- net economic impact and socio-economic benefits;
- the scale of contributions to renewable energy generation targets, and the effects on greenhouse emissions;
- the need for conditions; and
- the need for a planning obligation in respect of site restoration.

15. Overall, I consider that policy ED9 explicitly requires an assessment of the balance between any unacceptable significant adverse impacts of the development and any economic, environmental and community benefits. The latter will require consideration of current national planning and energy policies.

16. As set out in policy ED9 the council has now produced Supplementary Guidance (SG) on Renewable Energy. This was adopted by the council in July 2018 and now forms part of the development plan. The SG contains the spatial framework for onshore wind farms, as required by Scottish Planning Policy (paragraph 161). It also contains more detailed guidance on the above-mentioned development management considerations.

17. Both policy ED9 and the SG refer to the Wind Energy Landscape Capacity and Cumulative Impact Study, prepared by the Ironside Farrer Wind Energy Consultancy. This was originally prepared in 2013, but was updated in 2016.

18. I proceed below to assess the current proposal against the relevant considerations in LDP policy ED9.

Landscape impact

19. The statutory supplementary guidance referred to above contains the spatial framework for wind energy, based on the approach set out in Table 1 of Scottish Planning Policy. The appeal site is within an area with potential for wind farm development. However, as this area cover a large part of the Scottish Borders, more detailed guidance is needed to determine the acceptability of the location in landscape terms. The updated Wind Energy Landscape Capacity and Cumulative Impact Study provides strategic guidance based on the Landscape Character Types identified in the Borders Landscape Character Assessment of 1998. The study emphasises that it is a strategic level landscape and visual study, and that no site-specific conclusions should be drawn from it in relation to proposed

wind energy schemes; which need to be considered on their own unique locational and design characteristics, as well as their strategic context.

20. The appeal site lies in the Plateau Grassland (Lauder Common) Landscape Character Area (LCA). This extends along the edge of the uplands on the border with Midlothian and southwards for some distance. It is described as a broad ridge of gently rolling hills between the Moorfoot Hills to the west and the Lammermuir Hills to the east, forming a prominent northern escarpment at Soutra Hill, to the east of the appeal site. It is a large scale landscape, but lower than the Dissected Plateau Moorland LCAs to the east and west. The capacity study states that its inherent capacity is medium for wind turbines between 35 and 120 metres in height, but low for those over 120 metres. However, because of existing developments, it considers that cumulative impact and potential “saturation” of underlying capacity is a major consideration. It suggests that larger scale wind energy developments should be well separated from existing clusters, and should be located away from the visually prominent outer slopes. Taking account of the existing developments, it concludes that this LCA has a low capacity for further wind turbines of all sizes.

21. Immediately to the north of the appeal site, within Midlothian, is a further area characterised as a Plateau Grassland LCA, identified in the Midlothian Landscape Wind Energy Capacity Study of 2014. This is described as a gently undulating upland plateau occurring at the transition between the generally higher and more pronounced Moorfoot and Lammermuir Hills, and comprising the shallow basin of Fala Moor and the farmed hill slopes that immediately surround it. Fala Moor forms a gradual transition between the rolling lowlands of the North Lammermuir Platform LCA to the north and the more elevated and extensive Plateau Uplands in Scottish Borders and East Lothian. In terms of constraints for wind farm development, reference is made to the strong sense of naturalness and seclusion that can be experienced in the less modified moorland and wetlands of Fala Moor. The guidelines state that there is no scope to accommodate turbines over 50 metres high in this LCA in Midlothian without significant landscape impacts. Moreover, it considers that in the Plateau Grasslands LCA within the Scottish Borders (i.e. including the current appeal site) additional wind farm development should avoid being sited on the higher ground of Cowbraehill, Brotherstone, Hangingshaw, Clints and Hartside Hills, because these hills provide an important backdrop to Midlothian and restrict views of current operational wind farms from within Fala Moor and the adjacent North Lammermuir Platform LCA.

22. It can therefore be seen that both the above-mentioned landscape capacity studies in effect advise against the siting of large windfarms on the outer, north-facing slopes of Brotherstone Hill. I recognise that these studies are of a strategic nature and cannot provide definitive site-specific advice, but nevertheless consider that the guidance within them gives an indication of the potentially adverse landscape impact that would be created by the present proposal. Whilst the overall Plateau Grasslands (Lauder Common) LCA may be a large-scale landscape, the greater part of which would not be affected by this development, it is its proposed siting on the outer, north-facing slope of Brotherstone Hill that would have a significant landscape impact, albeit on a relatively small part of the overall LCA. The appellant’s submissions suggest that, because this LCA already contains a large number of wind turbines (Dun Law and extension, and Toddleburn wind farms), this demonstrates its inherent suitability as a landscape type to accommodate this form of

development. It is, however, acknowledged that *“it would be over-simplistic to assume that all parts of the character type therefore have the same carrying capacity, as clearly the sensitivity of the different parts of the LCT will vary.”* I agree with that qualification and consider that the specific circumstances of this part of the LCA render it more sensitive to the siting of wind turbines, especially of the large size currently proposed.

23. There is disagreement between the parties as to whether this site is on the “edge” of the uplands. In part this depends on from where the site is viewed. The appeal site is on the northern edge of the Plateau Grassland (Lauder Common) LCA within the Scottish Borders, but I accept that the administrative boundary does not reflect landscape character differences. In Midlothian there is the relatively flat expanse of Fala Moor before the land then slopes down to the north. This creates a different topography from the steeper scarp slopes of the Moorfoot Hills to the west and Soutra Hill to the east. There is, therefore, in this area a more gradual “transition” from the uplands to the lower-lying areas to the north. In my view, this creates a different relationship between the proposed wind farm and the topography than that found at other wind farms in the same LCA.

24. The Gilston turbines would be at a lower level than those at Dun Law, and I agree with the comments made in some of the consultation responses that, as a result, they would appear to be “spilling off” the higher ground. This is apparent in the long distance views shown in the visualisations from viewpoints 17 (Lammer Law) and 22 (Blackhope Scar). The latter, in particular, well illustrates the slope down from the Plateau Grassland Lauder Common LCA at Brotherstone Hill, the flat expanse of Fala Moor and then the further slope down at the northern edge of the Plateau Grassland LCA in Midlothian. Although complicated by differences in distance from the viewpoints, these visualisations also clearly demonstrate the greater height of the currently proposed turbines to those in the Dun Law complex, and their relationship to the topography of Brotherstone Hill.

25. The visualisation from viewpoint 2, on Fala Moor immediately to the north of the site, also shows how the height of the turbines would dominate Brotherstone Hill, thereby diminishing its impact in the landscape. From further north, for example from viewpoints 8 and 9 on the B6458 road, I acknowledge that only turbine blades would be visible, the hubs being screened by the intervening rising ground at the northern edge of the Midlothian Plateau Grassland LCA. However, from further afield (for example, from viewpoint 12) the full height of the turbines would be visible on the outer slope of Brotherstone Hill. Although not shown in a visualisation, there would be a similar effect from the minor road at the east end of Camp Wood in Midlothian, which stands on the Mayfield/Tranent Ridge. In longer distance views from the north-east (for example, from viewpoints 10, 13 and 18) the effect of turbines spreading from the higher ground to lower lying areas, where the turbine blades would be seen rising above the intervening farmland and woodlands, would be apparent. There would be a similar effect, albeit at a considerable distance, when seen from viewpoints 20, 23 and 25.

26. The landscape assessment in the Environmental Statement concludes that the effect of the proposed development on the landscape character of the northern parts of the Plateau Grassland (Lauder Common) LCA would be significant on an area that extends approximately 2-3 kilometres around the site. In general, I agree with that conclusion and, as is accepted in the Environmental Statement, consider that such an effect would be adverse.

27. I consider that the development would also have a significant indirect adverse effect on the landscape character of the Midlothian Plateau Grassland LCA. In particular the turbines would visually dominate the large flat expanse of Fala Moor, substantially reducing its sense of seclusion, remoteness and relative “wildness” that are very important features of its landscape character. Whilst the appellant has argued that the proposed turbines would not be on the ridgeline of Brotherstone Hill, their presence and proximity would nevertheless directly contradict the advice in the above-mentioned Midlothian landscape capacity study to avoid this area for large-scale wind turbines. By extending down the slope of Brotherstone Hill, in contrast to the Dun Law turbines which are visible on the more distant skyline, they would visually encroach onto the distinctive landscape of Fala Moor.

28. In the adopted Midlothian Local Development Plan 2017 Fala Moor is designated as a Special Landscape Area, replacing its former designation as an Area of Great Landscape Value (AGLV). I appreciate that such local landscape designations do not, of themselves, preclude wind farm developments on or around them. However, they do indicate a degree of landscape sensitivity that needs to be taken into consideration and, where appropriate, protected. The Environmental Statement assesses the impact of this development on what was then an AGLV. It acknowledges that there is a perception of wildness in the central part of Fala Moor, arising from factors such as its remoteness and naturalness, and that the proposed development would result in substantial changes to key characteristics. The result would be a significant and (I would add) adverse impact on this landscape designation.

Cumulative landscape impact

29. I have considered the information contained within the original Environmental Statement, together with the Further Environmental Information, which has updated the cumulative baseline. In this respect I consider that the most significant change is the addition of the application for eight turbines at Wull Muir on the Moorfoot Hills to the west of the appeal site. This scheme would be likely to have a significant cumulative landscape and visual impact in combination with Gilston, if it were to be approved. However, it is at an earlier stage of the application process, and I consider that its impact can therefore largely be discounted in my consideration of the cumulative impact of the present appeal proposal.

30. In general, I consider that the most significant cumulative landscape impact would be in combination with the large group of turbines on and around Soutra Hill. This group is made up of the original Dun Law wind farm (26 turbines), Dun Law Extension (35 turbines), Pogie (6 turbines), Pogie Extension (6 turbines) and Keith Hill (5 turbines); a total of 78 turbines with a maximum height of 76 metres. They are all within a Plateau Grasslands LCA, albeit that Pogie and Keith Hill lie within the East Lothian section of this character area. Views from certain viewpoints (for example, Lammer Law) show that Dun Law and its extension form a very dense cluster of turbines, reflecting the closer spacing of the smaller turbines. Turbines within this overall group would be seen in combination with those proposed at Gilston from many views to the north and north-east.

31. This group already has a significant impact on the landscape character of the Plateau Grasslands (Lauder Common) LCA within Scottish Borders, creating a “landscape with wind farms” in the northern part of the LCA, reinforced by the Toddleburn wind farm to the south of the present appeal site. The Environmental Statement states that the addition

of the present proposal would increase the extent of this landscape characteristic, but would not result in redefining the landscape as a “windfarm landscape” character type. It is also considered that the degree of separation between the Gilston development and Dun Law is sufficiently great as to avoid immediately contrasting scale comparisons between the much taller turbines proposed and the lower existing ones for the majority of the LCA. Where such contrast would occur, it is suggested that the separation is not ambiguous because of clearly different locational and distance indicators in views towards the site and the fact that *“in particular, the proposed development site appears more associated to the moorland of Fala Moor than it does to the forest covered horizon to the south.”* It seems to me that this latter statement supports the argument that the proposed turbines would appear to be “spilling off” the higher ground onto the lower land to the north.

32. In contrast to the appellant’s argument, Scottish Borders Council and a number of consultees (Scottish Natural Heritage (SNH), East Lothian Council and Midlothian Council) have expressed concern about the potential visual ambiguity created because of the differences in size between the proposed and existing turbines. In particular, SNH (in its letter of 21 April 2017) makes a number of comments, raising the following issues:

- the close physical association of the proposal with existing wind farms, often producing a visually conjoined grouping of turbines from certain viewpoints, but one which is not seen as an overall development that is cohesive in scale;
- the differing locational principles between developments, with the current proposal set within a lower lying and visually more open foreground to the hills compared to Dun Law, Pogie and Keith Hill;
- the likely readily noticeable difference in turbine scale, rotation speed and design layout between developments; and
- the presence of the Gilston wind farm would represent a shift from the existing and emerging pattern of wind farms within this area of the Lammermuir and Moorfoot Hills, extending large-scale commercial wind farms away from the higher hill areas into transitional and lower-lying hill fringe areas.

33. I appreciate that SNH did not formally object to the proposal, as it did not consider that it raised matters of national importance. However, on the basis of my own consideration of this development, I am largely in agreement with the above-mentioned comments.

34. In SNH’s document “Siting and Designing Wind Farms in the Landscape: Guidance “ (February 2017) a “wind farm landscape character area” is defined as one where wind turbines appear as a dominant characteristic of the area. The identification of such a character area in any particular circumstances is partly a matter of judgement, and partly a function of the size of area being considered. Thus, from the A68 at Soutra, the large number of turbines on both sides of the road creates a “wind farm landscape”. However, from a more distant view (for example, viewpoint 17 on Lammer Law, to the north-east of the site), the Dun Law turbines are seen as one group within a wider landscape, along with Toddleburn wind farm to the south-west. In that context, the proposed turbines at Gilston would be seen as adding to this landscape character, where turbines are a key characteristic but not of sufficient dominance as to be a defining characteristic of the area.

On the other hand, from closer viewpoints (for example, when driving north along the B6368 in the vicinity of the appeal site), the relatively close proximity of the proposed Gilston turbines to the west of the road and the Dun Law Extension turbines on the ridgeline on the east side of the Armet Water valley would create an impression where wind turbines would begin to appear as the dominant characteristic of this part of the landscape.

35. Whilst from viewpoint 17 the relationship between Gilston and Dun Law may appear to mirror that between Toddleburn and Dun Law, with a similar separation distance, I consider that, in closer views, the visual relationship would be very different; and that from many viewpoints to the north and north-east, the proposed development would appear to be much more closely related to the Dun Law group.

36. All told, I conclude that, by extending the range of wind turbines further west along the outer face of the Lammermuir/Moorfoot Hills, the proposed development would have a significant and adverse cumulative landscape impact in addition to the existing group of turbines at Dun Law. I appreciate the arguments that have been advanced in favour of grouping wind turbines in this range of hills in clusters, with clear areas of separation between individual clusters. However, I am not persuaded that this proposal would achieve that objective. Indeed, it is argued for the appellant that there would be sufficient separation from Dun Law as to avoid any visual confusion between the different turbine sizes. As such I consider that, rather than being a coherent enlargement of an existing cluster, the development would represent an encroachment of turbines into a part of the hills that is currently not directly affected by wind farms.

Visual impact (including cumulative impact)

37. The Environmental Statement contains maps showing the Zones of Theoretical Visibility for the proposed development, for both hub height and blade tips. These maps overstate the actual visibility because they do not take into account intervening screening by vegetation and buildings. What they do illustrate, however, is that, because of the location of the wind farm on the north-facing slopes of Brotherstone Hill, visibility from areas to the south and south-east of the site would be very limited. Areas of potential visibility are concentrated to the north, north-east and north-west, together with from areas of higher ground to the south-west.

38. The Environmental Statement examines in detail the visual impact from 26 viewpoints, using wireline diagrams and photomontages. As a result of this analysis, it is considered that no detailed assessment is required for a number of viewpoints, because of the very limited visibility of the turbines that would actually be available. In general, I accept the conclusions of the Environmental Statement in that respect. I consider the visual impact (including any cumulative impact) from the other viewpoints below.

39. Viewpoint 1 (B6368 at Kings Inch access) This is the closest viewpoint, at 1.2 kilometres from the nearest turbine. The visual impact at this range would be very considerable. It is inevitable, however, that large turbines such as those currently proposed would have a substantial visual impact on their immediate locality. The conclusion of the Environmental Statement is that the magnitude of change from this viewpoint would be medium-high, but I would put it at the upper end of that range. I agree that this is not a highly sensitive viewpoint, the principal receptors being road users on the B6368. The

overall view from this point is already affected by the turbines of the Dun Law Extension on the skyline to the south-east and, to a lesser extent, the original Dun Law turbines at a greater distance to the east. The Gilston development would introduce turbines into a further quadrant of the view, intruding into the distant view along the ridge of the Moorfoot Hills to the south-west.

40. I have indicated in paragraph 34 above that I consider that, in certain views from along the B6368 in this locality, the combination of the existing turbines to the east of the Armet Water valley and the proposed turbines to the west of the road would come close to defining a “wind farm landscape”. The proximity of the Gilston turbines to the road would make them the dominant visual feature to the west of the B6368 from this viewpoint and the adjoining sections of the road, in a view which is currently devoid of turbines except in the far distance. Overall, I conclude that they would have a significant adverse visual impact, both alone and cumulatively.

41. Viewpoint 2 (Fala Moor) The view south from this viewpoint would be dominated by the proposed turbines, the closest of which would be 1.6 kilometres away. Whilst they would be seen against the backdrop of Brotherstone Hill, they would also appear above the skyline, giving the impression of overwhelming the local topography. This is a sensitive location, being used by walkers on the right of way, and benefitting from the area’s relative remoteness and sense of wildness, and I consider that the visual impact of the turbines would significantly detract from these characteristics. From this viewpoint, turbines at Dun Law and its extension would also be visible at some distance. I agree with the point made for the appellant that, because of this distance, the lower height of these turbines might not be so apparent to the observer, although the faster rate of rotation might be noticeable. From this viewpoint, I consider that it is the over-dominant visual impact of the turbines on their own that would have a significant adverse effect.

42. Viewpoint 3 (Soutra Aisle) At present, the view of the proposed turbines from this location would be wholly screened by an intervening forestry plantation. The Environmental Statement has considered the potential impact were this plantation to be felled, as is likely during the 25-year lifespan of the wind farm. In that eventuality, the visual impact would be similar to that at viewpoint 1, albeit at a greater distance (the nearest turbine being 1.9 kilometres away). The view to the south-east and east of Soutra Aisle is already dominated by turbines, and the proposed development would introduce these features into another quadrant of the view, to the south-west, against the distant backdrop of the Moorfoot Hills. The extensive open views to the north, towards Edinburgh, and north-east, towards the East Lothian coast, would, however, remain uninterrupted. This is a sensitive location, because of the presence of scheduled ancient monuments and visitor interpretation facilities (I consider the impact of the development on the setting of the ancient monuments below). In general I agree with the conclusions of the Environmental Statement that the magnitude of change, if the forestry is removed, would be medium-high, and this would result in a significant visual impact, which I would further characterise as adverse.

43. Viewpoint 4 (A68, south of B6368 junction) Although six turbine tips would be theoretically visible from this viewpoint, they would be largely screened by the intervening landform and vegetation. I agree with the assessment in the Environmental Statement that there would be no significant visual impact.

44. Viewpoint 5 (Heriot Core Path Network, near Shoestanes) From this viewpoint, views of the proposed turbines would be largely screened by the intervening ridge of higher land to the east, so that only the moving blade tips would be visible. Whilst this might be somewhat distracting to users of the path, I accept the conclusions of the Environmental Statement that the overall visual impact would not be significant.

45. The Environmental Statement does not, however, assess that impact from the minor road that runs past the small community at Nettlingflat and onto the group of houses at Brothershiels over the above-mentioned ridge. From the crest of that road, there would be a clear view of the proposed turbines on the northern slope of Brotherstone Hill, with the existing Dun Law turbines behind. This is a view that would be experienced by residents at Brothershiels on a daily basis and is, therefore, relatively sensitive. I therefore consider it further below in the section on the impact of the wind farm on residential amenity.

46. Viewpoint 6 (B6368, north of Crookston) Looking north from this viewpoint, the turbines would be partially screened by the southern slope of Brotherstone Hill, so that the hubs of only two would be visible, plus the blade tips of four more. Their visual impact would add to that of the Toddleburn wind farm to the east, which is already prominent from this location. The Environmental Statement concludes that the magnitude of change resulting from the addition of the Gilston turbines would be medium-high, with a corresponding significant visual impact on a not particularly sensitive location. I agree with that assessment.

47. Viewpoints 8 (Saughland, B6458) and 9 (A68/B6458 junction) The views from these two viewpoints (4.2-4.6 kilometres from the closest turbine) illustrate the effect of the outer slope of the Midlothian Plateau Grassland LCA in screening the lower parts of the turbines in medium-distance views from the north. From viewpoint 8, two hubs and five blades would theoretically be visible above the southern skyline, although the former would in fact be screened by a forestry plantation. This would also screen views from viewpoint 9, with only three blades being largely visible. In general I agree with the assessment in the Environmental Statement that the magnitude of change from both these viewpoints would be no more than medium. In the vicinity of viewpoint 8 there would be views from a number of residential properties, increasing the sensitivity of this location; thus resulting in a significant visual impact.

48. From both these viewpoints there are views of existing turbines within the Dun Law grouping, particularly at the eastern end of this group (Dun Law Extension, Pogbie, Pogbie Extension and Keith Hill). These are at some distance away and at a higher elevation on Soutra Hill. Whilst I accept that this distance would make any size comparisons difficult, I consider that the wider views from both viewpoints emphasise that the Gilston turbines would be at a lower level to the north of the higher ground. This would, in my opinion, create the perception of turbines “spilling off” the ridge line, which I consider would constitute a significant adverse cumulative impact. I am not persuaded by the arguments in the Environmental Statement that, from these viewpoints, the proposed development would appear separated from the existing turbines, but *“would retain a clear association with a windfarm influenced landscape in the view and appearing in a similar part of the horizon would reinforce the existing pattern of windfarm development seen in this view, thereby limiting visual confusion...”*

49. The same effect of the proposed turbines appearing to be at a lower level than those on Soutra Hill would also be apparent in views from the A68 southwards from viewpoint 9, in sections where they would not be screened by intervening vegetation, as shown on Figure 6.15c in the Environmental Statement.

50. Viewpoints 10 (B6368, near Humbie) and 13 (Peaston) Whilst, at the distances involved (5.2 and 8.2 kilometres from the nearest turbines respectively) the direct visual impact of the proposed development would not be substantial, I consider that the views from both these viewpoints demonstrate the effect of the large scale turbines rising above the smaller scale features in the lower lying intervening landscape. This would represent a very distinct extension of turbines away from the higher ground. In this respect I agree with the views expressed in East Lothian Council's objection to this development. This effect would be noticeable from the roads between these two viewpoints when travelling westwards, wherever views are not obstructed by intervening vegetation. All told, I conclude that there would be an adverse cumulative visual impact in these cases.

51. Viewpoint 12 (South of Mossend) From this elevated viewpoint the wide extent of turbines on the southern skyline is apparent, albeit at a distance of some 11 kilometres. The proposed Gilston turbines would be visible in front of the western end of the Dun Law Extension turbines, and their greater height would be readily noticeable. The effect would be of turbines spreading northwards towards the lower-lying ground. In the view south from this location the horizon appears relatively level and the landform of Brotherstone Hill is not pronounced. The proposed turbines would rise above the skyline, thereby emphasising their scale and creating a somewhat cluttered appearance with the turbines behind. Whilst at the distance involved the direct visual impact would not be substantial, I consider that there would be an adverse cumulative visual impact as a result of the proposed development.

52. Viewpoints 14 (B7007, near Broad Law) and 22 (Blackhope Scar) These viewpoints represent views from the Moorfoot Hills, to the south-west of the site; the former from a public road at a distance of about 8.6 kilometres, and the latter only visible to walkers on the hills at a considerable distance (about 14 kilometres). From viewpoint 14, the nearby three-turbine Carcant wind farm is the dominant visual feature, and the proposed Gilston turbines would be largely screened by intervening forestry plantation. If this were to be felled during the lifetime of the wind farm, all seven turbines would be visible at a closer distance than the large number of Dun Law turbines that can presently be seen. The effect would be to extend the spread of wind farm development to the north. Because of the different height of the proposed turbines and their closer distance to the viewpoint, I am not convinced by the view expressed in the Environmental Statement that they would be read as an extension to the existing wind farm cluster. Nevertheless, I accept that the overall visual impact from this viewpoint, either alone or cumulatively, would not be significant.

53. From the more distant and higher location of viewpoint 22, looking towards the north-east, Gilston would be seen as adding to a number of existing wind farms in the view: Carcant (the closest), Toddleburn (further south), the Dun Law group in the distance, and Fallago Rig on the far distant horizon. In this view, the proposed development would not be seen as an extension of the Dun Law group. In landscape terms it would add to the character of a "landscape with wind farms" that I have previously referred to in paragraph 34 above when considering the view from Lammer Law to the north-east (viewpoint 17). In

terms of its visual impact, I consider that this viewpoint demonstrates the spreading of turbines down the northern slope of the hills, thereby extending the visual influence of wind farm developments in the overall view. At present there is a considerable degree of visual separation between the Dun Law group and Carcant, and Gilston wind farm would erode that separation, to the detriment of the wider view of this part of the Lammermuir/Moorfoot Hills. As such I consider that it would have a significant adverse cumulative visual impact.

54. Viewpoint 16 (Edgehead) From this location, the view of the proposed turbines would be largely screened by intervening vegetation. However, by continuing west and then north along the minor road on which this viewpoint is located, one arrives at the eastern end of Camp Wood on the elevated Mayfield/Tranent Ridge LCA; from where a much clearer view of the development would be available. This is a view which Midlothian Council raised concerns over, in its consultation response, as being on the Tyne-Esk trail, and therefore a sensitive location. From such a view, the visual impact of the development would be similar to that from viewpoint 12, but somewhat more pronounced. The proposed turbines would be visible to the west of the Dun Law Extension on the horizon, and at a lower level. The greater height of the Gilston turbines would be readily apparent. All told, I consider that the effect would be to significantly increase the extent of wind farm development seen in this section of the hills, as well as reinforcing the impression that such development would be spreading off the higher ground towards lower land to the north. I conclude that there would therefore be a significant adverse cumulative visual impact from this location.

55. Viewpoint 17 (Lammer Law) This is an elevated viewpoint, accessible only by walkers, about 9.6 kilometres north-east of the site. I have considered the cumulative landscape impact from this location in paragraph 34 above. The visualisation shows that the Gilston wind farm would be seen as distinctly separate from the Dun Law group and of a greater height of turbine. It would represent a clear expansion of wind farm development to the west and north, and would erode the current visual separation between Dun Law turbines and the distant Carcant wind farm. Although the wide, flat expanse of Fala Moor is visible extending to the north of the site, I consider that this view also demonstrates the effect of turbines spreading down the northern slope of the hills; and that the height of the turbines would over-power the existing landform of Brotherstone Hill. All told, I conclude that there would be a significant adverse cumulative visual impact from this viewpoint.

56. Viewpoint 18 (Kidlaw Road) At a distance of 9.9 kilometres from the closest proposed turbine, the view from this point shows the proposed turbines on the skyline, rising above the smaller-scale elements of the intervening lowland landscape. Existing turbines are not visible from this specific viewpoint (although they are from other locations in the vicinity), but this serves to emphasise the separation of the proposed Gilston wind farm from the Dun Law group, and its different visual context. I agree with the view expressed by East Lothian Council that, in this view, the turbines would appear out of character and scale with their setting; and, as such I consider that they would have a significant adverse visual impact, notwithstanding the distance involved.

57. Viewpoints 20 (A6093, Nisbet Junction), 23 (Tranent) and 25 (A1 near Haddington) From these long-distance viewpoints (13.4, 14.8 and 20.6 kilometres respectively) the degree of separation of the Gilston wind farm from the Dun Law group is emphasised, as is the greater height of the proposed turbines. The overall impact is that of wind farm

development spreading away from the higher ground to the south and being seen in a different visual setting, against a foreground of a more settled lowland landscape.

58. The overall conclusion of the Environmental Statement is that the proposed development would have a significant visual impact when seen from five viewpoints (1, 2, 3, 6 and 8), and sequentially from the B6368. It is argued for the appellant that these significant effects are localised within a radius of approximately five kilometres, and relate principally to the magnitude of change which will typically occur within this proximity to a commercial wind farm. Whilst not disputing that general assertion, this does not mean that such significant visual impacts, which I believe should be treated as adverse, are necessarily acceptable in planning terms. They must be considered in the context of the particular circumstances of each individual proposal. On that basis, I set out my overall conclusions on the landscape and visual impact of this development below.

Overall conclusions on landscape and visual impact

59. Having considered the environmental information submitted with both the original planning application and the appeal, together with my own observations from my visits to the area, I reach the following conclusions:

- a. The development would have a significant adverse impact on the northern part of the Plateau Grassland (Lauder Common) LCA within Scottish Borders by extending wind farm development down the northern slope of the hills in this area. Whilst acknowledging that the Plateau Grassland landscape character type extends northwards into Midlothian, I consider that the landscape of this particular area is different from the higher flatter areas to the south; and that it does form a “transition “ between those areas and the extensive, lower-lying, flat area of Fala Moor to the north. As such, I consider that it is more sensitive to wind farm development, as suggested in the relevant landscape capacity studies.
- b. The height of the proposed turbines would dominate the topography of Brotherstone Hill, thereby diminishing its impact in the landscape. This effect would be most apparent from closer views, such as from Fala Moor, but would also be seen in more distant views from the north (for example, from viewpoint 12).
- c. The development would have a significant indirect adverse effect on the landscape character of the Midlothian Plateau Grassland LCA. In particular the turbines would visually dominate the large flat expanse of Fala Moor, substantially reducing its sense of seclusion, remoteness and relative “wildness” that are very important features of its landscape character. There would also be a significant adverse impact on the designation of Fala Moor as a Special Landscape Area in the Midlothian Local Development Plan.
- d. In terms of its cumulative landscape impact, this would primarily be with the 78 existing turbines in and around Dun Law. In more distant views of the Plateau Grassland (Lauder Common) LCA (for example, from viewpoints 17 and 22), the addition of the Gilston wind farm would be seen as adding to the existing

landscape character, where turbines are a key characteristic but not of sufficient dominance as to be a defining characteristic of the area.

- e. However, from some closer viewpoints the relatively close proximity of the proposed Gilston turbines to the west of the B6368 and the Dun Law Extension turbines on the ridgeline on the east side of the Armet Water valley would create an impression where wind turbines would begin to appear as the dominant characteristic of this part of the landscape.
- f. By extending the range of wind turbines further west along the outer face of the Lammermuir/Moorfoot Hills, the proposed development would have a significant and adverse cumulative landscape impact in addition to the existing group of turbines at Dun Law.
- g. Rather than being a coherent enlargement of an existing cluster, the development would represent an encroachment of turbines away from the higher hills and into a part of the hills that is of a “transitional” landscape character, currently not directly affected by wind farms.
- h. The proposed wind farm would have a significant adverse visual impact when seen from viewpoints 1, 2, 3 (if the intervening forestry were to be felled), 6 and 8; and from the nearest section of the B6368.
- i. There would be an adverse cumulative visual impact over a much wider area because of the visual relationship between the Gilston wind farm and the existing turbines in the Dun Law group. This would be apparent in medium-distance views from the north (for example, viewpoint 12); from the north-east (viewpoints 10, 13 and 18); from elevated views in the Lammermuir and Moorfoot Hills (viewpoints 17 and 22); and even in long-distance views from the north-east (viewpoints 20, 23 and 25).
- j. This adverse impact would arise because the development would extend the view of turbines to the west along the Lammermuirs/Moorfoot hill ranges, and thus begin to erode the degree of visual separation between the Dun Law group and the nearest existing wind farm to the west (Carcant). From many viewpoints it would also appear to spread turbines to the north, extending away from the higher ground towards lower-lying areas. As a result, especially from views from the north-east, the proposed turbines would appear to be visually isolated and not part of a coherent cluster, and would be seen to rise in a prominent manner above the smaller-scale features of the intervening lowland landscapes.

60. Policy ED9 in the Scottish Borders Local Development Plan states that wind energy proposals will be approved providing that there are no relevant unacceptable significant adverse impacts or effects that cannot be satisfactorily mitigated. What constitutes an “unacceptable” significant adverse impact is essentially a matter of judgement. On the basis of my conclusions in the preceding paragraph, I find that this development would have an unacceptable significant adverse impact in terms of its landscape and visual effects, including cumulatively when its effects are added to the present baseline of wind

farms in the area at Dun Law. This impact stems from both the inherent nature of the proposal, and the particular circumstances of its location and siting, and cannot satisfactorily be mitigated. Consequently, I conclude that the proposal conflicts with policy ED9.

Impact on residential amenity

Visual amenity

61. The Environmental Statement (Technical Appendix 6.2) has assessed the impact of the proposed wind farm on the visual amenity of 17 residential properties within two kilometres of the development. Of these, five would have no visibility of the turbines. Dere Street Farm, about 1.5 kilometres north-east of the site, would have some visibility of the turbines above the intervening forestry plantation. Were this to be felled during the 25-year lifespan of the wind farm (a distinct possibility), there would be a clear view of all seven turbines from this property. However, at the distance involved, I accept that the turbines would not have an overbearing impact on the visual amenity of this house.

62. A group of four residential properties at Gilston is situated to the east of the summit of Brotherstone Hill. Although the wireline diagrams show that they would have theoretical visibility of some turbines, this would be largely screened or filtered by intervening woodland. The assessment in the Environmental Statement concludes that there would be a medium effect on visual amenity in the case of Gilston Farm, and a negligible effect in the other cases. I note that the farmhouse is owned by the landowner involved in the development, as is one other property, whilst a third is described as an “involved property”. Overall, I consider that the development would not have a significant detrimental impact on the visual amenity of these dwellings.

63. Upper Brotherstone is situated 0.78 kilometres south-west of the nearest turbine and would have an uninterrupted view of all seven. The Environmental Statement describes the effect on visual amenity as high, an assessment with which I agree. This is also identified as an “involved property”. It is indicated in the Environmental Statement that the occupants of the house have a financial interest in the development, and would therefore be willing to put up with a higher degree of visual impact than might otherwise be considered acceptable. The Environmental Statement states that the magnitude of change involved could amount to a level which might be considered to make the property an unattractive place in which to live. Again, I agree with that assessment. The Environmental Statement also states: “*The threshold of an overbearing effect occurring is not readily defined and is a matter of subjective judgement.*” As far as I am aware, there is no guidance which suggests that where the occupants of a residential property have a financial interest in a wind farm development a different standard in relation to visual amenity can be applied, as is explicitly the case for noise impact. However, I acknowledge the point made above that, in such circumstances, the occupants may be willing to tolerate a greater loss of visual amenity than might be considered acceptable for an uninvolved person. I note that the council did not raise any concerns about the impact of the development on residential visual amenity. Given the particular circumstances, I conclude that whilst the visual impact on Upper Brotherstone would result in a significant loss of amenity to that property, it would not, in itself, justify the refusal of planning permission.

64. The other group of houses affected by the development is at Brothershiels where there are five properties situated in the valley of the Brothershiels Burn, 1.13 – 1.25 kilometres south-west of the nearest turbine. All would have views of turbines from the houses or immediate vicinities, although in some cases these would be screened by an area of woodland. The Environmental Statement concludes that for four of the five properties there would be a significant effect on residential amenity. I have referred in paragraph 45 above to the view of the proposed wind farm from the road leading to Brothershiels where it crosses the crest of the ridge east of Nettlingflat. The magnitude of change from that viewpoint would, in my opinion, be medium-high, and the visual impact would be significant and adverse. This is a view that would be likely to be experienced by the occupants of these houses on a daily basis. I consider that the visual impact of a wind farm on residential amenity arises not just from direct views from the house itself, but also from gardens and the immediate vicinity, which residents experience every day. To that extent, I consider that the Gilston wind farm would adversely affect the amenity of the residents living at Brothershiels. However, I recognise that the threshold of acceptability in these cases is generally taken to be somewhat higher; namely, whether the development would have such an overbearing effect as to render a house an unattractive place in which to live. I do not think that such a threshold has been crossed in this case.

65. All told, I find that, whilst the impact of this development on the visual amenity of some residential properties in the surrounding area would have an adverse effect on their amenity, it would not be such as to warrant the refusal of permission.

Noise

66. The original noise assessment for this development was contained in Chapter 13 of the Environmental Statement. It was updated by an Operational Noise Report prepared by TNEI Services Ltd, dated 30 August 2017, which superseded the baseline noise levels and operational wind turbine noise predictions contained in the Environmental Statement. The appellant's noise assessment was criticised on a number of accounts in joint submissions by the Stow & Fountainhall and Heriot Community Councils of 6 July 2017 and 28 March 2018. TNEI in turn responded to the comments made in these submissions in April 2018.

67. In connection with the current re-determination of this appeal, Heriot Community Council submitted a further statement, including a review of the noise impact assessment by MAS Environmental Ltd, on 3 October 2019. TNEI responded to the matters raised in this review on 30 October 2019. In addition, as part of the Further Environmental Information submitted for the appellant, a further updated Operational Noise Report dated 1 November 2019 was included. I have based my consideration of the noise impact of the proposed wind farm on this latter report; the review of this report by Carmichael Associates for the council; the submissions by and on behalf of the community council; and the responses by TNEI.

68. The matters raised by the community council concern three main issues:

- the credibility of the measurements of the existing background noise levels in the area, including whether they have adequately filtered out noise from existing wind farms;
- consideration of the impact of Amplitude Modulation; and

- the potential for cumulative noise impact from Gilston and existing wind farms in the area.

69. On the first of these issues, measurements of background noise levels were taken by a different firm of noise consultants at six locations around the site in 2011 in connection with an earlier proposal for a wind farm development at Gilston and an adjoining site in Midlothian (see paragraph 134 below). These figures were re-analysed by TNEI and some minor adjustments were made to take account of errors in the original data; this has resulted in slightly lower background noise levels. The community council believes that the background levels are nevertheless unrealistically high when compared to average noise levels recorded by the 2000 National Noise Incidence Survey (NNIS) throughout Scotland, or even in Central London locations. In its response, TNEI has stated that such comparisons are not valid, as the measurements taken for wind farm assessments include the variation with wind speeds, whereas the NNIS data is based on recordings at low wind speeds. The background noise levels at the monitoring points in this case demonstrate the low levels at low wind speeds.

70. Current Scottish Government advice on noise from wind farms (contained in the web-based advice “Onshore Wind Turbines”, of May 2014) refers to the use of two documents in such assessments:

- “The Assessment and Rating of Noise from Wind Farms” (ETSU-R-97); and
- “A Good Practice Guide to the Application of ETSU-R-97 for the Assessment and Rating of Wind Farms” (Institute of Acoustics, May 2013) (IOAGPG).

The Scottish Government has endorsed the latter as providing current industry good practice.

71. Both the above-mentioned documents make clear that, in measuring existing background noise levels against which the predicted levels of a proposed wind farm will be assessed, noise from any existing wind farms in the area should be excluded. The appellant’s submissions outline four options for achieving this, and state that this has been done by filtering out noise readings taken when the wind was in directions most likely to carry noise from the existing wind farms, primarily the Dun Law group. The MAS review suggests that it has not been shown that noise from these wind turbines has not affected the measured background noise levels at two of the monitoring locations. In its turn, TNEI has criticised the method used by MAS to predict noise levels from existing wind farms at these locations and has demonstrated the angles used for the directional filtering of the noise measurements. It considers that the approach adopted for such filtering was appropriate and robust. The Carmichael Associates review states that the prevailing background noise levels have been derived using the appropriate methodology of IOAGPG. I consider that it has not been demonstrated that the background noise levels used in the assessment are inaccurate or unrealistic.

72. The issue of Amplitude Modulation of the noise from wind turbines, and its potential to cause annoyance to people living in the vicinity, has been discussed for many years and, it would appear, is no nearer to resolution. This may be, at least partly, because it is not possible to predict the impact of Amplitude Modulation before a wind farm is in operation. The term is used to describe the cyclic rise and fall in noise levels associated with the rotation of the turbine blades and is an almost inevitable consequence of such movement; it

is referred to in ETSU-R-97 as “blade swish”. It states that, in setting its recommended noise levels it has taken into account this character of wind turbine noise. What appears to be a particular problem in some cases is what has been referred to as “other” or “excessive” Amplitude Modulation, where a greater than normal degree of regular fluctuation in sound level occurs at blade passing frequency. Although it has been recognised that this can be a particular source of annoyance, despite a considerable amount of research, no practical means of dealing with it appears to have yet been found. Thus, IOAGPG (May 2013) states in paragraph 7.2.1:

“The evidence in relation to “Excess” or “Other” Amplitude Modulation (AM) is still developing. At the time of writing, current practice is not to assign a planning condition to deal with AM.”

73. In England the then Department for Energy and Climate Change suggested in 2016 the use of a possible planning condition to deal with situations where Amplitude Modulation occurs, but it appears that this has not been endorsed or used in practice. There is no substantive evidence before me that the Gilston wind farm would result in excessive Amplitude Modulation, or that existing wind farms in the area have given rise to such problems. I note that the council’s Environmental Health officers, in commenting on this proposal and the suggested noise limits, raised no concerns over this issue. Despite the uncertainty over the use of a planning condition relating to this issue, the appellant has suggested a possible wording if such a condition was considered to be appropriate. In its review of the most recent TNEI report, Carmichael Associates has recommended the use of such a condition, a view endorsed in the latest submission on behalf of Heriot Community Council. Had I been minded to grant permission for this development, further consideration of the wording of any such condition would have been required.

74. In terms of setting appropriate noise limits for the Gilston turbines, the Operational Noise Report first set total cumulative noise limits for eight assessment locations around the site, based on either ETSU-R-97 recommendations (i.e. 35 dBA or background plus 5dB, whichever is the greater, for daytime; and 43 dBA or background plus 5dB, whichever is the greater, for night-time) or existing noise limits set for properties in the planning permissions for existing wind farms. Noise immissions at these properties from the Gilston turbines were then predicted using a standard propagation model. Site-specific noise limits for Gilston alone were then derived to ensure that it would not result in an increase in cumulative noise. For one property (Upper Brotherstone) a slightly higher noise level has been set, because the occupier has a financial interest in the wind farm, as provided for in ETSU-R-97.

75. The MAS review raised concerns about the difficulties in assessing the impact of noise on residential properties where there are a number of wind farms in the area which may affect them. From my own experience in another case, I am fully aware of the technical and practical problems that potentially can arise in trying to determine which of a number of wind farms is responsible if it is found that noise limits are being exceeded. Because of different operators, it is rarely possible to switch off each wind farm in turn in order to determine its effect on measured noise levels. Had I been minded to grant permission for this development, this would have been an area that might have required further investigation. However, in broad principle, I consider that it should be possible to set noise levels that meet the ETSU-R-97 guidelines. Again I note that the council’s

Environmental Health officers have, with a number of provisos, accepted the conclusions of the appellant's noise assessment; and I agree that, subject to appropriate and enforceable planning conditions, the noise impact of the proposed wind farm would not warrant the refusal of planning permission.

Shadow flicker

76. The Environmental Statement states that no residential properties would be located within the area of potential shadow flicker influence. Although Upper Brotherstone is very close to the area shown in Figure 5.1 of the Environmental Statement, I agree with that assessment.

Ecological impacts (non-avian), including on the water environment

77. Immediately to the north of the appeal site, in Midlothian, is the Fala Flow Special Protection Area (SPA)/Ramsar site/Site of Special Scientific Interest (SSSI). The qualifying interest of the SPA is the wintering population of pink-footed geese, and this is dealt with in the following section of this notice on ornithological impacts.

78. The site drains northwards to the Brothershiels Burn, whilst the separate borrow pit is close to the Armet Water, a tributary of the former burn. This becomes part of the River Tweed Special Area of Conservation (SAC) just downstream at Nether Brotherstone. The qualifying interests of the SAC are Atlantic salmon; river, brook and sea lamprey; otter; and as a river with floating vegetation often dominated by water crowfoot. The surveys carried out for the Environmental Statement found little evidence of salmon or lampreys in the upper reaches of the burns.

79. In terms of a Habitats Regulations Appraisal, Scottish Natural Heritage (SNH) has stated that, although there is likely to be some connectivity between the development site and the River Tweed SAC, it does not consider that there would be any likely significant effect on the qualifying interests of the SAC from the construction or operation of the wind farm, provided that appropriate mitigation measures are taken to prevent any impact on the watercourses. Whilst I see no reason to differ from that conclusion, had I been minded to grant permission in this case, it would nevertheless have been necessary for me to undertake an appropriate assessment in terms of regulation 48 of The Conservation (Natural Habitats &c.) Regulations 1994, as amended, in respect of the River Tweed SAC.

80. The otter is a European Protected Species. The Environmental Statement states that evidence of otters has been found in the vicinity of the site, but considers that, provided all good practice measures are implemented, no significant effects are likely. I accept that conclusion.

81. All species of bats are also European Protected Species and survey work found the presence of a number of bat species, mainly in woodland edge locations. The open areas of the site were only subject to low levels of usage, and the Environmental Statement concludes that the construction stage would represent a non-significant effect on the conservation status of bats. A buffer of 50 metres between turbine tips and woodland edges has been provided but, during the operation of the wind farm, the Environmental Statement states that there is some uncertainty over likely collision fatalities and suggests

that post-construction monitoring could be undertaken, with mitigation only required if this identifies significant problems. SNH has raised no issues with this conclusion of the Environmental Statement.

82. Badgers are protected species, and there is evidence of setts in the area. The Environmental Statement concludes that the loss of foraging habitat for badgers within the site is not considered to be significant, and that good practice measures during construction should prevent any adverse impact on them; although a SNH licence would be required for any works in the vicinity of any sett, and appropriate mitigation measures would be necessary. Again, SNH has raised no issues on this aspect of the proposal.

83. The site comprises a mix of improved and semi-improved pasture, and a botanical survey has identified a range of individual habitats within the site; most of which are of no more than local interest, although there are areas of blanket bog and wet heath, which are of greater significance, on the northern part of the site. The bog in particular supports a colony of Large Heath butterfly, a UK Biodiversity Action Plan Priority species and a rare species in the Borders. The layout of the turbines and ancillary infrastructure would avoid these areas, and this has been welcomed in the representations by the Scottish Wildlife Trust and Butterfly Conservation Scotland. SNH has suggested that there should be a Habitat Management Plan to ensure the appropriate management of these areas.

84. In its consultation response, the Scottish Environment Protection Agency (SEPA) noted that groundwater dependent terrestrial ecosystems are specifically protected under the Water Framework Directive. Some of the habitats within the site have been identified as being potentially groundwater dependent, and SEPA has recommended appropriate mitigation in respect of certain turbines, as well as requiring 50 metre buffer zones for watercourses.

85. Both SNH and SEPA originally expressed concern about the impact of the development on peat deposits within the site, the assessment of which they considered to be inadequate. However, having received further information SEPA was satisfied that no peat would be disturbed as a result of the development, and that neither a peat management plan nor a peat slide assessment was required.

86. All told, I conclude that, subject to appropriate good practice and mitigation measures, to be included in a Construction Environmental Management Plan, the proposed wind farm would have no significant adverse non-avian ecological impacts.

Impact on ornithological interests

87. As indicated in paragraph 77 above, the site lies next to the Fala Flow SPA. The Environmental Statement includes an assessment of the impact of the development on pink-footed geese, the qualifying interest of the SPA, and other bird species found in and around the site.

88. In respect of pink-footed geese, the Environmental Statement concluded that there are no feeding locations within the site itself, and that the impact of construction operations and in terms of displacement would be negligible. With regards to the operation of the wind farm, it found that most flights were to the north of the site, in and around Fala Flow, with

relatively few crossing the site and therefore at risk of collision. The overall collision risk was calculated as being equivalent to one bird in approximately 57 non-breeding seasons; the presence of pink-footed geese in the area being predominantly in the autumn migration season. This low collision rate would be of negligible significance in terms of the conservation objectives of the Fala Flow SPA; in particular the need to ensure that the population of the qualifying interest is maintained as a viable component of the SPA.

89. SNH has confirmed that flight lines of the geese are predominantly between the roost at Fala Flow and nearby feeding/gathering grounds to the north, west and north-west; and that they are therefore not likely to be affected by the proposed development which lies to the south of the SPA. SNH considers that the development is not likely to have any significant effect on the qualifying interests of the SPA. I see no reason to differ from that conclusion. In the circumstances, I consider that it is not necessary for me to undertake an appropriate assessment in terms of regulation 48 of The Conservation (Natural Habitats &c.) Regulations 1994, as amended, in respect of the Fala Flow SPA.

90. The Environmental Statement also considered the impact of the development on black grouse, a lek site for which species is located to the north of the appeal site, within about 500 metres from the nearest turbine. It concluded that the impact on this species of construction operations would have a minor adverse effect; as would the impact of disturbance from the operational wind farm. The collision risk would be negligible. SNH has raised no issues with these conclusions, but advises that a number of mitigation measures should be implemented, as specified in the Environmental Statement.

91. Although the impact of the wind farm on a number of other bird species found in and around the site was considered in the Environmental Statement, it was concluded that the effects would be so small as to require no further assessment. SNH has raised no issues with these conclusions.

92. Overall, I conclude that, on the basis of my assessment of the evidence in the Environmental Statement and SNH's consultation responses, the proposed development would have no significant adverse ornithological impact.

93. In terms of the local development plan, I therefore find that, taking account of both avian and non-avian ecological matters, the development would not be in conflict with policies EP1 (International Nature Conservation Sites and Protected Species), EP2 (National Nature Conservation Sites and Protected Species) or EP3 (Local Biodiversity).

Impact on the cultural heritage of the area

94. A number of archaeological features within the site itself are identified in the Environmental Statement, mostly around the summit of Brotherstone Hill away from the development area; but including an area of probably medieval ridge and furrow farmland on the north-western boundary. The latter is the only feature that would be directly affected by the construction of the wind farm. The Environmental Statement proposes mitigation measures including targeted excavation, more detailed mapping of the ridge and furrow cultivation, and a watching brief during groundworks to identify any previously unknown features. The council's archaeology officer is in agreement with these measures, which can

be secured through appropriate conditions, and I am satisfied that they would ensure that the direct archaeological impact of the development would be of minor significance.

95. Further afield, the wind farm would have some impact on the setting of a number of scheduled ancient monuments, most notably Dere Street, a Roman Road, and those around Soutra Aisle, the remains of a former mediaeval hospital. The former already crosses the site of the Dun Law wind farm and its extension, and I consider that the proposed turbines, situated to the south-west, would have little additional impact on its setting. This view is shared by Historic Environment Scotland.

96. At present the remaining building at Soutra Aisle would be screened from views of the proposed turbines by a conifer plantation immediately to the south-west. Given the age of these trees there is the likelihood that they will be felled within the lifespan of the wind farm, and the Environmental Statement includes a visualisation of what would then be seen. The setting of Soutra Aisle is already affected by the Dun Law turbines, which extend to the east, south-east and south, so the current proposal would not introduce a new element into that setting. It would however extend the view of turbines into another quadrant, to the south-west. However, I agree with the conclusion in the Environmental Statement, and the views of Historic Environment Scotland, that the overall impact on the setting of the monuments at Soutra would not be significant.

97. To the north of the appeal site, on the edge of Fala Moor, is Fala Luggie Tower, a former tower house and a scheduled ancient monument. The Environmental Statement concludes that the impact on its setting from views of the proposed turbines would be of low impact and of negligible significance. I consider, as does Historic Environment Scotland, that this somewhat understates the impact. I noted from my site visits that in some views from the B6458 road to the north, the tower stands on the skyline of the rising land on the north side of Fala Moor. In such views, parts of the blades of some turbines would be seen in the background, and this would have some impact on its setting. Nevertheless, I accept that the overall impact would be no more than of minor significance.

98. I agree with the conclusions of the Environmental Statement that the proposed wind farm would have no significant impacts on any other heritage assets at a greater distance; for instance, Fala Conservation Area, or the listed buildings and scheduled monument at Saughland on the B6458.

99. I therefore conclude that, on the basis of my assessment of the evidence in the Environmental Statement and the relevant consultation responses, the proposed development would have no significant adverse impact on the cultural heritage of the area, and would not conflict with policy EP7 (Listed Buildings) or EP8 (Archaeology) in the local development plan.

Other environmental impacts

100. The Environmental Statement contains an assessment of the effect of the development on the **hydrology and hydrogeology** of the area. In general, the adoption of good practice measures, to be included in a Construction Environmental Management Plan would minimise the risks of pollution to watercourses and groundwater, and of erosion and sedimentation; risks that would primarily arise during the construction stage. The risk of

flooding should also be minimised through detailed design (for example, of the operation of the borrow pits, and of the one proposed watercourse crossing) and appropriate sustainable drainage measures for access tracks and hardstandings. A private water supply for properties at Gilston has a header tank close to one of the proposed borrow pits, and further investigation, monitoring and mitigation measures (if necessary, through the provision of an alternative supply) might be needed to protect this supply. SEPA has indicated that it is generally satisfied with the assessment and mitigation proposals. I conclude that, subject to appropriate conditions, the development would have no significant adverse impact on these matters.

101. With regards to the **transport implications** of the development, the Environmental Statement considered the effect of construction traffic, including abnormal loads, on the A68 and then the B6368 south to the appeal site. It concluded that the additional traffic generated during the construction period would not give rise to an unacceptable impact on road or junction capacity, driver delay, road safety or public amenity. Neither the council's own roads department nor Transport Scotland, as roads authority for the A68 trunk road, raised any objections to the development, subject to appropriate conditions. I see no reason to depart from the above-mentioned views and conclusions.

102. The Environmental Statement did not address the effect of heavy vehicles between the second borrow pit (if that is required to be used) and the site, which would need to use the section of the B6368 between the access to the borrow pit and the site access. This section of road is narrow and passes through the small community of Gilston. Frequent use by heavy vehicles when the borrow pit is in operation would be likely to cause some inconvenience to local residents and other road users, and some form of traffic control might be needed. However, any such impact would be for a relatively short period, and I do not consider that it would have a serious or unacceptable impact.

Aviation safety

103. The reporter who originally determined this appeal initially intended to hold an inquiry session on this matter because of an outstanding objection by Edinburgh Airport on the potential impact of the wind turbines on the airport's radar. However, agreement was subsequently reached between the airport and the appellant, and the objection was subsequently withdrawn. In response to the present re-determination, solicitors acting for Edinburgh Airport Limited have indicated that, if I am minded to allow the appeal, a planning condition should be imposed on the same terms as that included in the previous reporter's decision notice. I have been advised that the wording of such a condition has been agreed between the airport authority, the appellant and the council.

104. In addition to the above-mentioned objection, NATS En Route Plc (NERL) also originally objected to the proposal in relation to its possible impact on Kincardine Radar. Subsequently NERL wrote to the council advising that it had entered into an agreement with the appellant on suitable conditions to be attached to any planning permission ensuring the implementation of a defined mitigation solution that would be implemented under the terms of the agreement; and on this basis was prepared to withdraw its objection. In its original submission on this appeal the council expressed concerns over the wording of the agreed conditions, to which it had not been a party, which it considered to be ambiguous and confusing, and thus potentially unenforceable. Nonetheless, it acknowledged that NERL's

position could be addressed by the imposition of a suitably worded condition requiring the provision, approval and implementation of a Primary Radar Mitigation Scheme.

105. For its interests, the Ministry of Defence, Defence Infrastructure Organisation, has confirmed that it has no objections to the proposal, subject to the provision of appropriate aviation lighting on the turbines.

106. Overall, I am satisfied that, with the imposition of appropriate conditions, the development would have no adverse impact on aviation safety.

Socio-economic impacts

107. There is no substantive evidence that the development would have any significant impact on the **tourism economy** of the area, either during the construction period or in the long term. Soutra Aisle is a visitor attraction, and I have concluded in paragraph 42 above that, if the intervening forestry plantation were to be felled during the lifetime of the wind farm, it would have an adverse visual impact from this viewpoint. However, I also concluded in paragraph 96 that the overall impact on the setting of the scheduled monuments in this locality would not be significant. I consider it very unlikely that the presence of the wind farm would deter visitors to Soutra Aisle, especially given the significant existing presence of turbines nearby in the Dun Law group.

108. In terms of any other **recreational impact**, I consider that the proximity of the wind farm to the right of way crossing Fala Moor would significantly detract from the enjoyment of many users of that path, including visitors to the Fala Flow SPA because of its ornithological interest. This is a view shared by Scotways, which objected to the proposed development on this ground. Paragraphs 28 and 41 contain my conclusions on the landscape and visual impact of the proposed wind farm on Fala Moor; in particular, that it would be an over-dominant feature, the presence of which would detract from the sense of remoteness currently experienced on this path. I agree with the statement in the Environmental Statement that it is not known to what extent the development would affect the usage of the path, and acknowledge that some users might enjoy seeing the turbines at close quarters. Nevertheless, I consider that the overall impact would be a moderate, adverse effect (and thus classed as significant in environmental impact terms).

109. The **economic impact** of the proposed development would include an investment of £22-25 million on the construction of the wind farm, with the direct creation of 72 person years of employment during that period and further indirect and induced employment. The Environmental Statement estimates that around £14-16 million of that investment would be spent on civil engineering, most of which would be spent in Scotland; with possibly about £6 million benefiting the economy of the Scottish Borders during the construction period. Long-term employment provision during the operation of the wind farm would be low.

110. During operation of the wind farm, it is stated by the appellant that the local economy would benefit from the contribution of £5,000 per megawatt of electricity generated to a community fund. In addition, the issue of shared ownership of the project has been raised with local community councils.

111. LDP policy ED9 states that, where a wind farm would have unacceptable significant adverse impacts or effects that cannot be satisfactorily mitigated, the development will only be approved if the council is satisfied that the wider economic, environmental and other benefits of the proposal outweigh the damage arising from it. As indicated above, this development would have some economic benefits, although the extent to which they would apply to the local, as against wider, economy cannot readily be quantified. In addition to those mentioned in paragraph 109, the landowner would also benefit from the likely rental income from the turbines. However, the extent to which additional income might be re-invested in the area is also a matter of uncertainty.

112. A substantial amount of capital investment would be involved in any wind farm proposal of a similar size to that currently proposed, and I do not consider that the short-term economic benefits generated by the construction of this project should carry significant weight in the determination of this appeal. Likewise, although the provision of community funds is now a common practice for wind farm proposals, it is generally accepted that it is not a material consideration in the determination of such planning applications. Whilst the Scottish Government's document "Good Practice Principles for Shared Ownership of Onshore Renewable Energy Developments" (2015) seeks to increase the level of shared ownership of wind farm projects, I note the joint submission from the Stow & Fountainhall and Heriot Community Council states that, although the matter was raised at meeting in January 2017, there have been no substantive discussions on the subject of shared ownership. In the circumstances, I place no weight on this potential benefit of the development.

113. Any assessment of the balance between adverse environmental impacts of a wind farm proposal and its likely benefits involves a matter of judgement. In this case, I have concluded (paragraph 60 above) that this development would have an unacceptable significant adverse impact in terms of its landscape and visual effects, including cumulatively when its effects are added to the present baseline of wind farms in the area at Dun Law; and that this impact cannot satisfactorily be mitigated. I consider that the adverse environmental effects that I have identified would not be outweighed by the economic benefits of the proposal.

114. However, it is also necessary to assess these adverse effects against the likely environmental benefits of the development.

Environmental benefits, including climate change considerations

115. The Gilston wind farm would have a capacity to generate up to 21 megawatts of renewable energy. The Environmental Statement estimates that the annual electricity generation could displace 2333.5 tonnes of carbon dioxide. The development would therefore make a contribution towards meeting the Scottish and UK Governments' targets for renewable energy generation.

116. In its submissions (including those made in relation to this re-determination) the appellant has raised a number of energy and planning policy considerations. Whilst these, strictly speaking, are material considerations in relation to the determination of a planning application, they are directly relevant to the assessment of the balance that is required by policy ED9. It is therefore appropriate to deal with them here.

117. The Scottish Government has set a target that by 2020 the equivalent of 100% of electricity consumption should be met from renewables. This equates to about 16 gigawatts (GW) of installed capacity. The recently published “Energy Statistics for Scotland” (March 2019) indicate that, at the end of 2018, 74.6% of gross electricity consumption was being met from renewable sources. 10.9GW of renewable electricity generation capacity was operational, with a further 8.3GW under construction or consented. An additional 4.3GW was in the planning system. Even if the target was to be achieved, the Government has made clear that this does not represent a cap on the installation of further renewable electricity capacity. The “Scottish Energy Strategy”, published in December 2017, set a new target of the equivalent of 50% of all Scotland’s energy requirement to be met from renewable sources; and suggests that renewable electricity could rise to over 140% of electricity consumption, requiring in the region of 17GW of installed capacity in 2030. The document states that onshore wind must continue to play a vital role in helping to decarbonise the electricity system. It continues:

“That means continuing to support development in the right places, and – increasing the extension and replacement of existing sites with new and larger turbines, all based on an appropriate, case by case assessment of their effects and impacts and it means developers and communities working together and continuing to strike the right balance between environmental impacts, local support, benefits, and – where possible – economic benefits deriving from community ownership.”

118. Also published in December 2017 was the Government’s document “Onshore Wind Policy Statement”. This emphasises the continuing importance of onshore wind in meeting progress towards the Government’s targets, describing it as having a dominant and hugely valuable role. It states (paragraph 3):

“In order for onshore wind to play its vital role in meeting Scotland’s energy needs, and a material role in growing our economy, its contribution must continue to grow. Onshore wind generation will remain crucial in terms of our goal for a decarbonised energy system, helping to meet the greater demand for heat and transport sectors, as well as making further progress towards the ambitious renewable targets which the Scottish Government has set.”

It continues in the following paragraph:

“This means that Scotland will continue to need more onshore wind development and capacity, in locations across our landscapes where it can be accommodated.”

119. In its most recent submission on planning policy, the appellant has also made reference to the recent reports of the UK Committee on Climate Change, the Scottish Government’s “Climate Change Plan” (2018), the declaration of the First Minister of a “Climate Emergency”, and comments made by other reporters in a number of recent decisions on wind farms. Its position can be summarised in a number of conclusions in its Planning Policy Update:

“In the Appellant’s view, the language on the role of onshore wind is demonstrably stronger than that in the current NPF and SPP.” (Paragraph 4.1.4)

“It is very clear that the mood has changed in 2019 with regards to the importance of tackling global heating.” (Paragraph 4.1.8)

“The Scottish Government has acted on the stark warnings by the IPCC who have stated that by 2030 it would be too late to limit global heating to 1.5 degrees. In light of the further report by the CCC the Scottish Government has stated unequivocally that there needs to be “transformative change” – and that action has to be quick and decisive. An emergency requires action and decisions through the planning system must be responsive to that. The current situation must therefore go to the matter of weight to be attributed to project benefits and the need case.” (Paragraph 4.1.10)

120. In contrast to the above-mentioned arguments, the council has stated that the increased support for onshore wind energy referred to is nonetheless caveated by the need to strike the right balance between environmental impacts and the benefits of a proposal; and for developments to be in the right places and within landscapes where they can be accommodated.

121. I acknowledge that the thrust of current Scottish Government energy policy includes considerable support for the development of onshore wind farms, which it is recognised will continue to play a vital role in both meeting Scotland’s energy needs and helping to de-carbonise electricity generation. However, that support is not unqualified. The current approach still reflects the need to undertake an assessment of the balance between environmental benefits and disbenefits on a “case by case” basis. At the present time, I consider that such an assessment should still be based on the pre-eminence of the development plan in arriving at planning decisions; i.e. should still reflect local policies. It may be that the extent and urgency of the climate change problem will lead the Government to alter the planning balance in order to place greater weight on the benefits as against any adverse impacts. If there is to be a “transformative change”, as suggested by the appellant, this should be based on explicit government policy. As things stand at the present time, that policy in respect of the planning issues raised by onshore wind farms is still based on National Planning Framework 3 and Scottish Planning Policy; both of which I consider further below.

122. I recognise that the appellant believes that the landscape and visual impact of the Gilston wind farm is acceptable. I have arrived at a different conclusion, based on my consideration of the environmental information submitted and my own observations. In the circumstances, I have to make a judgement as to whether the adverse effects that I have identified, set out in paragraph 59 above, are outweighed by the general environmental benefits associated with the generation of renewable energy. My conclusion in this case is that they are not. I do not believe that the position at present is that the latter benefits should, as a matter of explicit policy, always outweigh the adverse environmental impacts of a specific development.

Overall conclusion in respect of the development plan

123. I conclude that, whilst the development would be acceptable in relation to many of the considerations contained in LDP policy ED9 (see paragraph 14 above), it would have an unacceptable landscape and visual impact, both alone and cumulatively. That impact

cannot be effectively mitigated. Although the proposal would be of benefit in contributing towards the Scottish and UK Governments' targets for the generation of electricity from renewable sources, thus helping to combat climate change, in the circumstances of this case I do not consider that these benefits (or any economic benefits associated with the development) would outweigh the unacceptable environmental impact. It would therefore fail that policy in very significant respects. I therefore find that, taken overall, the proposed development would not comply with the development plan.

124. It remains for me to consider whether there are any other material considerations that would nevertheless warrant planning permission being granted.

Material considerations

National planning policies

125. **National Planning Framework (NPF)** re-iterates the Scottish Government's target of generating the equivalent of 100% of gross electricity consumption from renewables, and, thus, provides general support for onshore wind farms.

126. **Scottish Planning Policy 2014 (SPP)** includes a presumption in favour of development that contributes to sustainable development. The current proposal would, through the generation of electricity from a renewable source, contribute to sustainable development. However, paragraph 28 of SPP also points out that "*The aim is to achieve the right development in the right place; it is not to allow development at any cost.*" I have concluded, for the reasons I have detailed above in relation to the landscape and visual impact of this development, that it is not in the right place.

127. Paragraph 32 of SPP states that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making; and that, for proposals that do not accord with up-to-date development plans, the primacy of the plan is maintained. The Scottish Borders Local Development Plan was adopted in 2016 and is, therefore, up-to-date. I have concluded that this proposal would not comply with the relevant provisions of that plan. Whilst SPP's presumption in favour of development that contributes to sustainable development is a material consideration in the determination of this appeal, I have also concluded that, in the specific circumstances of this case, the environmental benefits associated with the generation of electricity from this onshore wind farm do not outweigh its adverse environmental impact.

128. Paragraph 161 of SPP requires planning authorities to set out in the development plan a spatial framework identifying those areas that are likely to be most appropriate for onshore wind farms. The council has done this in its Supplementary Guidance on Renewable Energy, which it adopted in 2018. The appeal site is within an area which has potential for wind farms. It is thus within an area defined in Group 3 of Table 1 (Spatial Frameworks) in SPP, where it is stated "*wind farms are likely to be acceptable, subject to detailed consideration against identified policy criteria.*" SPP paragraph 169 sets out considerations that should be taken into consideration in development management decisions on energy infrastructure. These are reflected in the detailed considerations contained in LDP policy ED9.

129. There is nothing in SPP that requires detailed consideration of individual wind farm proposals against criteria contained in up-to-date development plans to be set aside in favour of an over-riding presumption that they should be granted permission. In the appellant's recent Planning Policy Update, it is suggested that the language in the 2017 Onshore Wind Policy Statement is demonstrably stronger than that in the current NPF and SPP. It is also stated (paragraph 2.7.5):

“Even if a view is taken that the language is no different, the context within which the NPF/SPP policy statements were given is demonstrably different by way of more stretching targets and no subsidy or certainty on route to market. The increased importance of the contribution that onshore wind is expected to make to targets and meeting future energy needs should be afforded special weight.”

130. Notwithstanding that view, the 2017 Scottish Energy Strategy still requires an “appropriate, case by case assessment” of the effects and impacts of proposals for new and larger turbines (see paragraph 117 above). If a significantly greater weight should be given to the energy benefits of onshore wind farms as against their environmental impacts, this is a matter for the Scottish Government to determine; perhaps through the new National Planning Framework that is to be prepared.

131. Whilst I do not doubt that the current NPF and SPP provide significant support for renewable energy developments, I consider that each proposal still requires to be assessed on its individual merits, against policies in up-to-date development plans. The essential difference between the appellant and the planning authority in this case is whether the proposed Gilston wind farm would have an unacceptable landscape and visual impact. I have concluded that it would. I do not believe that the current guidance in SPP requires that conclusion to be outweighed by the renewable energy benefits of the proposal.

The role of landscape capacity studies

132. The appellant's Planning Policy Update contains a section on the approach to landscape capacity studies, and cites the comments made by a number of reporters in other appeal decisions. I have considered the guidance contained in the wind energy capacity studies carried out for both the Scottish Borders and Midlothian in paragraphs 20-22 above. In the former area, LDP policy ED9, in referring to the assessment of the landscape and visual impact of wind farms, states that this should take into account the report on Landscape Capacity and Cumulative Impact (at that stage of July 2013) “*as an initial reference point*”; and should demonstrate that it can be satisfactorily accommodated in the landscape, and should properly address the issues raised in the 2013 report. The adopted Supplementary Guidance on Renewable Energy (2018), which carries the same weight as the development plan, states with reference to the landscape impact of wind farms, that the council will support proposals if they are capable of being accommodated in the landscape in a manner which respects its main features and character as identified in the Wind Energy Landscape Capacity and Cumulative Impact Study (2016).

133. I fully recognise that landscape capacity studies are carried out at a strategic level, and that the assessment of the landscape impact of a specific development requires a detailed approach, as I have carried out above. Notwithstanding the identification of the

Plateau Grassland (Lauder Common) LCA as having some capacity for additional wind farm development, the 2016 capacity study contains specific advice that larger scale wind energy development should be located away from sensitive locations, including the visually prominent outer slopes. I have concluded that the proposed Gilston wind farm would be on a visually prominent outer slope of the Scottish Borders section of this LCA, on the northern side of Brotherstone Hill. Despite the appellant's attempt to play down the significance of landscape capacity studies in general, I consider that the advice which I have referred to above can be given some weight in the determination of this appeal; both on its own merits, and by reason of the mention of the landscape capacity study in the development plan.

Previous appeal decision

134. In August 2013 a reporter dismissed an appeal (ref. PPA-140-2043) against the refusal of planning permission for the erection of seven wind turbines on the current appeal site. This development was part of a proposal for a larger wind farm, with 16 turbines in total, which extended northwards onto Fala Moor in Midlothian. A separate application for the nine turbines on that land was refused permission by Midlothian Council, and a separate appeal was also dismissed by the same reporter who determined the appeal within the Scottish Borders.

135. In the appellant's submissions with respect to this appeal, the previous appeal decision is criticised on the grounds that it is considered that the previous reporter did not have sufficient information to be able to distinguish between the effects of the two parts of what had been put forward by the developer as a single wind farm, albeit one which was split between two administrative areas. This is because the environmental information submitted, including wirelines and photomontages, covered the whole wind farm, and did not specifically identify which turbines lay within each area.

136. Given that there were two separate planning applications and appeals, the previous reporter had no alternative but to issue two decisions. However, he made clear that each decision was made on its own merits. Thus:

"3. For the avoidance of doubt, this particular decision notice relates solely to the proposal within the Scottish Borders Council area. The appeal regarding the proposals on an adjoining site within Midlothian is separate and has been determined in its own right, even though the decision notice for it is being issued at the same time as this one. In both cases the assessments I have made take into consideration that the appellant is seeking and envisaging a "cross-boundary" windfarm combining the two proposals for the adjoining sites."

137. From my reading of the previous appeal decision, it seems to me that the reporter gave very careful and thorough consideration to the arguments put forward by the then appellant, the council, SNH, and in representations on the landscape and visual impact of the turbines within the Scottish Borders. As is pointed out in the current appeal submissions, he makes a number of references that indicate that his conclusions on these matters were based on the impact of those turbines solely within the Scottish Borders area. He also refers on a number of occasions to the information gained from his own site visits as well as from the environmental information submitted with the application. I find no reason to believe that, through these site visits and the careful consideration of the

submitted material, the reporter was not able to distinguish between the effects of the turbines on Brotherstone Hill (in the Scottish Borders) and those on Fala Moor (in Midlothian).

138. Chapter 2 of the Environmental Statement for the current appeal contains a detailed rebuttal of some of the findings in the previous appeal decision. In addition, Technical Appendix 6.4 of the Environmental Statement contains comparative ZTVs and wirelines that show the present proposal and the earlier 16-turbine scheme extending onto Fala Moor. I accept that the landscape and visual impact of this larger proposal would have been greater and more harmful than that of the currently proposed development. However, I have undertaken a detailed consideration of that proposal on its own and concluded that it would still have an unacceptable landscape and visual impact. Many of my conclusions are not dissimilar to those arrived at by the previous reporter in his decision based on the seven turbines within the Scottish Borders. I am therefore satisfied that the presently proposed development has not overcome the deficiencies previously identified.

139. I acknowledge that Scottish Government energy policy has moved on since that appeal decision in 2013. However, for the reasons that I have given in my consideration of that issue, I do not believe that the energy benefits that would be associated with this development would be sufficient to outweigh its adverse environmental impact.

Third party representations

140. 29 representations have been received from residents living in the general vicinity of the appeal site, including in Gilston, expressing support for the proposed development. Matters that they raised included:

- The environmental impacts of the development (including its landscape and visual impact) are acceptable and it has addressed the impacts that previously led to refusal by reducing the overall number of turbines and more sensitive siting.
- The development would be in character with the established landscape of wind farms in the area, thereby allowing the visual impact to be minimised.
- The noise impacts meet the appropriate guidelines.
- Other impacts on amenity are acceptable.
- Overall, the development complies with LDP policy ED9.
- The high wind speeds in the area will result in efficient electricity generation.
- Locally produced renewable energy is clean, sustainable and reliable, helping to counter climate/environmental change.
- The development would contribute towards meeting the Scottish Government's renewable energy targets.
- The development would bring economic and employment benefits to area, including helping to sustain an upland farm.
- There would be a generous community benefit fund.

141. 17 representations (including responses to consultations by the council) received contained objections to the development. These included the joint response from Stow & Fountainhall and Heriot Community Councils; the responses from East Lothian Council, Moorfoot Community Council in Midlothian and Scotways; representations from a local

landowner; and representations from 12 households, mostly living in the vicinity of the site. Issues raised included the following points:

- The development is not materially different from the previous proposal refused on appeal, and has not addressed the landscape and visual impacts previously identified.
- It would have more detrimental landscape and visual impacts than the previously refused scheme, including the use of taller turbines.
- It would exceed the capacity of the landscape to accommodate wind turbines of the size proposed and conflict with the council's strategy for wind farm development.
- Cumulative impacts limit scope for further wind farm development in the area, where there is already an over-provision.
- Insufficient account had been taken of environmental and amenity impacts on the closest houses, including those at Brothershiels, where the turbines would have an overbearing effect.
- There would be an unacceptable noise nuisance impact at the nearest non-financially involved dwellings, including at Brothershiels, and there had been an inadequate assessment of noise.
- The development would have an unacceptable impact on birds and wildlife, including the Fala Flow SPA/SSSI.
- It would also have an unacceptable impact on surrounding rights of way, including the Fala Moor Road Core Path.
- The proposal would be contrary to LDP policy ED9.
- The adverse environmental and amenity impacts are not outweighed by economic, energy, employment and community benefits; or by the contribution to national renewable energy targets.
- The Scottish Government target of achieving the equivalent of 100% gross electricity consumption from renewable sources has already effectively been met.
- Local wind farms are already receiving large constraint payments because of the limited capacity of the national grid connector to England.

142. I have covered most of the issues raised both in support of and opposition to this development in the main part of this notice; including the balance to be drawn between its environmental impact and the economic and environmental benefits. With regards to the latter, I acknowledge that the income received by the landowner would no doubt be of benefit in diversifying and sustaining the rural economy in this area. However, I do not consider that such a benefit would outweigh the adverse impacts that I have identified. Equally, whilst I note the comments received from a number of parties on the Scottish Government renewable energy targets, the fact remains that the policy of the Government in general is to continue to support and promote further onshore wind developments.

Conclusion

143. Notwithstanding that general support, I do not believe that this overrides an assessment of individual wind farm developments on a case-by-case basis. On the basis of such an assessment, I conclude that, for the reasons set out above, the proposed development does not accord overall with the relevant provisions of the development plan. Despite the contribution that the proposed wind farm would make to helping to meet renewable energy targets, I conclude that this and other potential benefits would not

outweigh the environmental harm in the particular circumstances of this case. I therefore conclude that there are no material considerations which would justify granting planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

M D Shiel

Reporter