

Appeal Decision Notice

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Decision by Malcolm Mahony, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: P/PPA/140/367
- Site address: land south-west of Dunion Hill, Jedburgh
- Appeal by Windjen Power Ltd against the decision by the Scottish Borders Council
- Application for planning permission 05/02336/FUL dated 15 December 2005 refused by notice dated 10 September 2007
- The development proposed: erection of 8 wind turbines and ancillary development, including permanent meteorological mast, substation and control building, borrow pits, construction of access roads and upgrading of existing access roads
- Application drawings listed in schedule at appendix 1
- Dates of inquiry: 20-23, 27-29 January 2009

Date of appeal decision: 9 April 2009

Decision

I dismiss the appeal and refuse to grant planning permission.

Reasoning

1. The determining issues in this appeal are: landscape and visual impact; recreational routes for walkers, equestrians and cyclists; tourism and the local economy; ecology and badgers; and private water supplies; all having regard to national planning and energy policy and guidance, and the provisions of the development plan.

2. The appeal site lies in countryside some 4km to the south-west of Jedburgh. It is located on the top of an elongated dome shaped hill. This comprises the rocky summit of Dunion Hill (approximately 300m AOD), from which a broad grassy ridge runs approximately 1km south-west to Black Law (338m AOD) and then on to Watch Knowe (292m AOD).

3. Although access would be gained over the shoulder of Dunion Hill, the proposed turbines would lie along the ridge between Black Law and Watch Knowe over a distance of some 1.4km. The layout would be informal. Rotor blades of 41m length would be mounted on 60m high towers, giving an overall height to blade tip of 101m. Each would have an installed capacity of around 2.5MW; a total of 20MW for the whole development. At the



inquiry, this was qualified for the appellants as falling within the range 16-24MW, depending on choice of turbine. Other elements would include a permanent meteorological mast, some 3.4km of access tracks, and a substation. During construction there would be a construction compound located alongside the existing telecommunications masts on the summit of Black Law, and 2 borrow pits, one just below the summit of Black Law and the other, the site of small former workings, on the ridge some 900m to the south-west.

4. Access would be taken from the B6358 road via a new track alongside the existing track, which leads to a disused quarry and landfill site on the summit of Dunion Hill. The windfarm would be linked to the existing 33kV overhead transmission system to the north of the site by an underground connection.

5. The appearance of Dunion Hill is marred by the signs of its use as a quarry and then landfill site, including chainlink fencing at the road entrance, abandoned storage containers and pieces of equipment around the quarry edges and disturbed ground. There are telecommunications masts on its northern slopes. The summit of Black Law is marred by the presence of telecommunications masts and, more particularly, the clutter of associated buildings, fenced compound and access track associated with them. The tallest of those masts rises to 42m above ground level, which incidentally forms a useful scale reference for the proposal.

6. Beyond Black Law, where the turbines would be located, the land is generally open improved and poor semi-improved grassland with damp reedy areas. Along the top, there are few fence lines and relatively few contour details to interrupt the broad sweep of the landform. As the land falls to the north down to the Rule Water valley, the landscape changes to a more intricate pattern of fields, woodlands, wooded and rocky bluffs, and shelter belts, with scattered built development. Where the land falls to the west and south, similar changes occur, but to a less intricate pattern.

7. The council received 289 letters objecting to the proposal and 9 in support. Their grounds were summarised in the report to the council's committee. The key issues from those representations are covered below.

Areas of search

8. Scottish Natural Heritage's Strategic Locational Guidance for Onshore Windfarms in respect of the Natural Heritage identifies 3 zones of relative sensitivity. The proposal lies within zone 1, which has the lowest sensitivity for natural heritage and where there is the greatest scope for windfarm development. However, SNH emphasise that good windfarm design and appropriate siting are still required to avoid natural heritage impacts.

9. Policy I19 of the Scottish Borders Structure Plan refers to Diagram 18: Wind Energy Development – Areas of Search. Using a sieve of area designations for natural heritage, it identifies 3 categories. The appeal site falls within the least sensitive of these, known as Preferred. It is stated that 2 strategic issues are not covered by the methodology, namely cumulative effect and landscape character. These must be assessed on a site by site basis. Cumulative effect is not a key issue in this appeal; landscape character is.

Landscape and visual impact

10. It is well documented that attitudes to windfarms in principle tend to colour people's reactions to specific proposals and to actual windfarms on the ground. All of the landscape experts at the inquiry took the position that, for the purpose of assessment, landscape and visual effects should be taken to be adverse. I do likewise, albeit in the knowledge that in reality opinions would often be divided.

11. The inquiry heard debate over where, for the purposes of the landscape and visual assessment in the Environmental Impact Assessment (EIA), the threshold of significance should be set. I am satisfied that in this locality, where there are no natural heritage designations, and for this type of development, the threshold of moderate/substantial used in the EIA is appropriate. I note that this threshold is typical for windfarm assessments.

12. The Dunion Hill/Rule Valley area has no landscape designation. I am aware that, as a requirement of the new local plan, local landscape designations (AGLVs) are to be reviewed throughout the council area, it being some 40 years since the present designations were made. I have read carefully the relevant sections of both the local plan inquiry report and the local plan, and am satisfied that neither give any indication that the Dunion Hill/Rule Valley area would or should be designated as an AGLV. Work on the review of designations has not yet commenced, and it is not possible to say whether the appeal locality would be designated in such a review. The local landscape must therefore be assessed simply on its own merits.

13. However, in saying that, I bear in mind the exhortation in NPPG14: Natural Heritage that decision makers should "*safeguard and enhance the wider natural heritage beyond the confines of nationally designated areas*". I am also aware that, as an indicator of quality, the council cite a consultants' report on designed landscapes, which has identified a number of such landscapes in the vicinity of the site, one of which (Monteviot House and its policies, at a distance of just over 5km from the turbines) is listed in the Inventory of Gardens and Designed Landscape in Scotland.

14. On the other hand, SPP6 points out that areas without natural history designations "*should not be afforded the same protection as designated sites*". Furthermore, it was drawn to my attention, on behalf of the appellants, that Glenkerie and Crystal Rig windfarms lie within AGLVs. In the council's view, the site specifics of those schemes enabled visual integration. However, it is evident that the council accept that a landscape designation does not necessarily rule out windfarm development.

15. The Borders Landscape Assessment was cited by all sides in the case and I consider it to contain an impartial and helpful analysis of landscape characteristics in the region. It indicates that Dunion Hill and Black Law fall within the Bonchester/Dunion area of the Grassland with Hills landscape character type. There are 4 other examples of this landscape type in the Scottish Borders, including the Eildon Hills, Rubers Law and Knock Hill near Duns (which includes Black Hill windfarm).

16. The key characteristics of the type are described as *“typically steep, cone or dome shaped hills, frequently of volcanic or igneous rock ... rich in visual contrasts, with individual hills as dominant focal points of view.”* *“... the open character of the hills and upper pastures contrast with pockets of more intimate scale landscapes in hollows or minor valleys.”* *“But the eye is continually drawn upwards to the focal points of the individual hills.”* The scale of the landscape is assessed to be *“varied”*. Key historic monuments in the area are stated to include Rubers Law fort, on the summit of that hill. The visual sensitivity is stated to be high because of the *“important views of many of the areas from the A7, A68 and A702 trunk roads.”* The degree of external visibility is said to be intermediate to high.

17. In this locality, I consider that the individual hills to which the eye is drawn are chiefly the cone shaped Rubers Law and Bonchester Hill. In most views Dunion Hill forms a less visually distinctive whale back shape. It forms part of the skyline from a number of viewpoints. I am not, however, persuaded that it constitutes one of the *“individual hills as dominant focal points”* referred to in the Borders Landscape Assessment, or indeed a *“significant landmark hill”* as implied by the council. Such descriptions are more apt for Rubers Law and the Eildon Hills. However, as SNH point out, Dunion Hill is important as the local backdrop of contrasting character to the surrounding valley and farmland landscape types.

18. The high level of visual sensitivity indicated for this landscape type is stated to be due to important views of many of the areas from the A7, A68 and A702 trunk roads. However, in the appeal locality this is moderated by the fact that views from those trunk roads are limited mainly to short sections of the A7 (at a distance exceeding 10km) and of the A68.

19. The Scottish Borders Council (SBC) contend, in their reasons for refusal, that lack of enclosing landform would render the windfarm particularly visible, especially within 5km of the site, with dominant and major visual impacts. In support of this position, the council produced a memorandum of September 2002 (SBC21) from its Principal Landscape Officer, Mr Knight, expressing a preference for windfarms to be located within upland plateaux where the edges of the plateaux will tend to reduce external visibility of those windfarms. This is an internal council document which, although it may help to illuminate some of the thinking which led to the formulation of draft policy D4 of the local plan, has no formal standing in its own right. Moreover, it relates to only one of a number of criteria within policy D4, some of which are potentially in tension. I also note that the local plan inquiry report recommended changes to the draft policy on the basis that it had been too restrictive: changes which the council implemented. I can therefore place little weight on this document.

20. Somewhat more persuasive, was a table produced by Mr Aikman, Development Manager for SBC, setting out details of 17 windfarms in the Scottish Borders which were operational, approved, under consideration or refused. This showed that, looking at the area within a radius of 5km from the sites, the proposal had the highest potential visibility of those sites at 75.7% (with the exception of Sell Moor, which had been refused and not appealed). The operational site at Dun Law and an approved site at Glenkerie have visibility within a few percentage points of Dunion Hill, but most other sites have visibility

either side of 50%. The 5km radius is identified in PAN45 as a distance within which windfarms in an open landscape are likely to be perceived as prominent in some degree.

21. The council's approach was criticised on the ground that it did not distinguish locations where only a few blade tips might be visible. However, a comparison of the Zones of Theoretical Visibility relating to blade tip height and to hub height shows relatively little difference, indicating that from most locations turbines would be visible at least down to hub height. It was also argued that the council's approach took no account of screening by buildings and vegetation. This might indeed be more significant because of proximity to wooded valleys by comparison with the more open upland sites of most other windfarms in the region. However, many such views would be filtered through trees rather than blocked by them and, as SNH pointed out, interrupted views of that kind can increase the sense of discordance afforded to the viewer by the turbines, especially at close proximity, and have a greater adverse effect on landscape character.

22. Mr Aikman's table then compared the number of residential properties with potential visibility within the 5km range. This produced a figure of 1,857 for the Dunion Hill scheme, considerably higher than for other windfarms (the highest for an approved windfarm being 326 at Toddleburn). However, the bulk of those 1,857 properties are in settlements, particularly Jedburgh near the boundary of that 5km radius, where views are more likely to be limited by built forms. The Dunion Hill Conservation Group (DHCG) estimate that, of properties with potential visibility, there are 232 individual dwellings with the remainder in the settlements. That was not contested and seems to be a reasonable estimate.

23. Mr Aikman accepted that there had been undercounting of residential receptors at 9 of the other windfarm sites, where properties falling outwith the Scottish Borders had been omitted. Nevertheless, my examination of the relevant maps suggests that this would be unlikely to change the overall picture markedly. The combination of ZTV and residential receptor evidence therefore suggests a relatively low degree of visual containment in the Borders context.

24. Looking in more detail at the proposal, whilst the proposed windfarm would be shielded in views from various directions by high ground principally at Rubers Law, Bonchester Hill, Faw Hill, Dunion Hill, Lanton Hill and the Minto Hills, it would be visible particularly in most of the Rule Water valley up to Bonchester Bridge, the River Teviot valley north of Denholm, parts of the Jedwater valley and the north-east sector of Jedburgh. Therefore, the landform would bring about only limited containment of views of the windfarm. This level of visibility would be moderated to some extent by the wooded nature of the surrounding valleys and by intervening built development, but is still high by comparison with other approved and operational windfarms in the Scottish Borders. I note that SNH regard visibility of the windfarm to be reduced by nearby hills, but not visually contained by them.

25. Whilst the Black Law-Watch Knowe ridge forms part of the skyline in a number of the viewpoints, especially within 5km, I am not persuaded that it can be described as a "*prominent skyline*". It is generally rather non-descript. Nor can it be said that views tend to be channelled towards it by, for example, the surrounding landform. Such limited

prominence as obtains relates rather to the knobbly summit of Dunion Hill. Attention is often drawn to other more distinctive hills in the area. Moreover, aside from the issue of scale (see below), and given that most windfarms will form a skyline feature in at least some views, I do not consider that the proposed arrangement of turbines in this location would detract unacceptably from that skyline.

26. On balance, and despite the relative lack of visual containment, I am not persuaded that, in principle, the Grassland with Hills landscape character type, or this example of it at Bonchester/Dunion, is, in itself, incapable on landscape and visual grounds of accepting a well designed windfarm. In this I agree with SNH and the landscape architects acting for the appellants. However, as I argue below, that lack of visual containment combined with the local pattern of landscape character types has important repercussions in the wider landscape context.

27. As SPP6 points out *“the design and location of any development must reflect the scale and character of the landscape.”* Mr Welch, consultant landscape architect for the appellants, considers that the scale of the Bonchester and Dunion Hills landscape character area is medium to large in the Borders context. SNH refer to the *“predominantly medium to large scale land uses”*. These include permanent pasture, conifer plantations, shelter belts and former mineral workings. Mr Knight considers that this site lacks the large scale setting characteristic of the Borders upland areas. Mr Sinclair, landscape consultant for DHCG, considers the scale to lie closer to medium than large.

28. In my view, the scale varies across the area within the range of medium to large. However, I consider that for practical purposes of windfarm design the medium scale elements should be most influential. This is because the large scale areas are not in themselves extensive and are interwoven with areas of medium scale, where scale indicators, such as individual trees, narrow tree belts in which individual trees are distinguishable, field boundaries, telecommunications masts, and some buildings, including Fulton Tower (a scheduled ancient monument and category B listed building) are apparent.

29. In that respect, if assessment were confined to the Bonchester/Dunion Grassland with Hills area, I consider that the scale and layout of the windfarm would be broadly acceptable. However, (in contrast with some of the upland and lowland areas of the Borders) this landscape character area is relatively small in extent and forms part of a patchwork of relatively small character areas. Furthermore, the appeal site falls close to the boundary with a Wooded Upland Fringe Valley landscape type: the Rule Water valley. Other than for turbines 2, 4 and 6, the turbines are located close to the break in slope on the western and southern edges of the broad ridge, increasing their intervisibility with the valley and beyond.

30. The Zone of Theoretical Visibility maps indicate that almost all of the nearby valley area would have visibility of the windfarm, albeit often filtered through trees. The windfarm would therefore be viewed from distances of down to approximately 1km in the context of a landscape type which is described as *“small scale, intimate enclosed”* in the Borders Landscape Assessment. It is stated that the *“pronounced conical and dome shaped volcanic hills of surrounding upland fringes create strong enclosure and distinctive dramatic*

skyline.” Whilst the Dunion Hill-Black Law ridge is one of the less dramatic skylines around the valley area it creates a strong sense of enclosure, and the presence of scale indicators in these outward views would draw attention to the size of the turbines. The viewpoints so affected would include those in the vicinity of Bedrule Church (a category B listed building).

31. For comparison, the approved windfarm site at Drone Hill, near Coldingham, is located within a landscape type (Coastal Moorland) assessed as large scale in the Borders Landscape Assessment, adjacent to the large scale Coastal Farmland landscape type on 2 sides, and to a medium scale Pastoral Upland Fringe Valley landscape type on the other. The Assessment states that, for the latter, enclosure by uplands less strong than for upland valley landscape types.

32. These effects underline the importance of designing the windfarm to be a good fit to its host and adjacent landscapes, especially with regard to size of turbines. In the present case, I consider that the proposed turbines are too large. In my view, they would appear out of scale and would not fit comfortably in the mosaic of landscape types, to the detriment of landscape character. In making this judgement I note that Mr Welch accepts that there would be scale conflicts (albeit he maintains they would be limited to areas in close proximity to the site), and I draw on the following observations of SNH and Mr Sinclair on this issue.

33. SNH dispute Entec’s view on behalf of the appellants that the physical size of the turbines responds well to the landscape context of the site. They consider that *“there is potential to relate a windfarm to [the] more immediate characteristics”* of the application site, and comment that the proposed design layout *“in some way achieves those aims”*. However, *“in close proximity to the windfarm, the sheer vertical scale of the turbines is readily apparent and in marked contrast with the scale and experience of nearby and surrounding landscape features such as trees, shelterbelts, minor gullies and local topographical undulations.”* Examples are given from the surrounding roads. *“In certain cases, the scale of the turbines can be seen to dominate the perceived scale of the hill as seen in wider views”* for example from part of Jedburgh and from Spittal on Rule. *“Additionally, there will be adverse landscape impacts from a range of positions on minor roads and for residential properties within the immediate context of the development (especially within 0-2km of the site but some effects up to 5km away).”*

34. SNH state that, whilst they have *“serious concerns about the adverse landscape and visual impacts of the development”*, on a balanced consideration of the range of impacts, they do not object to the development on grounds of its effects on landscape character because they consider that the windfarm *“relates to, or does not dominate the key landscape characteristics of this Grassland with Hills area when experienced from outwith the immediate vicinity of the site (and in the majority of wider views towards the site).”* They arrive at this position after taking into account their national remit and their policy framework, which is supportive of renewable energy. They add that *“Scottish Borders Council may place different weight on the nature of these impacts and come to a different view about the overall significance of the effect of the development on the landscape character within the local and regional context and in relation to their development plan policies.”*

35. Mr Sinclair emphasises that a number of the turbines are situated close to the edges of the ridge and therefore visible more or less in full from valley level, accentuating their disproportionate scale.

36. I also bear in mind the requirement in SPP6 that for windfarms *“the design and location of any development must reflect the scale and character of the landscape”*, and the advice in PAN45 that *“developers should seek to ensure that through good siting and design, landscape and visual impacts are limited and appropriate to the location.”*

37. For all of the reasons set out in the foregoing paragraphs, I consider that the windfarm as proposed does not represent a good fit to the landscape context and that this represents a fundamental defect of the proposal.

Visual impact

38. SNH have maintained an objection to the visual impact of the electricity substation, construction compound and borrow pits. During the course of the inquiry, agreement was reached between the appellants and the council that relocation of the proposed substation building to a position near the access track in the vicinity of the Dunion Hill quarry would remove any concern in that regard on the part of the council, subject to use of appropriate building design and external materials. I consider that the location as applied for would add unnecessary visual clutter to the existing structures on the summit of Black Law, that the suggested alternative location would be less prominent, and that the revised location could be secured by imposition of an appropriate condition without compromising the nature of the development considered by the council.

39. Whilst I am not aware of any overriding reason why the construction compound should be sited in a prominent position on the summit of Black Law, it would be there for only about 9 months. The proposed borrow pits would be visible in some views, although, being located on relatively level ground and, of their nature, subsurface, visibility would tend to be restricted to more elevated viewpoints. SNH stated that they would prefer stone to be extracted from the existing Dunion Hill quarry. This would provide the opportunity to improve restoration at the quarry. However, that quarry lies within different ownership. Moreover, the borrow pits would be active for only a few months and then be restored to present profiles (although the source of the fill material is not identified). The visual effects of both construction compound and borrow pits would be subsumed into the broader effects of construction activity on the site, including cranes and other vehicles. I am not therefore persuaded that these are sufficient reasons to withhold permission for the windfarm. This was also the opinion of Mr Knight.

40. SNH also express concerns about the visual effects of the development, particularly within 5km of the site, including from Jedburgh (at some 4.5km from the nearest turbine), but conclude *“taking into account our policy and national remit, we do not object to the development on the basis of visual impacts. Scottish Borders Council may place different weight on the nature of these impacts and come to a different view about their overall significance.”*

41. In the vicinity of the proposal, as accepted by Mr Welch, there would be significant adverse visual impacts on a number of local public viewpoints, for example on local roads, at relatively close range. There is a network of paths and a promoted recreational route (the Borders Abbeys Way) in regular use by both local people and visitors for walking, riding horses or cycling. These would give close and sometimes sustained views of the windfarm from nearby, and some of these routes would pass through the windfarm.

42. There would be an elevated view of the entire windfarm from the publicly accessible summit of Rubers Law (424m AOD) at a distance of some 3.5km, which would also expose the branching system of access tracks and crane pads to view, albeit parts of the construction would be allowed to re-vegetate over time. The views from Bonchester Hill (5km) and the Minto Hills (6km), also publicly accessible, as well as from the golf courses at Jedburgh and Minto would also be significantly adverse. Outwith an approximate 5km radius, including from important viewpoints such as the Waterloo Monument on Peniel Heugh (9km), the Eildon Hills (15km) and Carter Bar (13km), the effects of distance and the backclothing of views by topography would reduce the visual impacts to the extent that I do not consider that they would be significant. In making these findings, I agree with those of Mr Welch, which are themselves very close to those of Mr Knight.

43. The council accepts that any cumulative impacts would be sufficiently distant as not to be determining factors in this appeal.

44. Conservation areas are considered under the heading of cultural heritage.

45. The council accepts, and I agree, that the area does not exhibit qualities of remoteness or wilderness. It is not, at one extreme, included in an area of search for wild land, as identified by SNH. More pertinently, its limited extent means that views of habitation, cultivated land and other signs of man's activities are rarely absent.

46. Although the DHCG estimates that there are some 5,100 people living within in 5km of the windfarm site, most of these would have no visibility of the turbines from their houses. The council has used its database to estimate the number of dwellings in that range which fall into the Zone of Theoretical Visibility as 1,857. That includes a large number of dwellings within settlements, mainly Jedburgh, but also Denholm and Lanton, which the Environmental Statement (ES) treated as single settlement receptors. I accept that as a reasonable estimate.

47. Mr Welch, following the ES approach, estimates that there are some 137 dwellings lying both within 5km of the windfarm site and within the Zone of Theoretical Visibility, but outwith settlements. That exact figure was questioned by the council and DHCG, but the order of magnitude was not.

48. Of those 137 or so dwellings, the number which would sustain a significant adverse visual effect was estimated by Mr Welch to be 43 and by DHCG to be 56. There was not therefore a great deal of disagreement between the parties on those figures. Mr Welch also accepts that a small part of Jedburgh in an area of new development at Forest Gate would

experience significant adverse visual effects, although he contends that people living in towns have different expectations with regard to views. Mr Knight also regards the impact on the Howdenburn housing area of the town to be significantly adverse. SNH expresses concerns about the “*less than harmonious*” design composition from that viewpoint. The council has identified extant planning permissions for a further 245 houses within the 5km Zone of Theoretical Visibility, mostly within the settlements. The closest dwelling to the windfarm would be Fulton Cottage at some 900m and numbers of those within the 2km range, from where PAN45 suggests windfarms are likely to be perceived as a prominent feature, are limited.

49. It is very likely that some such visual effects will be felt by residential property around almost any windfarm. As SBC accepts, windfarms cannot be hidden. Indeed, locations remote from habitation often have their own drawbacks in terms of ecology, landscape quality, etc. In the circumstances of this case, it is evident from the description in the ES of the design process that efforts have been made to minimise effects on residential receptors with the result that they would not be excessive.

50. I am not persuaded that for any of the affected properties, the windfarm would be so close and so dominant as to unacceptably affect their residential amenity.

51. In arriving at my conclusions on visual impact, I have not ignored those visual effects which fall below the threshold of significance for ES purposes or visibility from garden grounds.

Rights of way and recreation

52. The Borders Abbeys Way is a 104km walking route linking the historic abbeys of Melrose, Dryburgh, Kelso and Jedburgh. The stretch of the Way between Jedburgh and Denholm, and beyond, is a candidate core path in the council’s draft Core Path Network. Its route crosses the northern end of the site from east to west and passes within some 54m of the nearest turbine. The route is waymarked and promoted by leaflets available at tourist offices and tourist accommodation. It is not an officially designated Long Distance Route like the Southern Upland Way. No figures are available as to levels of use.

53. The Queen’s Ride is an annual equestrian event commemorating a ride by Mary Queen of Scots from Jedburgh via Fulton Tower. It passes down the length of the windfarm site on right of way BR154 passing several turbines, the closest at a distance of some 23m. The event takes place during the popular Festival of the Horse which is held within in the Borders each year.

54. The Justice Trail is a 40km cross country waymarked mountain bike route established in 2003. It loops through the site, using BR154 and other rights of way, this being the highest point on the ride. It attracts modest but increasing numbers of users.

55. In its figure SBC 22-5, the council has also identified other parts of the local path network, including candidate core paths, with potential visibility of the windfarm.

56. In respect of these rights of way, the issues arising relate to: the visual impact of the windfarm on sensitive receptors (walkers, riders and cyclists) as they approach and pass through the windfarm; the disruption experienced during construction; the deterrent to use of the routes arising either from adverse perception of that visual impact or intimidation/fear of passing close to or under the blades; the danger or discomfort of ridden horses being alarmed by the movement of the blades; and the physical hazard from blade shear or ice throw.

57. With regard to visual impact, Mr Welch confirmed that the windfarm would be intermittently visible to walkers on the Borders Abbeys Way and have significant visual effects over a distance of just under 4km, divided between the eastward approach and the westward approach. They would involve walkers viewing the turbines over relatively sustained periods of time in forward views from distances of some 2km until they pass through the windfarm. For comparison, Mr Welch estimated that the Deucheran Hill windfarm would be visible over about 2km in total of the Kintyre Way walking route as it passes through that windfarm. The crossing of Black Law is the highest point on this leg of the Borders Abbeys Way, and is promoted in the leaflet guide as a viewpoint. The most dramatic aspects of that view are towards Rubers Law and Bonchester Hill, which would be seen alongside and through the windfarm, respectively. To be set against this, some walkers might find such proximity to the windfarm a point of interest.

58. For the appellants, it was pointed out that rights of way pass through the council approved Black Hill windfarm, and that the Southern Upland Way passes within some 360m of the nearest turbine on that site.

59. In their publication Guidelines on the Environmental Impacts of Windfarms and Small Scale Hydroelectric Schemes SNH take a neutral stance on “*whether the perception that there will be disturbance or safety risk to a public right of way adjacent to turbines is justified or not*”, in relation to walking, horse riding and cycling.

60. In the specifics of this case, where the Borders Abbeys Way passes through the Dunion Hill windfarm there is little evidence of a path on the ground. The ground thereabouts is open and there are few barriers to prevent the user from diverting to give the turbines a wider berth or make a closer inspection, depending on preference.

61. As Mrs Fraser of the British Horse Society pointed out there is a difference between horses habituated to windfarms because they are grazed or stabled nearby and others from further afield which might take fright at the movement of turbines, endangering their riders and themselves. The temperament of individual horses and the skill of their riders no doubt vary widely. The British Horse Society suggests that wind turbines should be sited no closer than 200m from a bridleway. However, there appears to be a lack of hard evidence to support such an approach. Mr Stewart, planning consultant for Windjen, argued that modern turbines are less likely to cause problems because their blades rotate at less than half the speed of earlier models and their swept path is further off the ground. I also note that the inspector at an appeal in England (Carsington, Derbyshire, reference APP/P1045/A/07/2054080) found no basis to support the British Horse Society separation

distance, albeit this related to a national horse trail passing some 160m from the nearest of 4 turbines of 102m height.

62. At the accompanied site inspection, I observed that the section of the Queen's Ride route south from the B6358 along the flank of Dunion Hill ran uphill between boundary markers, had duck boards fixed along its centre, and was rocky and uneven on either side. These factors would appear to make it difficult for less experienced horse riders to negotiate. Views of the windfarm would appear gradually on approach from the north (or south). Consequently, horses are less likely to be startled by their presence.

63. Windjen maintains that there is no danger to horse riders, but, to allay any concerns, has suggested that a planning condition requiring that the turbines be switched off for the duration of the Queen's Ride through the site (about 4 hours on one day each year) could be imposed, if necessary.

64. As with the Borders Abbeys Way, within the area of the windfarm, there are few physical barriers (and, being access land, no legal barriers) to prevent users from deviating from the line of the rights of way if they wished to put more distance between themselves and the turbines.

65. Anecdotal evidence was advanced regarding blade shear and reference made to ice throw. There was no substantive evidence of any significant risk from blade shear. My attention was drawn to a technical paper regarding precautions to be taken regarding icing of turbines. In this case, given the proximity of the turbines to rights of way, the fitting of ice sensors and of vibration sensors to detect any imbalance caused by icing of the blades would seem advisable and could be required by condition.

66. In summary, the windfarm would have a mainly adverse impact on the network of rights of way in the locality, and notably on the Borders Abbeys Way. However, there would be mitigating factors and, overall, I consider that the various effects would represent shortcomings of the scheme rather than a justification to dismiss the appeal.

Tourism and the local economy

67. The local tourism industry is based on numbers of small enterprises, each with its individual characteristics. In this section, I therefore start by summarising the circumstances of those who appeared at the inquiry on behalf of the DHCG, as a sample of those who objected on tourism grounds.

68. Billerwell Farm Holidays, is a nature-based tourism accommodation business in a quiet, corner of the Rule Water valley which experiences high levels of repeat business. It is a thriving diversification venture for the farm. The windfarm would be visible from windows in the accommodation at a distance of under 2km and from approach roads. Based on surveys of the qualities which attract guests to Billerwell, Marion Oates, the owner and director, was concerned that she would lose visitors because of the visual and possibly noise impact of the scheme, and that a cluster of similar businesses in the valley would

suffer cumulatively. She considered that the proposal placed her plans for expansion of the business in jeopardy.

69. John Millward's high quality tourism accommodation in Jedburgh and its environs has a clientele looking for open, scenic, quiet countryside. In his view, the windfarm would be poorly sited and would fail to preserve the natural environment. He therefore felt that his plans for expansion of the business were threatened by the proposal.

70. John Henderson's Walking Support business is related to long distance walking. He believed that the proposal could impact on walkers of the Borders Abbeys Way through disruption, especially during construction, noise, shadowing, flicker, interruption to views and danger of ice throw. His limited online open survey of walkers (15 responses) suggested that those effects are significant where the walking routes pass close to a windfarm. Over half of the walkers could be deterred, with a loss to the local economy of £1m per 3,000 walkers. He said that walkers on other paths in the vicinity would be adversely affected.

71. Ann Fraser of the British Horse Society stated that the Scottish Borders region is one of the best known areas for equestrian holidays. Some 350km of trails have been developed and a Horses Welcome scheme is being promoted. The equestrian industry is worth nearly £30m per annum to the Borders and is recognised as having great potential for generating further economic activity. The windfarm would not enhance the peace and quiet or the historic scenery. She considered that it would deter riders from returning, especially given the proximity of turbines (see the section on rights of way above).

72. Anthony Yates considered that disruption to the section of the Justice Trail during construction of the windfarm together with the subsequent presence of the turbines would be a significant depressor of user numbers, to the detriment of Jedburgh's tourist economy.

73. Alan Bailey is the owner and land manager of Spital Tower on the shoulder of Rubers Law. Spital Tower is diversifying to provide tourist accommodation in the form of a campsite, wild camping, and self-catering units as well as a horse tourism project. These enterprises rely on the unspoilt landscape and sense of wildness, which he considered would be lost.

74. For the DHCG, it is stated that the 2008 study for the Scottish Government by Glasgow Caledonian University and others, entitled *The Economic Impacts of Windfarms on Tourism*, finds that in relation to tourists *"the loss of value when moving from medium to large developments is not as great as the initial loss. It is the basic intrusion into the landscape that generates the loss"*. The group argues that Dunion Hill windfarm would be the first intrusion on the northern slopes of the Cheviot. Other findings are also highlighted by the group, namely: *"... to minimise the impact on tourism very large single developments are preferable to a number of smaller developments, particularly when they occur in the same general area."* The group maintains that the proposal is for a relatively small windfarm and so is not favoured. *"A number of medium-sized farms dispersed in a relatively small area so that they become contiguous, is also not desirable"*. DHCG consider that windfarms are proliferating throughout the Borders and many would be visible

from elevated viewpoints nearby. “... *there is a need to make clearer to the general public that in some scenic/wilderness areas they will not see large commercial windfarms.*” In the opinion of group members, the potential AGLV status should therefore indicate against windfarms.

75. However, I note that the recommendations in that study relate to tourism interests only and express preferences for government to consider rather than expressing policy. There is no national or local policy to resist new windfarms of whatever size in areas where there are no existing operational or approved windfarms. Moreover, the proposal would not form one of a contiguous group of existing or approved windfarms. Nor is it located in a designated scenic or wilderness area.

76. Objectors point out that whilst the effects of the appeal proposal might be acceptable at national level, at local level the effects would be very damaging. This is because the area has a low income economy and has seen a reduction in the traditional industries of textiles and family farming, making tourism-related income more important. In relation to the southern Borders, the Glasgow Caledonian University study estimates a maximum potential loss of £1.5m per annum and of 75 full time equivalent jobs as a result of all windfarms applied for being constructed. However, the authors emphasise that this is a worst case scenario. DHCG argue that there would be no transfer of tourists to unaffected areas of the Borders, because so many windfarms are in prospect in the Borders. However, even if that were accepted, and I find it unconvincing, the study makes that argument for the Scotland level and not the regional level.

77. Almost all of the concerns expressed by third parties rely on the assumption that the windfarm would harm their businesses and projects. Whilst it is not uncommon for local businesses to be fearful of the effect of windfarm development on trade in advance of implementation, it was pointed out by Mr Stewart that no evidence has been forthcoming of actual loss of trade attributable to windfarms anywhere in the UK. Indeed, visitor numbers in Cornwall and Cumbria, the English counties with the largest numbers of windfarm sites, have continued to grow, and studies of the areas around individual windfarms at Delabole and Lambrigg have suggested a net increase in visitor numbers.

78. Mr Stewart also drew attention to the conclusion in the 2008 Glasgow Caledonian University study that “*whilst there was evidence of a belief from local people prior to a development that it might be injurious to tourism there is virtually no evidence of significant change after development has taken place. However, that is not to say that it could not have an effect, rather it reflects the undoubted fact that where outstanding scenery, with high potential tourist appeal, has been threatened, permission has been refused. The conclusion is that any effects we are likely to find in Scotland, if they exist, are likely to be small*”. He was not challenged on these points.

79. Mr Bailey suggested that, because the views of objectors to the Dunion Hill proposal were similar in number to those used for the intercept survey in the above research, those views could be extrapolated to draw conclusions at the national level. However, the selection of intercept subjects was designed to be representative, whereas it would not be

statistically valid to extrapolate from the views of the self-selected group of objectors in that way.

80. PAN45: Annex 2: Spatial Frameworks and Supplementary Planning Guidance for Windfarms echoes the findings of the 2008 research report that *“the negative impact of windfarms on tourism at national level is small. However, ... planning authorities may wish to consider a range of issues ... to ensure that any adverse local impacts on tourism are minimised.”*

81. The key issues listed, and not already dealt with above, are *“location in relation to tourist routes”, “the relative scale of recreation and tourism in the area, i.e. local or national”, “views from accommodation in the area” and “visitor population whose recreational interests may be affected.”*

82. In respect of these issues, visibility from tourist roads is primarily found on parts of the A68, a short stretch of the A7 to the north of Hawick and locally on the A698. However, these views are generally intermittent, at broad angles to the direction of travel and/or at a distance. I agree with Mr Welch that such visibility would, in the main, be significant only on those sections within about 5km of the site. Other than for views from the A698 in the vicinity of Spittal on Rule, where a conflict of scale in the appearance of the turbines would be apparent, the views would be acceptable in terms of scale and composition. The area is of local rather than regional or national significance for tourism and recreation. My observations above regarding views from residential accommodation can be applied to views from tourist accommodation. Based on the information before me, the number of visitor bedspaces within the area of significant effect is relatively small, and tourist activity, other than in the heart of Jedburgh appears to be fairly light.

83. Some businesses argued that they had been established in compliance with planning policies, but would now be threatened by a non-compliant proposal. The planning policies which they quote are subject to interpretation and must be balanced with national level policies and other material considerations. Having done so, I do not accept the thrust of their argument.

84. In the light of all these matters, I am satisfied that adverse local impacts on tourism from the development would be minimised. I also note that Mr Aikman took the view that there was not a sufficiently strong case to refuse the proposal on tourism grounds.

85. PAN45: Annex 2 cites some recommendations from the Glasgow Caledonian University study including that: *“if the tourism and renewable industries work together to ensure that suitably sized windfarms are sensitively sited, whilst at the same time affording parts of Scotland protection from development, then the impacts on anticipated growth paths are expected to be so small that there is no reason to believe that Scottish Government targets for both sectors should be seen as incompatible.”* There is no policy basis for me to treat the appeal locality as a part of Scotland which should be protected from development.

86. I note that in response to consultation VisitScotland passed on the views of tourism businesses in the area for consideration by SBC. These are largely reflected in the observations above. VisitScotland commented that both feedback and their own research showed that opinion was varied, for and against. They lodged no objection on their own behalf.

87. In the round, the evidence indicates that, if there are any adverse impacts on tourism and the economy locally, they are likely to be limited. Such impacts would be minimised by the design of the scheme and by proposed planning conditions, and would not justify rejection of the scheme.

Cultural heritage

88. SBC's reasons for refusal included that the appellants had been unwilling to modify their proposals to take account of archaeological interests. Subsequently, the appellants have submitted a report on an archaeological survey (November 2008), which records previously unidentified archaeological sites/remains. In December 2008, they submitted a revised assessment of direct impacts on archaeological features in the application area, which includes proposed mitigation measures. On the basis of these reports, the council has agreed that archaeological matters can be addressed by the imposition of appropriate conditions.

89. Fulton Tower is a scheduled ancient monument and category B listed building. It is located in the Rule Water valley within a field some 900m south-west of the nearest turbine. The listing description states that Fulton Tower is a "*small 16th century tower house, of which only two storeys survive.*" Historic Scotland criticise the ES but then state that, having carried out their own appraisal in relation to affected sites of interest to them, they are content that the proposal would not have a significant adverse impact on these, including Fulton Tower.

90. Bedrule Church dates from 1914 and is listed at category B. It is located on the outskirts of the settlement some 1.4km north-west of the nearest turbine.

91. Simon Blackwood, for DHCG, maintained that the impact of the development on the settings of Fulton Tower and Bedrule Church would be unacceptable. He considered that the windfarm would form a dominant backdrop to the tower and have a severe impact on the setting of the church. He was critical of Historic Scotland's consultation response, which he stated was undertaken on the basis of a desktop review, without a site inspection, and without applying any recognisable criteria to their assessment of the tower. He failed to see any logical connection between Historic Scotland's reasoning and its conclusion.

92. SPP23: Planning and the Historic Environment states that scheduled monuments are of national importance and should be preserved within an appropriate setting. Scottish Historic Environment Policy (October 2008) explains that development affecting monuments will be assessed in relation to the impact which the works would have on the cultural significance of the monument.

93. For the purpose of implementing those policies, the setting of a scheduled monument or listed building is not necessarily the same as its visual envelope. Settings can be wide or confined depending on the nature and function of the monument/building. A stately home designed to have intervisibility with a hilltop monument at the end of a parkland vista could have a wide setting, as might a castle intended to dominate its hinterland. Buildings with, for example, a more domestic function or intimate ambiance are likely to have a more local setting. The appeal decision concerning a Saxon chapel at Bradwell on Sea, Essex cited by Mr Stewart, reference APP/X1545/A/06/2023805, illustrates this point. There the inspector considered that: *“the setting is quite small because of the intimacy of the immediate surroundings and the fact that the chapel relates more to these surroundings than the dramatically altered wider landscape. It seems to me therefore that although the turbines in the middle distance would affect views out from the chapel they would do little to change the feeling of the intimacy and spirituality of the place.”*

94. In the case of Fulton Tower and Bedrule Church, there would appear to be no justification for a wide setting. These are buildings with local functions, which do not, in my opinion, extend as far as the windfarm. Appreciation of the cultural significance of the tower or the historic and archaeological interest of the tower and church, would not be affected by the location of the windfarm.

95. Similar comments can be made regarding the settings of conservations areas at Jedburgh, Minto, and Ancrum, which are at distances of some 5-8km from the appeal site.

Ecology/badgers

96. SNH object regarding the potential impact of the proposal on the River Tweed Special Area of Conservation, but would remove their objection if suitable conditions were imposed on any planning permission. This should take the form of a construction method statement to include details of measures to be taken to reduce pollution, soil erosion, etc, in accordance with best practice advice available from the Scottish Environment Protection Agency (SEPA). I consider that such a condition could be framed.

97. The council's second reason for refusal related to lack of information from the appellants to properly determine the impact of the development on ecological interest at the site. The subsequent provision of information by the appellants has addressed the council's concerns regarding Northern Hawksbeard, Hill Pond on Watch Knowe, and the impact on the River Tweed Special Area of Conservation. However, its concerns regarding badgers remain.

98. Badgers and their setts are protected under the Protection of Badgers Act 1992 on animal welfare grounds. It is illegal to wilfully kill, injure or take a badger. It is an offence, except where licensed by SNH, to damage, destroy or obstruct access to a sett, or to intentionally or recklessly disturb a badger while it is occupying a sett. The badger is not a rare or endangered species, nationally or in the Borders. However, as part of its duties under the Nature Conservation (Scotland) Act 2004 and its Supplementary Planning Guidance for Biodiversity, the council seeks to protect badgers and their foraging areas.

99. The Black Law area is well used by badgers. Several setts, including 4 main setts, have been identified within the appeal site area, together with many signs of badger activity. For those reasons, and because badgers are sensitive to disturbance from human presence in their foraging areas, Dr Andrew Tharme, for the council, considered that bait marking studies should be carried out. This would identify the extend of badger clan territories and demonstrate whether, as the appellants had claimed, badgers suffering disturbance would be able to relocate their foraging off site. If that were not possible the badger population could be adversely affected, contrary to the council's duties and policies with respect to biodiversity. The council's witnesses differed on whether this factor alone was sufficient to justify dismissal of the appeal.

100. To update the information contained in the extended phase one survey carried out in April 2004, a badger survey had been carried by Entec for the appellants in October 2006. In December 2006, the draft report on that survey was reviewed by Dr Julian Brown, a recognised expert on badgers and co-author of an academic paper on bait marking on which Dr Tharme sought to rely. Dr Brown did not recommend bait marking. Nor did SNH's concerns extend to such a requirement.

101. SNH's published advice is to *"extend the initial survey beyond the boundary of the proposed development in order that an assessment can be made of the extent of the territory and productivity loss that may result."* The survey work for the appellants covered the application site, which extends between about 100m and 400m from the turbines and access tracks. Since there is uncertainty about how much territory can be lost without affecting the badger population, it is recommended that each case is considered individually in consultation with SNH.

102. In this case, SNH has considered the various reports and not objected or expressed concern over lack of information or loss of territory. Disturbance during construction over the potential foraging area on the site would be restricted to about 9 months and could be mitigated by appropriate conditions. There is no clear evidence that the operation of the windfarm is likely to cause significant disturbance, subject to stand-off distances. The development footprint itself would result in the long term loss of only a small area of potential foraging for badgers. Entec refer to *"clear evidence that the area is not yet at capacity for badgers."*

103. Unlike the other (transport and urban expansion) development examples cited by Dr Tharme, there would be no severance of badger territories or large scale loss of foraging areas as a result of this proposal. For all these reasons, and because of the weight of evidence from experts, I am not convinced that further study, including a bait marking exercise, is necessary. I consider that the welfare of badgers could be adequately protected by the imposition of appropriate conditions. I note that Mr Aikman, SBC's witness on planning policy, when asked if the proposal could be refused solely on the basis of impact on badgers, accepted that in isolation that might not be sufficient.

104. SNH accept that, in the main, their objections regarding impact of the proposal on badgers could be overcome by the imposition of planning conditions. These would require that turbine 1 is not micro-sited any closer to any of the sett entrances; and that turbine 2 is

not micro-sited any closer than 131m to the nearest sett entrance, and would incorporate various mitigation measures suggested in a report and correspondence from Julian Brown Consultancy for the appellants.

105. Scottish Badgers (a wildlife charity) advocate a set-back distance between a turbine and the nearest entrance of a main sett of 30m plus the height of the turbine (131m in total). This is based on a 30m disturbance-free zone around a sett and avoidance of the risk that a turbine might fall onto the sett. I find it difficult to see how such an onerous restriction can be justified when the risk of a turbine falling is acknowledged to be remote, there is no evidence of harm being caused by a falling turbine, and such a requirement would exceed that which PAN45 suggests as a set-back distance from roads and railways.

106. SNH recommend that blasting and pile driving do not take place within 100m of the nearest sett entrance. The contention by Malcolm Ouldcott, a retired geologist living in Jedburgh, (made during evidence in chief) that the rock hereabouts is too hard to work other than by blasting is denied by Windjen. I have no reason to doubt that Windjen have reasonable grounds for that view. As part of their mitigation package for badgers, they have committed to a condition which prohibits blasting on the site. They have also accepted the advice of their consultants, Entec, that a 50m stand-off should be allowed around borrow pits.

107. Ian Hutchison, a wildlife consultant with particular experience of badgers, acting for DHCG, expressed concerns regarding: possible disruption to badger setts or foraging ground from the route taken by the electricity grid connection; the need to identify badger territories around the site; the need for pre-construction and post-construction monitoring; the need for stand-off distances between turbines and setts; the need for detailed information about stone extraction from borrow pits; and the need for all of these matters to be taken into account in a badger mitigation plan. In cross-examination, he indicated that, having read Stewart Lowther's precognition (for the appellants), his concerns would be met by separation distances of 30m between working areas and setts, other than for borrow pits where the distance should be 50m; and by imposition of a condition requiring monitoring of the badger population during the construction and operation of the windfarm, in order to help reduce the knowledge gap regarding the effect of wind turbines on badgers.

108. With the exception of the 131m set-back distance, conditions have been agreed which would satisfy the SNH objections. These conditions derive from the ES, and the report by Dr Brown, and would include a construction method statement a pre-construction check survey, and a post-construction monitoring study. The appellants suggest distances from main sett entrances of 30m for working areas around construction work other than borrow pits where the set-back would be 50m to allow for the noise of peckering. Those distances appear to me to be adequate to protect the interests of badgers and would not unduly constrain any micro-siting of turbines, tracks, etc.

109. A colony of the rare and endangered Northern Hawksbeard flower has been found in a location some 600m from and some 90m downslope of the appeal site. DHCG are concerned that the windfarm development could result in pollution of an adjacent watercourse or changes in levels of drainage affecting ground conditions at the colony,

thereby threatening these flowers. They want to see a condition imposed in order to protect them. On behalf of the appellants, it was contended that the status and nature of that threat had not been established and the relevant witness for DHCG had decided not to appear for questioning on his precognition.

110. It seems to me that the range of mitigation measures suggested in chapter 12 of the ES to avoid impacts on hydrology, together with a carefully worded construction method statement should be capable of dealing with any potential impact on the off-site Northern Hawksbeard.

Private water supplies

111. Malcolm Ouldcott, a retired geologist living in Jedburgh, contended that developments involving major groundworks, such as the windfarm, should avoid locating on, or at higher elevation than, areas of Upper Old Red Sandstone as being the best aquifer in the region and therefore vulnerable to pollution of water supplies. He argued that the 20 private water supplies in the surrounding area, all at lower elevations than the windfarm, would be affected by pollution of the groundwater by sediment arising from construction of turbine foundations and other works. The ES states that “*water abstractions a distance of up to 1km downstream of potential pollutant entry points might be at risk*”. The water supplies at Swinnie, Swinnie Toll, Wells Kennels and Fulton lie within that distance and would, he claimed, consequently all be at risk.

112. However, Upper Old Red Sandstone outcrops extensively in Scotland. Built development has occurred in many locations on these rocks, and I have no evidence that it has caused intractable problems to water supplies.

113. Richard Church, a hydrogeologist acting for the appellants, responded that the Upper Old Red Sandstone is not a good aquifer in the national context. SEPA has classified the aquifer as moderately productive and Upper Old Red Sandstone as having a dominantly intergranular flow. Such flow would normally allow attenuation of suspended solid pollutants within tens of metres and dissolved pollutants within up to 1km. Overlying drift deposits would provide additional filtration to surface run-off from the site.

114. Subsequent to the ES, private water supplies have been subject to more detailed study, reported in a letter from Entec dated 9 December 2008, of which Mr Ouldcott was not aware. This states that Fulton Cottage takes its drinking water from the mains. The catchment of the spring supplying Fulton Cottage with non-potable water and Wells Kennels with all of its water lies outwith the proposed development infrastructure, so surface water run-off and groundwater infiltration would not be expected to enter the spring. Swinnie Farm is served by a spring whose catchment includes turbine 2. However, subject to 4 mitigation measures relating to the micro-siting and construction of that turbine and re-vegetation of the ground thereafter, the risk to that spring from silty run-off or spillages is assessed to be low. Lower Swinnie, Swinnie Cottages and 2 new build properties are supplied from boreholes situated some 1.25-1.5km from the development and within a catchment which would have no windfarm infrastructure. Consequently, there is no risk to that supply. Swinnie Toll is supplied from a spring on Swinnie Moor some 1km from the

development and outwith the surface water catchment for it. The risk to this supply is stated to be low, but by analogy with assessment of other supplies, this appears to be an error, and I note that the summary paragraph of the letter lists the water supply to Swinnie Toll as being at no risk from the development. Other properties in the vicinity are supplied by mains water or from a borehole in a catchment outwith any development infrastructure.

115. Overall, I am satisfied that this study, by specialist hydrogeologists/hydrologists, has addressed the concerns of the action group adequately. I also note that neither SEPA nor SBC have objected with respect to private water supplies.

Energy policy

116. SBC pointed out that there are already 10 windfarms operational or approved within its area with a capacity of over 500MW, indicating that the council is willing to contribute towards government targets. The windfarms at Black Hill, Dun Law, Carcant, Crystal Rig, and Glencairn were approved by the council and no objection was raised to the Crystal Rig extension just over the boundary in East Lothian. I note those points, but they do not, of course, affect the need to consider each application on its own merits.

117. The benefits of low carbon energy generation in terms of reduced emissions of greenhouse gases and more diverse supplies of energy, assisting in security of supply, are important factors in favour of a wind energy scheme. Government energy and planning policy clearly express the position that these are considerations which should carry significant weight in determining renewable energy proposals, including onshore windfarms, even though the major benefits accrue to society generally and the wider economy rather than at the windfarm location.

118. The Scottish Ministers have made it clear that they wish to see rapid progress towards the more ambitious target set in 2007 for 50% of Scotland's electricity supply to come from renewable sources by 2020, quantified as 8GW installed capacity. The subject proposal is located where grid capacity is available locally and could therefore come on stream without delay.

119. Policy targets are set in terms of installed capacity, which in this case would be around 20MW (16-24MW having been indicated). That level of contribution would be useful, although by no means large by today's standards. Mr Aikman used the expression "modest" and Mr Stewart accepted that it was "relatively modest" in the Scottish context.

120. Dr Constable's and Mr Sinclair's criticisms of the appellants' claims for energy generation levels, carbon dioxide emissions savings and homes powered were not convincingly countered. The appellants' assumed load factor of over 30% is not justified by any evidence and yet is higher than typical levels achieved at other windfarms in Southern Scotland in recent years. All we are told is that there are "*higher than average windspeeds at Dunion Hill*" and "*indicative average windspeeds over the site are approximately 7.0-9.5m/second compared to an average of 6.8m/sec for the UK as a whole*". In this respect, I note that the Dunion Hill area is not among the sites identified in the council's 1995 policy guidelines as having high wind speeds and being preferred for wind energy development. I

therefore consider that the wider economic and environmental benefits of the proposal are worthwhile but have not been demonstrated to be as high as the appellants have claimed.

121. The guidance in SPP6 is that “*consideration of the significance of any adverse impacts of a renewable generation proposal should have regard to the projected benefits of the proposal in terms of the scale of its contribution to the Scottish Executive’s targets for renewable energy*”. Therefore, in relation to national policy, matters of output, emissions savings, etc are beside the point. The government’s targets are set in terms of installed capacity. Moreover, as has been argued for the appellants, the logical conclusion of Dr Constable’s argument as applied to the aspirations of the Scottish Ministers is that more renewable energy schemes should be brought forward; the imperative for such schemes would therefore be greater.

Other matters

122. Mr Sinclair contends that the appellants have failed to satisfy the requirements in Circular SG 8/2007 regarding alternative approaches to the development. I consider that sufficient information has been provided regarding site selection (albeit in very general terms) and iterations of site layout (in detail) to meet those requirements. There is no requirement to detail alternative sites; indeed, that would usually be impractical.

123. Mr Aikman suggested that there would be merit in considering the expansion of existing windfarm sites where infrastructure has already been provided, a degree of impact has already been accepted, mitigation measures are already being implemented and sequential effects would be minimised. That is effectively a policy stance, but I have not been informed that it has been authorised at either local or national level. I cannot therefore accord it any weight. Moreover, the application must be determined on its own merits and not by comparison with other possible sites.

124. My attention has been drawn to the work carried out for the council by Macaulay Enterprises Ltd to investigate areas where windfarm development is likely to be most visually intrusive. This helped to inform policy D4 of the local plan, but I note that reference to this study was removed from the local plan following the recommendation in the local plan inquiry report. The study also constitutes preliminary work towards the council’s supplementary planning guidance on windfarms. It addresses the single issue of visibility and only from residential receptors. As such, whilst it indicates the council’s policy preparation, it does not directly bear on the appeal proposal.

125. DHCG has criticised the ES and other information produced for the appellants for inaccuracies. Where those criticisms are justified, I have taken account of the accurate information.

Development plan

126. My consideration of the proposal against policies in the development plan is informed by my assessment of specific matters above and by the guidance in SPP6 that “*Development plan policies should be based on the principle that windfarms should be*

accommodated where the technology can operate efficiently and environmental and cumulative impacts can be addressed satisfactorily.”

127. Policy I20: Wind Energy Developments of the Scottish Borders Structure Plan 2001-2011 sets out a checklist of criteria to be taken into account. These have been subsequently covered in more detail in the local plan. I conclude that the policy is not satisfied with respect to impact on the landscape character of the area. The structure plan also defines Areas of Search for Wind Energy Developments by sifting out areas with sensitive designations. In strategic terms, the appeal site falls within a Preferred Area, the least constrained of the 3 areas defined.

128. Policy I19: Renewable Energy which *“supports the development of renewable energy sources that can be developed in an environmentally acceptable manner”* and policy N9: Maintaining Landscape Character, which aims to maintain the integrity of the landscape character and enhance its quality, would be offended for reasons set out in my landscape and visual sections above.

129. In relation to policy N5: Local Biodiversity Action, I have found that, subject to conditions, the development would not be likely to have an adverse effect on habitats or species identified for conservation action in the Local Biodiversity Action Plan, and is not therefore offended.

130. Policy N14: National Archaeological Sites which, among other things, will not permit development which would adversely affect the setting of scheduled ancient monuments, is satisfied. Policy N15: Regional and Local Archaeological Sites is no longer in contention.

131. Since the date of refusal, the Roxburgh Local Plan has been superseded by the Scottish Borders Local Plan (2008). Policy D4: Renewable Energy Development of the latter plan is the key development plan policy. It takes the essentially positive stance that such developments will be approved provided there are no unacceptable adverse effects on a range of environmental and other factors, or that any adverse impacts can be satisfactorily mitigated. Where there are judged to be significant adverse impacts which cannot be mitigated, approval will only be given where the development’s contribution to wider economic and environmental benefits outweighs the potential damage to the environment or to tourism and recreation.

132. In detail, the policy states that *“commercial windfarm development will normally be more acceptable in locations within “preferred areas” outwith environmental designations as set out in structure plan policy I19”* Dunion Hill falls within such a preferred area.

133. The policy then notes that a review of AGLVs is proposed, with a view to including additional areas, and that its results will inform the assessment of the location of windfarms. It appears, therefore, that the council envisages a reduction in the broad areas of search for windfarms commensurate with any new AGLV designations. I take note of these facts. However, it would not be proper to prejudge the outcome of the council’s review of AGLVs and the council does not ask me to do so.

134. The policy goes on to state that *“Locations within the large scale landscape settings defined as upland type in the landscape classification hierarchy (contained within the Borders Landscape Assessment) will normally be more acceptable than other landscape character types, subject to detailed assessment of the fragility of the area to change.”*

135. Dunion Hill does not lie within an upland landscape type, although it is recognised by SNH, Mr Knight and Mr Welch as lying within an area of medium to large scale. This part of the policy is expressed as a preference for upland areas and not as a predisposition against all other landscape types. To read the policy any other way would be to treat non-upland areas as though they were a further spatial constraint in addition to those already used in the sifting process carried out to arrive at the broad Areas of Search for Wind Energy Developments. That would be illogical and contrary to the thrust of government advice, such as is contained in paragraph 1 of Annex A to SPP6. Thus I find that the appeal proposal fails to gain positive support from this element of policy, but does not thereby offend the policy.

136. In that respect, I also bear in mind the guidance in SPP6 that where planning authorities have identified broad areas of search for windfarms in their development plans, *“such areas should provide a steer to developers on acceptable locations but their existence should not be used to rule out development elsewhere if it can be accommodated in a manner consistent with the approach set out in this SPP.”*

137. Policy D4 also favours locations with *“a surrounding landform that minimises the external visibility of the development, where there is no interference with prominent skylines or where there is no conflict with sensitive habitats.”* As detailed in paragraphs 19-24 above, several hills and areas of high ground serve to reduce the potential visibility of the windfarm, especially from the main settlement in the locality, Jedburgh, and from the main roads used by tourists. However, I accept that the level of external visibility is relatively high, and indeed higher than at any of the existing and approved windfarms in the Scottish Borders. The proposal would not therefore be favoured by this element of the policy. I do not consider that the affected skyline is especially prominent or that, subject to mitigation measures and conditions, there would be significant conflict with sensitive habitats. It follows that the proposal gains policy support in relation to skylines and habitats, but not in relation to external visibility.

138. With regard to landscape impacts, *“particular attention will be given to the effects on high sensitivity receptors including major tourist routes and important landscape viewpoints.”* Effects on major tourist routes would be limited, as described above. Of the important landscape viewpoints in the area, Rubers Law, Bonchester Hill, and the Minto Hills would sustain significant effects, the former 2 being particularly adverse. On the other hand, these are not heavily used locations. The Carter Bar viewpoint is heavily used, but the impact on views would be moderated by distance and backclothing. The impact on other important landscape viewpoints, including the Waterloo Monument and Eildon Hills are also moderated by distance.

139. The policy goes on to list 9 criteria against which commercial windfarms will be assessed and states that proposals will be approved where the overall impact is judged

acceptable. These cover landscape character, remote qualities, sensitive receptors, visual impact, noise, traffic, ecology, telecommunications, aviation, decommissioning, etc, and cumulative impact. Some of these factors are not at issue. For the others, related essentially to visual matters and ecology, I am satisfied for the reasons set out in earlier paragraphs that their overall impact would be acceptable, with the exception of those effects on landscape and visual matters noted above.

140. The policy then states that reference should be made to what is now SPP6 and to PAN45 with respect to visual and other impacts.

141. The council intends to prepare supplementary planning guidance to supplement and extend the existing policy framework, but since this has not begun, it is not something I can take into account.

142. Taking policy D4 overall therefore, I consider that in some respects, the unacceptable adverse effects of the proposal can be satisfactorily mitigated. However, that is not the case firstly with regard to the size of the proposed turbines in the receiving landscape, which would give rise to conflicts of scale within an area up to several kilometres away, and secondly to the degree of external visibility of the windfarm in the wider landscape. Nor is it true, to a lesser extent, with regard to the impact on rights of way (this aspect not being determinative). Moreover, I consider that the development's contribution to wider economic and environmental benefits arising from the generation of some 20MW of renewable energy, including the contribution this would make to the achievement of government targets, does not outweigh its potential harm.

143. With respect to policy BE2: Archaeological Sites and Ancient Monuments, this refers back to structure plan policies on the same topic. Policy NE3: Local Biodiversity seeks to safeguard the integrity of habitats important for local biodiversity. It requires adequate survey information. Where developers can demonstrate that harm to local biodiversity is outweighed by the public benefit of a scheme, compensatory measures should ensure no net loss of habitat. Subject to appropriate planning conditions, I am satisfied that this policy would not be offended.

Conditions

144. I have considered whether the development could be rendered acceptable by the imposition of planning conditions, but concluded that it could not.

Conclusion

145. Drawing together all the above findings, I find that the proposal would not accord with the development plan, that the imposition of planning conditions could not make it so, and that other material considerations would not indicate otherwise.

146. In arriving at my conclusion, the ES and all the other relevant environmental information has been taken into account.

This is a true and certified copy of the decision issued on 9 April 2009”

MALCOLM MAHONY
Reporter

Appendix 1
Schedule of application drawings
From the ES

- Figure 1.1 Site location plan
- Figure 1.2 Application boundary
- Figure 6.1 Proposed site boundary
- Figure 6.2 Typical wind turbines
- Figure 6.4 Typical permanent mast
- Figure 6.8 Typical site road construction – section
- Figure 6.9 Typical turbine pad foundation
- Figure 6.10 Typical crane hardstanding
- Figure 6.11 Typical cable trench detail
- Figure 6.12 Typical control building
- Figure 10.1 Proposed access routes and location of traffic flow surveys

Other

Plan submitted by Mr Welch during the inquiry to illustrate relocation of the substation

