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SCOTTISH BORDERS COUNCIL PLANNING AND BUILDING STANDARDS COMMITTEE

MINUTES of Meeting of the PLANNING AND BUILDING STANDARDS COMMITTEE held in Council Chamber, Council Headquarters, Newtown St Boswells and via Microsoft Teams on Monday, 24th April, 2023 at 10.00 am

Present:- Councillors S. Mountford (Chair), J. Cox, M. Douglas, D. Moffat, A. Orr, N. Richards, S. Scott, E. Small and V. Thomson

In Attendance:- Lead Planning Officer (B. Fotheringham), Lead Roads Planning Officer (D. Inglis), Solicitor (S. Thompson), Democratic Services Team Leader, and Democratic Services Officer (W. Mohieddeen).

1. **MINUTE**

There had been circulated copies of the Minute of the Meeting held on 27 March 2023.

DECISION

AGREED to approve the Minute for signature by the Chair.

2. **APPLICATIONS**

There had been circulated copies of a report by the Chief Planning and Housing Officer on applications for planning permission which required consideration by the Committee.

DECISION

DEALT with the applications as detailed in Appendix I of this Minute.

3. **REVOCAION OF PLANNING PERMISSION**

There had been circulated copies of a report by Chief Planning and Housing Officer that sought Members' approval of a revocation Order under Section 65 of the Town and Country Planning (Scotland) Act 1997, to revoke planning permission 11/01527/FUL for the erection of a dwelling with carport and stables/workshop/store on land North West of Greenlawdean Farmhouse, Greenlaw. Under Section 65 of the Town and Country Planning (Scotland) Act 1997, the planning authority had the power to revoke or modify any permission to develop land granted on an application. In exercise of this function, the planning authority must have had regard to the development plan and any other material considerations. Revocation of planning permission under Section 65 of the Act may be exercised where the permission related to the carrying out of a building or other operations, at any time before those operations have been completed. The Lead Planning Officer presented the report with associated slides and advised Members that executors of the late applicant Mr Peter Leggate had been instructed to apply for revocation of the planning permission following the death of Mr Leggate in the summer of 2022. The Leggate family as successors to the estate of Mr Peter Leggate decided that the planning permission was no longer needed nor did they desire to proceed with the approved dwelling. The Leggate family had agreed to remove the existing section of foundation and restore the land to its former condition. There was a Section 75 agreement associated with the planning permission which the agent was aware of and a separate application would be made to remove it. The extant planning permission was assessed against policies that had since been superseded by NPF4. The Lead Planning Officer advised that there had not been a significant shift in policy since the planning permission was approved, however there had been a significant change in personal

circumstances and the need for the new dwelling no longer exists. The Committee agreed with the recommendations of the report.

DECISION

AGREED that the Committee exercise the power conferred by Section 65 of the Town and Country Planning (Scotland) Act 1997 and make an Order revoking the planning permission granted under reference 11/01527/FUL.

4. APPEALS AND REVIEWS

There had been circulated copies of a briefing note by the Chief Planning and Housing Officer on Appeal to the Scottish Ministers and Local Review.

DECISION

NOTED that:

- (a) An appeal had been received in respect of Installation of insulated plasterboard system to walls, 68 High Street, Coldstream;
- (b) There remained 2 appeals previously reported on which decisions were still awaited when this report was prepared on 13th April 2023. This related to sites at:

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|-----------------------------|--|
| • 1 Hall Street, Galashiels | • The Old Cow Shed, Lennel, Coldstream |
|-----------------------------|--|

- (c) Review requests received in respect of:
 - (i) Alterations and dormer extension to dwellinghouse, 11 Tweed Avenue, Peebles – 27/00788/FUL;
 - (ii) Erection of 2no dwellinghouses, Land South of 1 Kelso Road, Coldstream – 22/01416/PPP;
 - (iii) Erection of dwellinghouse with detached garage, Land West of The Old Barn Westwater, West Linton – 22/01739/FUL;
 - (iv) Erection of dwellinghouse, Paddock West of Hardens Hall, Duns – 22/01740/PPP;
 - (v) Installation of timber gates (retrospective), Church House, Raemartin Square, West Linton – 22/01935/FUL;
 - (vi) Erection of dwellinghouse, Land North of Belses Cottage, Jedburgh-23/00034/PPP;
 - (vii) Change of Use from Class 4 to Class 2 Veterinary Practice, 2 Rowan Court, Cavalry Park, Peebles – 23/00056/FUL;
- (d) The following review had been determined as shown:
 - (i) Erection of dwellinghouse, Land South West of Castleside Cottage, Selkirk – 21/01618/FUL – Decision of Appointed Officer Upheld;
- (e) There remained 15 reviews previously reported on which decisions were awaited when the report was prepared on 13 April 2023 which related to sites at:

| | |
|--|--|
| <ul style="list-style-type: none"> • Land North East of Runningburn Farm, Stichill | <ul style="list-style-type: none"> • Land at Silo Bins Edington Mill Chirnside, Edington Mill Road, Chirnside |
| <ul style="list-style-type: none"> • Land South West of Corstane Farmhouse, Broughton | <ul style="list-style-type: none"> • Land North and East of Clay Dub, Duns Road, Greenlaw |
| <ul style="list-style-type: none"> • 17 George Street, Eyemouth | <ul style="list-style-type: none"> • Dove Cottage Gate Lodge Press Castle, Coldingham, Eyemouth |
| <ul style="list-style-type: none"> • Ravelaw Farm, Duns | <ul style="list-style-type: none"> • Land South West of West Loch Farmhouse, Peebles |
| <ul style="list-style-type: none"> • 100 Abbotseat, Kelso | <ul style="list-style-type: none"> • Land West of Greenburn Cottage, Auchencrow |
| <ul style="list-style-type: none"> • Land South of Ebbastrand, Coldingham Sands, Coldingham | <ul style="list-style-type: none"> • The Millers House Scotsmill Kailzie, Peebles |
| <ul style="list-style-type: none"> • Ratchill Farmhouse, Broughton | <ul style="list-style-type: none"> • Land at Disused Railway Line Rachan, Broughton |
| <ul style="list-style-type: none"> • Scott House, Douglas Square, Newcastleton | |

- (f) There remained one Section 36 Public Local Inquiry previously reported on which a decision was still awaited when the report was prepared on 13 April 2023 which related to a site at Land West of Castleweary (Faw Side Community Wind Farm), Fawside, Hawick.

The meeting concluded at 11.35 am.

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APPENDIX I
APPLICATIONS FOR PLANNING PERMISSION

| <u>Reference</u> | <u>Nature of Development</u> | <u>Location</u> |
|-------------------------|--|--|
| 21/01134/S36 | Wind farm development comprising of 12 turbines (149.9 metres in height), associated infrastructure and battery energy storage system. | Cloich Forest Wind Farm, Land West Of Whitelaw Burn, Eddleston |

DECISION: Members agreed with the Officers' recommendation and do not object to the proposed development. Members also agreed to a minor modification of suggested Conditions 21 and 22 to replace the word 'mitigate/mitigation' with 'avoid/avoidance'. It was recommended that the following conditions are attached to any consent that may be granted:

1. Duration of Consent

The consent is for a period of 40 years from the date of Final Commissioning. Written confirmation of the date of First Commissioning shall be provided to the Planning Authority and Scottish Ministers no later than one calendar month after that date.

Reason: To define the duration of the consent

2. Commencement of Development

Commencement of Development shall be no later than five years from the date of this consent, or in substitution such other period as the Scottish Ministers may hereafter direct in writing. Written confirmation of the intended date of Commencement of Development shall be provided to the Scottish Ministers and the Planning Authorities no later than one calendar month before that date.

Reason: To avoid uncertainty and ensure that consent is implemented within a reasonable period, and to allow the Scottish Ministers and the Planning Authorities to monitor compliance with obligations attached to this consent and deemed planning permission as appropriate.

3. Non Assignment

The company shall not be permitted to assign this consent without the prior written authorisation of the Scottish Ministers. The Scottish Ministers may assign the consent (with or without conditions) or refuse assignment as they may, in their own discretion, see fit. The consent shall not be capable of being assigned, alienated or transferred otherwise than in accordance with the foregoing procedure. The company shall notify the local planning authority in writing of the name of the assignee, principal named contact and contact details within 14 days of written confirmation from the Scottish Ministers of an assignment having been granted.

Reason: to safeguard the obligations of the consent if it is assigned to another company

4. Serious Incident Reporting

In the event of any breach of health and safety or environmental obligations relating to the development during the period of this consent, the company will provide written notification of the nature and timing of the incident to the Scottish Ministers, including confirmation of remedial measures taken and/ or to be taken to rectify the breach, within 24 hours of such an incident occurring.

Reason: to keep the Scottish Ministers informed of any such incidents which may be in the public interest.

5. Implementation in accordance with approved plans and requirements

Except as otherwise required by the terms of this section 36 consent and deemed planning permission, the Development shall be undertaken in accordance with the Application (including the EIAR as amended or supplemented by the AEI).

Reason: To ensure that the Development is carried out in accordance with the approved details.

6. Design and operation of turbines

a. There shall be no Commencement of Development unless full details of the proposed wind turbines (including, but not limited to, the power rating and sound power levels, the size, type, external finish and colour (which should be non-reflective pale grey semi-matt), any anemometry masts and all associated apparatus have been submitted to and approved in writing by the planning authority.

b. The turbines shall be consistent with the candidate turbine or range assessed in the environmental statement, and the tip height thereof shall not exceed 149.9 metres above ground level.

c. The development shall be constructed and operated in accordance with the approved details and maintained in the approved colour, free from external rust, staining or discolouration, until such time as the wind farm is decommissioned.

d. All wind turbine blades shall rotate in the same direction.

e. None of the wind turbines, anemometers, power performance masts, switching stations or transformer buildings/enclosures, ancillary buildings or above ground fixed plant shall display any name, logo, sign or other advertisement (other than health and safety signage) unless otherwise approved in advance in writing by the planning authority.

Reason: To ensure that the environmental impacts of the turbines forming part of the development conform to the impacts of the candidate turbine assessed in the environmental statement and in the interests of the visual amenity of the area

7. Design of sub-station and ancillary development

There shall be no Commencement of Development unless final details of the external appearance, dimensions, and surface materials of the substation building, associated compounds, any construction compound boundary fencing, external lighting and Battery Energy Storage System (BESS) facility and parking areas have been submitted to and approved in writing by the planning authority. The substation building, associated compounds, fencing, external lighting and BESS facility and parking areas shall be constructed in accordance with the approved details.

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

8. Micro-siting

(1) Subject to paragraph (2), all wind turbines, buildings, masts, areas of hard standing and tracks shall be constructed in the location shown on Figure 2.1 of the Supplementary Environmental Information submitted on 1 December 2022

(2) Wind turbines, buildings, masts, areas of hard-standing and tracks may be adjusted by micro-siting within the site, but micro-siting is subject to the following restrictions, unless otherwise approved in advance in writing by the Planning Authority (in consultation with SEPA and SNH)—

(a) no wind turbine foundation shall be positioned higher, when measured in metres Above Ordinance Datum (Newlyn), than the position shown on Figure 4.1;

(b) no building, mast, access track or hard-standing shall be moved more than 50 metres from the position shown on the original approved plans;

(c) no wind turbine shall be moved more than 50 metres from the position shown on the original approved plans and no turbines (T2, T3, T4 and T5) shall be moved closer than the location specified in figure 2.1 of the Supplementary Environmental Information submitted on 1 December 2022 to any of the dwellings at Upper Stewarton, the Stewarton group (Nether Stewarton Farmhouse, Stewarton House, Stewarton Toll, Stewarton Lodge) and the Harehope group (Harehope Cottage, Harehope Steading, Old Harehope, Harehope Farmhouse);

(d) all micro-siting permissible under this condition must be approved in advance in writing by the Ecological Clerk of Works.

(2) No later than one month after the date of First Commissioning, an updated site plan must be submitted to the Planning Authority showing the final position of all wind turbines, masts, areas of hard-standing, tracks and associated infrastructure forming part of the Development. The plan should also specify areas where micro-siting has taken place and, for each instance, be accompanied by copies of the Ecological Clerk of Works or Planning Authority's approval, as applicable.

Reason: to control environmental impacts while taking account of local ground conditions, and specifically to limit changes to positioning of turbines where they are closest to residential property and where their relocation would have the potential to change the level of impact on residential amenity and hydrology to that hereby consented.

9. Borrow Pits

There shall be no Commencement of Development unless a scheme for the working of each borrow pit forming part of the development has been submitted to and approved in writing by the planning authority in consultation with SEPA. The scheme shall include;

a. A detailed working method statement;

b. Details of the handling of any overburden (including peat, soil and rock);

c. Drainage, including measures to prevent surround areas of peatland from drying out;

d. A programme of implementation of the works described in the scheme; and e. Full details of the reinstatement, restoration and aftercare of the borrow pit(s) at the end of the construction period. The approved scheme shall thereafter be implemented in full.

Reason: to ensure that excavation of materials from the borrow pit(s) is carried out in a manner that minimises the impact on road safety, amenity and the environment, and that the mitigation measures contained in the environmental

statement accompanying the application, or as otherwise agreed, are fully implemented. To secure the restoration of borrow pit(s) at the end of the construction period.

10. Planning Monitoring Officer

There shall be no commencement of development unless the planning authority has first approved the terms of appointment by the company of an independent and suitably qualified environmental consultant to assist the council in the monitoring of compliance with conditions attached to this deemed planning permission during the period from commencement of development to the date of Final Commissioning and thereafter throughout the period of operation of the wind farm.

Reason: to enable the development to be suitably monitored during the construction phase to ensure compliance with the consent issued

11. Ecological Clerk of Works

There shall be no commencement of development unless the planning authority has approved in writing the terms of appointment by the company of an independent Ecological Clerk of Works (in consultation with NatureScot and SEPA). The terms of appointment shall:

- a. Impose a duty to monitor compliance with the ecological and hydrological commitments provided in the environmental statement and other information lodged in support of the application, the Construction and Environmental Management Plan and other plans approved in terms of the Construction Method Statement and Habitat Management and Enhancement Plan (conditions 12 and 15); and
- b. Require the Ecological Clerk of Works to report to the company's nominated construction project manager any incidences of non-compliance with the works for which the Ecological Clerk of Works is responsible for monitoring at the earliest practical opportunity.

The Ecological Clerk of Works shall be appointed on the approved terms from commencement of development, throughout any period of construction activity and during any period of post construction restoration works approved in terms of condition 12.

No later than 18 months prior to decommissioning of the development or the expiration of this consent (whichever is the earlier), the company shall submit details of the terms of appointment by the company of an independent Ecological Clerk of Works throughout the decommissioning, restoration and aftercare phases of the development to the planning authority for approval in consultation with Scottish Natural Heritage and SEPA. The Ecological Clerk of Works shall be appointed on the approved terms throughout the decommissioning, restoration and aftercare phases of the development.

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

12. Construction Method Statement

There shall be no commencement of development unless a Construction Method Statement outlining site specific details of all on-site construction works, post-construction reinstatement, drainage and mitigation, together with details of their

timetabling, has been submitted to and approved in writing by the planning authority in consultation with Scottish Natural Heritage and SEPA.

The Construction Method Statement shall include (but shall not be limited to):

- a. a Construction Environmental Management Plan outlining the procedures, mechanisms and responsibilities for implementing the environmental controls outlined in the Construction Method Statement and the separate management plans listed below;
- b. site waste management plan (dealing with all aspects of waste produced during the construction period other than peat), including details of contingency planning in the event of accidental release of materials which could cause harm to the environment;
- c. details of the formation of the construction compound, welfare facilities, any areas of hard-standing, turning areas, internal access tracks, car parking, material stockpiles, oil storage, lighting columns, and any construction compound boundary fencing;
- d. details of borrow pit excavation and restoration;
- e. a dust management plan;
- f. details of measures to be taken to prevent loose or deleterious material being deposited on the local road network including wheel cleaning and lorry sheeting facilities, and measures to clean the site entrances and the adjacent local road network;
- g. a pollution prevention and control method statement, including arrangements for the storage of oil and fuel on the site;
- h. soil storage and management;
- i. a peat management plan;
- j. a drainage management strategy, demonstrating how all surface and waste water arising during and after development will be managed and prevented from polluting any watercourses or sources
- k. sewage disposal and treatment;
- l. temporary site illumination;
- m. the construction of the access into the site and the creation and maintenance of associated visibility splays;
- n. the method of construction of the crane pads;
- o. the method of construction of the turbine foundations;
- p. the method of working cable trenches;
- q. the method of construction and erection of the wind turbines and meteorological masts;
- r. details of watercourse crossings;
- s. post-construction restoration/ reinstatement of the working areas not required during the operation of the development, including construction access tracks, borrow pits, construction compound and other construction areas. Wherever possible, reinstatement is to be achieved by the careful use of turfs removed prior to construction works. Details should include all seed mixes to be used for the reinstatement of vegetation;
- t. a wetland ecosystems survey and mitigation plan, where appropriate; and
- u. a felling and forestry wastes management plan, where appropriate;
- v. a strategy for monitoring, control and mitigation in respect of construction noise, and a methodology to be applied in instances where complaints are received in relation to construction noise.

The development shall be implemented thereafter in accordance with the approved Construction Method Statement unless otherwise approved in advance in writing by the planning authority in consultation with NatureScot and SEPA.

Reason: to ensure that all construction operations are carried out in a manner that minimises their impact on road safety, amenity and the environment, and that the mitigation measures contained in the environmental statement accompanying the application, or as otherwise agreed, are fully implemented.

13. Construction Hours

Construction work which is audible from any noise-sensitive receptor shall only take place on the site between the hours of 07.00 to 19.00 on Monday to Friday inclusive and 07.00 to 16.00 on Saturdays, with no construction work taking place on a Sunday or on Bank Holidays or Public Holidays . Outwith these specified hours, development which is audible from any noise sensitive property shall be limited to turbine foundation construction, turbine installation, maintenance, emergency works, dust suppression, and the testing of plant and equipment, unless otherwise approved in advance in writing by the relevant Planning Authority.

Reason: In the interests of local amenity.

14. Traffic Management Plan

There shall be no commencement of development until a Traffic Management Plan (TMP) has been submitted to and approved in writing by the Planning Authority. The TMP to include:

- a. The detailed delivery route and vehicle numbers for all cars, HGV deliveries and abnormal loads associated with the development and measures to ensure that the specified routes are adhered to, including monitoring procedures;
- b. Details of all ancillary works required to the public road network to facilitate deliveries, including all signage and lining arrangements, a programme and timescales for implementation and reinstatement proposals after the development is complete and a programme and timescales for completion;
- c. Road condition survey of all proposed access routes carried out prior to the development commencing and details of any upgrading works and a regime for routine maintenance during construction of the development. Any remedial works required as a result of damage/deterioration by construction traffic (to be highlighted in a post-construction road condition survey) to be rectified at the expense of the developer after the development has been completed in accordance with an agreed timescale. Any emergency repairs identified during the construction period to be rectified within one week, unless otherwise agreed;
- d. Details of tree or hedge removal along the route for the abnormal loads and a scheme for replacement planting and a timescale for its implementation and completion;
- e. Swept path analysis drawings for agreed areas of concern along the route for the abnormal loads and remedial measures;
- f. Areas of the abnormal load route where the removal of street furniture, including lighting, is required and all temporary lighting measures required for the duration of the abnormal load movements;
- g. Name and contact details of a nominated person to whom any road safety issues can be referred.
- h. A trial run to be undertaken on the finalised abnormal load route, with representatives from the Council present.

The approved TMP thereafter to be implemented in full, unless otherwise agreed in advance in writing by the Planning Authority and all work within the public road boundary to be undertaken by a contractor first approved by the Council.

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

15. Habitat Management and Enhancement Plan

There shall be no commencement of development unless a Habitat Management and Enhancement Plan has been submitted to and approved in writing by the planning authority in consultation with RSPB Scotland, Forestry Commission Scotland and SEPA. The Habitat Management and Enhancement Plan shall set out proposed long term management and enhancement of the wind farm site and shall provide for the maintenance, monitoring and reporting of habitat on site in relation to bats, schedule 1 raptors, breeding birds, reptiles, amphibia, woodland, wetland, grassland and heathland management.

The approved Habitat Management and Enhancement Plan will be updated to reflect ground condition surveys undertaken following construction and prior to the date of Final Commissioning and submitted to the planning authority for written approval in consultation with RSPB Scotland, Forestry Commission Scotland and SEPA.

Unless otherwise agreed in advance in writing with the planning authority, the approved Habitat Management and Enhancement Plan shall be implemented in full.

Reason: in the interests of good land management and the protection and enhancement of habitats

16. Biodiversity Monitoring and Management

Prior to the commencement of the development and, in the case of items (b) and (c) prior to the commencement of any on-site works or development, the following plans, programmes and/or survey results shall have been submitted to, and approved by the Planning Authority:

- (a) a programme of monitoring of Schedule 1 raptor species and protected mammals including bats and badgers, agreed with the Planning Authority and in consultation with Scottish Natural Heritage and RSPB Scotland;
- (b) supplementary surveys for protected species (including otter, bat, badger, red squirrel, breeding birds), carried out by a suitably qualified person or persons in a manner appropriate to the phasing of the development, to inform a Species Mitigation and Management Plan;
- (c) a Species Mitigation and Management Plan relating to the species identified in clause (b);

(d) an Integrated Water Quality and Fisheries Management Plan agreed with Marine Scotland-Freshwater Laboratory and River Tweed Commissioners (at least 12 months before construction starts), with a programme of pre-construction water quality and fisheries surveys to establish a baseline, plus during and after construction water quality monitoring (in addition to visual checks required under the Construction and Environmental Monitoring Plan). In the case of (a), the programme shall be undertaken pre-construction, during construction, and for years 1, 2, 3, 5, 10 and 15 once the wind farm becomes operational.

In the case of (b), the results of these surveys should be used to inform construction activities and any required mitigation proposals for protected species on the site, and shall be strictly adhered to in the course of development.

In the case of (c) and (d), all on-site works and development shall thereafter be carried out in accordance with the approved plan(s).

Reason: To ensure that reasonable protection is given to biodiversity on and utilising the site; species protected by law are not harmed as a result of the development taking place; the protected species are afforded due protection (and to enable greater understanding of the impacts of development of this nature); and proposed mitigation measures are effective in protecting fisheries within and downstream of the proposed development.

17. Breeding Birds

There shall be no commencement of development unless a Breeding Bird Protection Plan (BBPP) has been submitted to and approved in writing by the planning authority in consultation with RSPB Scotland and thereafter shall be implemented in accordance with the agreed details. The BBPP shall set out mitigation to limit the disturbance of the development on goshawk and crossbill.

Reason: To ensure suitable protection is given to breeding birds and ensure they are not harmed as a result of any effects of the development.

18. Archaeological Clerk of Works

There shall be no commencement of development unless the planning authority, in consultation with Historic Environment Scotland, has approved the terms of appointment by the company of an independent Archaeological Clerk of Works, and the company has secured the implementation of a written scheme of investigation outlining a programme of archaeological mitigation. The scope of the Archaeological Clerk of Works's appointment shall include:

- a. Monitoring implementation and compliance with a programme of archaeological mitigation works approved by the planning authority in a written scheme of investigation which shall specify:
 - i. An archaeological watching brief on relevant excavations where unknown archaeological deposits or features may exist;
 - ii. A paleo-environmental sampling and dissemination strategy in areas where deep peat will be impacted by development;
 - iii. A post-excavation research and dissemination strategy in the event of significant discoveries determined as such by the Archaeological Clerk of Works and planning authority. All post-excavation research and dissemination shall be completed within 3 years of the completion of on-site investigations;
 - iv. The erection of suitable fencing around known archaeological assets, to be determined by the Archaeological Clerk of Works and planning authority, where there is potential damage during development;
 - v. A strategy of LiDAR survey of the impacted historic landscape to be agreed between the company and the planning authority and to include community engagement, interpretation and dissemination;
- b. Advising the company on adequate protection of archaeological interests on the site;
- c. Checking for new records of archaeological interests for which additional mitigation may be required;
- d. Directing the micro-siting and placement of turbines and tracks away from known assets and discovered assets of archaeological significance where in situ preservation is warranted;

e. Monitoring the compliance with mitigation, reinstatement and restoration measures approved in this consent; and

f. Reporting any breaches of the mitigation, reinstatement and restoration measures approved in this consent to the planning authority in writing.

The Archaeological Clerk of Works shall be appointed on the approved terms throughout the period from commencement of development, throughout any period of construction activity and during any period of post construction restoration works approved in terms of condition 12.

No later than 18 months prior to decommissioning of the development or the expiration of this consent (whichever is the earlier), the company shall submit details of the terms of appointment by the company of an independent Archaeological Clerk of Works throughout the decommissioning, restoration and aftercare phases of the development to the planning authority for approval, in consultation with Historic Environment Scotland. The Archaeological Clerk of Works shall be appointed on the approved terms throughout the decommissioning, restoration and aftercare phases of the development.

Reason: To ensure the protection or recording of archaeological features impacted by development.

19. Replanting of Forestry

There shall be no commencement of the development unless a woodland planting scheme to compensate for the removal of existing woodland (“the Replanting Scheme”) has been submitted for the written approval of the planning authority in consultation with Forestry Commission Scotland Conservator.

The Replanting Scheme must comply with the requirements set out in the UK Forestry Standard (Forestry Commission, 2011. ISBN 978-0-85538-830-0) and the guidelines to which it refers, or such replacement standard as may be in place at the time of submission of the Replanting Scheme for approval. The Replanting Scheme must include:

- (a) details of the location of the area to be planted;
- (b) details of land owners and occupiers of the land to be planted;
- (c) the nature, design and specification of the proposed woodland to be planted;
- (d) details of all consents required for delivery of the Replanting Scheme and timescales within which each will be obtained;
- (e) the phasing and associated timescales for implementing the Replanting Scheme;
- (f) proposals for the maintenance and establishment of the Replanting Scheme, including annual checks, replacement planting, fencing, ground preparation and drainage; and
- (g) proposals for reporting to the planning authority on compliance with timescales for obtaining the necessary consents and thereafter implementation of the Replanting Scheme.

Unless otherwise agreed in writing by the planning authority, the development shall not be commissioned to supply electricity on a commercial basis unless all relevant consents necessary for implementation of the approved Replanting Scheme in accordance with the phasing and timescales set out therein have been obtained.

In the event that there is no reasonable prospect of the relevant consents necessary for implementation of the approved Replanting Scheme being obtained, then the company shall submit an amended Replanting Scheme to the planning authority for approval in consultation with Forestry Commission Scotland. Unless otherwise agreed in writing by the planning authority, the

development shall not be commissioned to supply electricity on a commercial basis unless all relevant consents necessary for implementation of the approved amended Replanting Scheme in accordance with the phasing and timescales set out therein have been obtained.

The approved Replanting Scheme (or, as the case may be, an approved amended Replanting Scheme) shall be implemented in full, unless otherwise agreed in writing by the planning authority after consultation with Forestry Commission Scotland Conservator.

Reason: to secure replanting to mitigate against effects of deforestation arising from the Development.

20. Noise

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

a. The company shall continuously log power production, wind speed and wind direction. These data shall be retained for a period of not less than 24 months. The company shall provide this information to the planning authority within 14 days of receipt in writing of a request to do so.

b. There shall be no First Commissioning of the Development until the company has received written approval from the planning authority of a list of proposed independent consultants who may undertake compliance measurements in accordance with this condition. Amendments to the list of approved consultants shall be made only with the prior written approval of the planning authority.

c. Within 21 days from receipt of a written request from the planning authority following a complaint to it from an occupant of a dwelling alleging noise disturbance at that dwelling, the company shall, at its expense, employ a consultant approved by the planning authority to assess the level of noise immissions from the wind farm at the complainant's property. The written request from the planning authority shall set out at least the date, time and location to which the complaint relates and any identified atmospheric conditions, including wind direction, and include a statement as to whether, in the opinion of the planning authority, the noise giving rise to the complaint contains or is likely to contain a tonal component.

d. The assessment of the rating level of noise immissions shall be undertaken in accordance with an assessment protocol that shall previously have been submitted to and approved in writing by the planning authority. The protocol shall include the proposed measurement location(s) where measurements for compliance checking purposes shall be undertaken, whether noise giving rise to the complaint contains or is likely to contain a tonal component, and also the range of meteorological and operational conditions (which shall include the range of wind speeds, wind directions, power generation and times of day) to determine the assessment of rating level of noise emissions. The proposed range of conditions shall be those which prevailed during times when the complainant alleges there was disturbance due to noise, having regard to the

written request of the planning authority under condition 19 paragraph c above, and such others as the independent consultant considers likely to result in a breach of the noise limits.

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

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

g. Where a further assessment of the rating level of noise immissions from the wind farm is required, the company shall submit a copy of the further assessment within 21 days of submission of the independent consultant's assessment pursuant to condition 19 paragraph d above unless the time limit has been extended in writing by the planning authority.

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

| Location including co-ordinates | Standardised wind speed at 10 metre height (m/s) within the site averaged over 10 minute periods | | | | | | | | | | | |
|-------------------------------------|--|----|----|----|----|----|----|----|----|----|----|----|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| Nether Stewarton Properties* | 37 | 37 | 37 | 37 | 37 | 37 | 37 | 37 | 38 | 40 | 41 | 42 |
| Ruddenleys Properties** | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 36 | 39 | 41 | 43 | 44 |
| Cloich Farm | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 36 | 38 | 41 | 44 | 48 |
| Harehope Properties*** | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 39 | 42 | 45 | 47 | 49 |
| Upper Stewarton | 39 | 39 | 39 | 39 | 39 | 39 | 39 | 39 | 39 | 40 | 41 | 42 |

Table 2 – Between 23:00 and 07:00 – Noise limits expressed in dB LA90,10-minute as a function of the standardised wind speed (m/s) at 10 metre height as determined within the site averaged over 10 minute periods.

| Location including co-ordinates | Standardised wind speed at 10 metre height (m/s) within the site averaged over 10 minute periods | | | | | | | | | | | |
|---------------------------------|--|--|--|--|--|--|--|--|--|--|--|--|
|---------------------------------|--|--|--|--|--|--|--|--|--|--|--|--|

| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |
|-------------------------------------|----|----|----|----|----|----|----|----|----|----|----|----|
| Nether Stewarton Properties* | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 45 |
| Ruddenleys Properties** | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 |
| Cloich Farm | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 |
| Harehope Properties*** | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 46 | 49 |
| Upper Stewarton | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 45 |

* Nether Stewarton Farm, Stewarton House, Stewarton Lodge, Stewarton Toll

** White Heather Cottage Ruddenleys, The Carriage House Ruddenleys, Ruddenleys Cottage, Ruddenleys House

***Harehope Cottage, The Steading Harehope, Old Harehope, Harehope Farmhouse

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

21. Private Water Supplies

There shall be no commencement of development unless the following private water supply matters have been submitted to and agreed in writing with the Planning Authority:

- a) a method statement (private water supply plan) has been submitted to and approved in writing by the planning authority, detailing all avoidance measures to be delivered to secure the quality, quantity and continuity of water supplies to properties which are served by private water supplies at the date of this consent and which may be affected by the development. In particular, the method statement shall include a water quality and quantity (yield) monitoring plan for every private water supply which may be affected by the development during the construction, operational and decommissioning phases of the development.
- b) a site-specific emergency response plan has been submitted to and approved in writing by the planning authority, detailing all additional (emergency) measures to be delivered in the event of the avoidance measures (identified as part a.) unpredictably failing to secure a sufficient supply of wholesome water to properties which are served by private water supplies at the date of this consent and which may be affected by the development. In particular, the plan shall identify all measures necessary to secure a sufficient and continuous supply of wholesome water to the properties until such time as the pre-development water supply conditions (quality, quantity and continuity) are reinstated, along with the criteria necessary for liability for the unpredicted event(s) to be attributed to the development and the duration of this liability, as far as reasonably practicable. Finally, in the event that the pre-development water supply conditions cannot be reinstated or the additional measures include new infrastructure (e.g. source, pipework, tank, treatment, etc.), the plan must include consideration of any long-term additional operation and maintenance tasks, including running costs, and confirmation of where liability for and/or responsibility thereof is to be attributed to the development/applicant.

Reason: To maintain a secure and adequate quality water supply to all properties with private water supplies which may be affected by the development.

22. Private water supply – Turbine 3

There shall be no commencement of development in relation to the construction of Turbine 3 (T3) or any of its associated infrastructure (including the new access track between T3 and T4/T5) until a scheme of details has first been submitted to and approved in writing by the planning authority, informing on the groundwater table and/or groundwater flow direction to demonstrate that the development will not impact the Nether Stewarton (“Stewarton”) private water supply system in terms of quality, quantity and continuity of water supply. In the event that any assessment or site investigation concludes that the location of T3 or its infrastructure could adversely impact the Stewarton or any other private water supply system(s), a scheme of details to avoid the impact(s) on the private water supply system(s) should be submitted to and approved in writing. Alternatively, it may be appropriate for T3 and its infrastructure be re-sited to another location under Condition 8, providing no adverse impacts to any private water supply systems as a consequence of the re-siting are able to be confirmed in writing and approved by the planning authority

Reason: Further information is required to determine the impact of the Turbine 3 (T3) development site on private water supplies and seek to maintain a secure and adequate supply to all properties with private water supplies which may be affected by the development.

23. Water and Flood Risk Management

There shall be no commencement of development unless the following matters have been submitted to and approved in writing by the planning authority and thereafter the development shall be carried out in accordance with the approved details:

- a. design details of new crossings or alterations to previous crossings to ensure that there is no decrease in flow conveyance and subsequently increased flood risk caused by the crossings;
- b. details of regular maintenance relating to new water crossings and drains, to mitigate by reducing surface water runoff impact;
- c. details of levels of discharges from SUDS or other drainage, confirming how it will be kept to existing Greenfield run-off rates;
- d. written explanation of how it is proposed to manage the minimisation of sediment entering the surrounding water courses.

Reason: to minimise impact on the water environment and to ensure that flood risk is ameliorated.

24. Redundant turbines

If one or more turbine fails to generate electricity for a continuous period of 12 months, then unless otherwise agreed in writing by the planning authority, the Company shall:

- a. by no later than the date of expiration of the 12 month period, submit a scheme to the planning authority setting out how the relevant turbine(s) and associated infrastructure will be removed from the site and the ground restored; and
- b. implement the approved scheme within six months of the date of its approval, all to the satisfaction of the planning authority.

Reason: To ensure that any redundant wind turbine is removed from Site, in the interests of safety, amenity and environmental protection

25. Aviation Safety

There shall be no commencement of development until the company has provided the planning authority, Ministry of Defence, Defence Geographic Centre and NATS with the following information, and has provided evidence to the planning authority of having done so:

- a. the date of the expected commencement of each stage of construction;
- b. the height above ground level of the tallest structure forming part of the development;
- c. the maximum extension height of any construction equipment; and
- d. the position of the turbines and masts in latitude and longitude.

Reason: in the interests of aviation safety

26. Aviation Lighting

Prior to the erection of the first wind turbine, the company shall submit a scheme for aviation lighting for the wind farm to the planning authority for written approval. The scheme shall include details of infra-red aviation lighting to be applied. No lighting other than that described in the scheme may be applied at the site, other than as required for health and safety, unless otherwise agreed in advance and in writing by the planning authority. No turbines shall be erected on site until the scheme has been approved in writing. The development shall thereafter be operated fully in accordance with the approved scheme.

Reason: in the interests of aviation safety

27. Site Decommissioning, Restoration and Aftercare

The development will be decommissioned and will cease to generate electricity by no later than the date falling twenty five years from the date of Final Commissioning. The total period for restoration of the site in accordance with this condition shall not exceed three years from the date of Final Commissioning without prior written approval of the Scottish Ministers in consultation with the Planning Authority.

There shall be no commencement of development unless a decommissioning, restoration and aftercare strategy has been submitted to and approved in writing by the planning authority in consultation with NatureScot and SEPA. The scheme shall detail measures for the decommissioning of the development, restoration and aftercare of the site and will include, without limitation, proposals for the removal of the above ground elements of the development, the treatment of ground surfaces, the management and timing of the works, and environmental management provisions.

No later than 3 years prior to decommissioning of the development or the expiration of this consent (whichever is the earlier) a detailed decommissioning, restoration and aftercare plan, based upon the principles of the approved decommissioning, restoration and aftercare method statement, shall be submitted to the planning authority for written approval in consultation with NatureScot and SEPA. The detailed decommissioning, restoration and aftercare

plan will provide updated and detailed proposals for the removal of above ground elements of the development, the treatment of ground surfaces, the management and timing of the works and environment management provisions which shall include:

- a. a site waste management plan (dealing with all aspects of waste produced during the decommissioning, restoration and aftercare phases);
- b. details of the formation of the construction compound, welfare facilities, any areas of hard-standing, turning areas, internal access tracks, car parking, material stockpiles, oil storage, lighting columns, and any construction compound boundary fencing;
- c. a dust management plan;
- d. details of measures to be taken to prevent loose or deleterious material being deposited on the local road network including wheel cleaning and lorry sheeting facilities, and measures to clean the site entrances and the adjacent local road network;
- e. a pollution prevention and control method statement, including arrangements for the storage of oil and fuel on the site;
- f. soil storage and management;
- g. sewage disposal and treatment;
- h. temporary site illumination;
- i. the construction of any temporary access into the site and the creation and maintenance of associated visibility splays;
- j. details of watercourse crossings;
- k. a species protection plan based on surveys for protected species (including birds) carried out no longer than 18 months prior to submission of the plan.

The development shall be decommissioned, site restored and aftercare thereafter undertaken in accordance with the approved plan, unless otherwise agreed in writing in advance with the planning authority in consultation with NatureScot SEPA.

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

28. Financial Guarantee

There shall be no commencement of development unless the company has delivered a bond or other form of financial guarantee in terms acceptable to the planning authority which secures the cost of performance of all decommissioning, restoration and aftercare obligations contained in condition 25 to the planning authority. The financial guarantee shall thereafter be maintained in favour of the planning authority until the date of completion of all restoration and aftercare obligations.

The value of the financial guarantee shall be determined by a suitably qualified independent professional as being sufficient to meet the costs of all decommissioning, restoration and aftercare obligations contained in condition 25. The value of the financial guarantee shall be reviewed by a suitably qualified independent professional no less than every five years and increased or decreased to take account of any variation in costs of compliance with restoration and aftercare obligations and best practice prevailing at the time of each review.

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

29. Public Path/Access Protection, Enhancement and Management

There shall be no commencement of development until a Public Path and Access Management Plan has been submitted to and approved in writing by the planning authority, in consultation with the Forestry Commission Scotland Ranger. The plan shall include (but not be limited to) the following:

- a. timings of any intended diversion, closure or obstruction of any public right of way (note that these are likely to need a separate consent);
- b. measures for ensuring that paths kept open during development are safe and can be traversed without undue harm to the amenity of users;
- c. measures to ensure that users of the path network and accessible areas more generally are able to navigate through and adjacent to the site, including mapping and signage;
- d. any temporary installations such as gates, stiles and bridges and the duration of their installation;
- e. proposals to restore original paths to an acceptable condition between construction and decommissioning and once full decommissioning has taken place; and
- f. proposals to enhance public access within and adjacent to the site during the lifetime of the development.

Reason: the development would interact with a range of public paths and accessible areas, with development effects causing changes that require careful management to ensure that the experience of users is not harmed unacceptably or, where it will be harmed, that the level and nature of harm is limited and controlled to minimise development effects.

Informatives

1. In relation to Condition 22, the potential re-siting or micro-siting of any turbines and associated infrastructure has the potential to impact private water supply systems, particularly if the sources have not been fully risk assessed (i.e. the true source locations have not been determined) and the aquifers (origin of the water) or distribution networks (pipework, tanks, etc.) serving said sources are undetermined and inadvertently impacted by the re-sited infrastructure. As such, as far as reasonably practicable, it must be ensured that all private water supply systems have been suitably risk assessed, and so it is recommended that the following information request be attached to the planning consent for this purpose:

(a) An ArcGIS overlay (plate/map/figure) should be provided of the PWS Search Zone (i.e. including the site boundary of the wind farm, the area within 3 km of the site boundary and source catchments) showing every PWS source point (i.e. the point where water is collected/sourced) risk assessed as per Section 5 and Table 10.1 of Technical Appendix A10.2 (PWSRA) of the EIA Report. Each source point should be labelled with the Source Reference Number as detailed in Table 10.1 and, if any source point depicted is not the true location of the source ("true source location") but it is simply the first point (e.g. a chamber) through which the water is being channelled or collected, then this should also be identified – e.g. through appropriate colouring, symbol shape, etc.

(b) An ArcGIS overlay should be provided of the PWS Search Zone showing every PWS source point screened-out of the risk assessment as per Table 10.2 of Technical Appendix A10.2 (PWSRA) of the EIA Report. Each source point should be labelled with the Source Reference Number as detailed in Table 10.2 and, if any source point is not the true source location, then this should also be identified – e.g. through appropriate colouring, symbol shape, etc.

(c) An ArcGIS overlay should be provided of the PWS Search Zone showing every property which has an undetermined water supply/source point, as per Table 10.3 of PWSRA V2. Each property (or collection of properties in close proximity to one another) should be labelled with the Source Reference Number as detailed in Table 10.3 of Technical Appendix A10.2 (PWSRA) of the EIA Report.

NOTES

1. Vote

Councillor Moffat, seconded by Councillor Scott, moved that the application be approved as per the officer recommendation

Councillor Douglas, seconded by Councillor Richards, moved as an amendment that the application be refused on the grounds that it was contrary to Policies 1, 2 and 11 of the National Policy Framework 4 (NPF4), Policy ED9 of the Local Development Plan in that the development would have unacceptable adverse landscape and visual impacts on the broader landscape as a result of the increased height of the proposed turbines which will be prominent and wholly contained within the landscape. Further, it is contrary to Policy 7 of NPF4 and Policy EP8 of the Local Development Plan in that the proposed development will have significant adverse impact on the historic environment, particularly the setting of Whaup Law Cairn.

On a show of hands Members voted as follows:-

Motion – 6 votes

Amendment – 3 votes

The Motion was accordingly carried and the application approved.

| <u>Reference</u> | <u>Nature of Development</u> | <u>Location</u> |
|------------------|--|---|
| 22/01876/FUL | Variation of Condition 1 of planning permission 97/00461/FUL to allow year-round occupation of caravans. | Pease Bay Caravan Site, Land West Of Whitelaw Burn, Eddleston |

DECISION: Approved as per officer recommendation subject to the following condition:

1. The development hereby approved shall be occupied for holiday use only and shall not be used as a person or persons' sole or main residence. The operator shall maintain an up-to-date register of the names of all holiday-makers staying in the holiday units and their principal home addresses. This information shall be made available for inspection at all reasonable times by an authorised officer of the Planning Authority.

Reason: To ensure compliance with the adopted development contributions policy, to retain effective control over the development and to ensure that the development, in line with the details presented in support of the planning application, is only ever used for holiday use and is not used as a private dwellinghouse by any permanent residents.