
Appeal Reference:	2012/A0070
Appeal by:	Altgolan Windfarm Ltd
Appeal against:	The refusal of full planning permission
Proposed Development:	Wind farm development comprising 5 turbines with a maximum base to blade-tip height of 125 metres (tower height of 80 metres and blade diameter of 90 metres) with ancillary development including wind turbine transformers located internally or underground, turbine hardstands, strengthening and widening of an existing site entrance, strengthening and widening of any existing site access roads, new on site access roads, drainage, electrical control building, communication antennae on control building; underground electrical cables linking the turbines with the electrical control building, underground communication cables, all related site works, drainage management measures and ancillary developments including silt traps and side drains to be installed along the access tracks and hard standings.
Location:	Townlands of Altgolan and Meenclogher, Killen, Castlederg, Strabane, Co Tyrone
Planning Authority:	Department of Environment & Derry City and Strabane District Council
Application Reference:	J/2006/0840/F
Procedure:	Hearing on 9 November 2016 and 3 December 2016
Decision by:	Commissioner Rosemary Daly dated 11 May 2017

Decision

1. The appeal is allowed and full planning permission is granted, subject to the conditions set out below.

Background and Preliminary Matters

2. On 21 August 2006, a planning application for a wind farm development was submitted to the Department of Environment. The application was accompanied with an Environmental Statement (ES). The development comprised 13 turbines; each with a maximum blade tip height of 125 metres and ancillary development.
3. The description of the proposed wind farm development was subsequently amended on 28 December 2007 and related to 7 turbines each with a maximum blade height of 125 metres and included other ancillary development. Further Environmental Information in respect of the amended development was submitted to the Department in December 2007. The Department refused planning permission on 12 May 2012.

4. An appeal was lodged on 23 May 2012 and in October 2012 and October 2013 the appellant voluntarily submitted other environmental information that they considered necessary to supplement the ES and FEI. This information was titled FEI II and FEI III. This environmental information related to the amended 7 wind turbine layout proposal.
5. Details of amendments to the scheme were set out in FEI III/2 (Section 5.5 -5.22 inclusive). There is no change to the site boundary and the temporary construction compound as shown on the drawings has been withdrawn from the proposal. In summary the amendments related to:
 - Turbine 3 repositioned 52 m NE
 - Turbine 5 repositioned 82 m S
 - Turbine 6 repositioned 110 m SE
 - Turbine 7 repositioned 13 m NE
 - Turbine 1 hard standing re-orientated
 - Turbine 4 hard standing re-orientated
 - Site track between Turbine 6 to Turbine 7 is re-aligned
 - Site track between Turbine 6 to Turbine 5 is re-aligned
 - Site track re-alignment to Turbine 3
 - Upgrade of existing site track to access turbines Turbine 4, Turbine 2 and Turbine 1
6. Commissioner de-Courcey issued a decision on this appeal on 21 December 2016. The decision refused planning permission on the site. This decision was quashed and remitted for reconsideration.
7. On the 5 October 2016 the Commission received a letter from Canavan Associates Ltd, advising the appellant now proposed a further amendment. The proposed amendment related to the removal of Turbine 6 and Turbine 7 and associated track from the proposed wind farm layout. A layout drawing was submitted (TL19) showing this amendment. The Council were also notified about the proposed amendment at this time.
8. At the appeal hearing on 9 November 2016 the Council representatives raised concerns regarding prejudice, to the Council, by considering the proposal without proper representation to the Planning Committee. Given the short time period between when the Council were informed about proposed amendment and the date of the next Council Planning Committee meeting it was accepted there had been a limited opportunity to allow proper consultation before the date of the appeal hearing. In the interests of fairness and to ensure no prejudice to the Council the appeal hearing was adjourned to facilitate discussion, regarding the proposed amendment, at the next Council Planning Committee meeting on 30 November 2016.
9. There are no statutory stipulations for the amendment of development proposals at appeal stage. The admission of amendment is a matter for the Commission's discretion. The appeal site remains unchanged since the submission of the application. The proposed turbines' hub height, blade diameter and over all blade tip height are also unchanged. The temporary construction compound is no longer part of the proposal. The previous amendments as noted above are not so substantial as to represent a different proposal from that which was the subject of the Department's decision. No objections were raised in respect of admitting these amendments. The proposal is now for 5 turbines, instead of 7 turbines. This amendment does not bring the impacts of the development any closer to the neighbouring residential development in the area. Albeit the proposed wind farm layout now relates to fewer

turbines, I am satisfied the amendments to the now proposed wind farm development are not so different to alter the substance of the development which was applied for.

10. The turbines have been consistently numbered throughout all the revised schemes. It is therefore reasonable to understand the effects of the removal of Turbine 6 and 7 and their associated tracks and ancillary works from the proposed scheme. The proposal does not involve any amendment or alteration to the layout of the remaining turbines 1-5 as indicated by the submitted revised drawing (TL19). At the appeal hearing on 9 November 2016 the appellant clearly set out the effects of the amended proposal for the benefit of all of the parties. The appellant's landscape and visual consultant provided a detailed description of the amendments in respect of the existing visualisations for the proposal and their environmental consultant set out the effects of changes to the impact on biodiversity and nature conservation. The reduced environmental, economic and social benefits were also outlined at this stage. I am satisfied the existing environmental information submitted is sufficient to consider the effects of the now amended (5 turbine) proposal. The information is clear, coherent and is presented in a way that does not make it difficult to understand the implications of the proposed amendment caused by dropping Turbine 6 and 7. I do not consider the circumstances to be the same as those presented in the House of Lords Case *Berkeley v Secretary of State for the Environment* and another where a paper trail relating to various case officers reports, statements of case, background papers and letters were alleged to constitute the environmental statement.
11. In line with issues raised in appeal decision 2013/A0102 it is evident in this appeal that reducing the number of turbines on the site is in order to address concerns relating to the impact of the proposal on the nature conservation and biodiversity interests of the site. The proposed 7 turbine layout, a larger scheme, was considered in the context of the submitted environmental information. I am satisfied that the now proposed 5 turbine scheme, whilst may alter the number of turbines on the site, does not constitute "any other environmental information" in accordance with Regulation 23 of The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015. As stated by Commissioner McCooley in decision 2013/A0102 "*a pragmatic approach should be taken to environmental impact assessment. Decisions of the courts have ruled that the environmental impact process is not an obstacle course but is an aid to good decision making*". Therefore an amendment to address an environmental concern is not uncommon. It is difficult to see how the proposed amendment in this case would give rise to any greater significant impact than the previous 7 wind turbine scheme.
12. The Council, statutory consultees and interested parties were given the opportunity to consider the environmental effects of the amendment 5 turbine scheme. The Council have also had an opportunity to properly consult the Planning Committee. On this basis I am satisfied that the Council has not been substantially prejudiced by the submission of the revisions at this late stage in the process. As the proposal is for a reduced number of turbines on the site; the proposed layout of the remaining 5 turbines is unchanged; and third parties have been invited and involved in the appeal process I have not been persuaded that there is a substantial prejudice to the members of public by accepting the revisions to the proposal at this stage in the appeal process.
13. Whilst I note that the former Strabane District Council were in support of the appeal proposal, this opinion is contrary to that of Derry City and Strabane District Council which is now the planning authority for the area. Whilst at the hearing there was dispute relating to the second reason for refusal being withdrawn by the Planning

Committee at the Council meeting on 30 November the Council's representatives provided a summary of how the Council had agreed to proceed. The position presented by the Council was to continue to defend the proposal for the 5 turbine scheme on the basis of both reasons for refusal and to present conditions on a without prejudice basis. Accordingly I will consider both reasons for refusal in this appeal.

14. Commissioner de-Courcey considered the matters raised by all of the parties in respect of the impacts of the proposed 7 turbine layout scheme. In reaching her conclusions she found the proposal to be visually unacceptable and would have an unacceptable impact on active peat. This 2016 decision was quashed in its entirety. I have been appointed to reconsider the appeal afresh. Notwithstanding the views of the previous Commissioner in making her decision, the proposal now before me relates to an amended 5 turbine scheme. In making my consideration of this appeal I have taking account of the various written submissions from the date the appeal was first received, together with the evidence presented at the appeal hearings. However I have not been party to the oral evidence presented to Commissioner de-Courcey. All interested parties were advised by the Commission of the new hearing dates and were at liberty to come along and make submission and present their views and comments in respect of the proposed wind farm development at Altgolan.

Reasoning

15. As required by Regulation 4 of the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015, I have, in reaching this decision, taken into consideration the environmental information presented by all the parties in relation to the application and this appeal
16. The main issues in this appeal relate to:
 - The environmental, economic and social benefits offered by the proposed development;
 - The impact of the development on the visual amenity and landscape character of the area;
 - Impacts on biodiversity and nature conservation interests; and
 - Impacts on residential amenity.
17. The wind farm site is located at Altgolan Hill, within the townlands of Altgolan and Meenclogher, near the rural settlements cluster of Blacktown, 3.5 km south of Killen and 8 km south of Castlederg. The site covers an area of 227.29 hectares and the elevations within the site vary from 180 metres at the west to 260 metres at the centre of the site. The area around the site is upland landscape dominated by cutover blanket bog. The site is bounded to the north and east by farmland, to the south by cutover blanket bog and to the west by a mixed conifer plantation at Carriackaholten. The site is accessed directly from the B72 Scraghey Road. The proposed 5 wind turbines are grouped to the southern part of the site on an undulating plateau varying in elevation between 185 – 230 metres AOD. Each turbine would have a maximum blade height of 125 metres.
18. The Strabane Area Plan 1986-2001 (SAP) operates, for now, as the local development plan for the area. The provisions of this plan apply in respect of all development proposals in the area. The site lies in the rural area identified in the SAP and not within any policy area of environmental designations. The SAP is silent on the subject of renewable energy and is therefore of limited assistance in determining this appeal.

19. The provisions of the Strategic Planning Policy Statement for Northern Ireland – Planning for Sustainable Development (SPPS) is material to all decision on individual planning applications and appeals. The SPPS sets out transitional arrangements that will operate until the new Councils have adopted new LDP's for their areas. In the interim period, the SPPS will apply, together with policy contained in existing regional Planning Policy Statements, as listed in paragraph 1.13 of the SPPS. The relevant policy context in this appeal is provided by Planning Policy Statement 21 Sustainable Development in the Countryside (PPS21), Planning Policy Statement 18 Renewable Energy (PPS18) and Planning Policy Statement 2 Natural Heritage (PPS2). The SPPS also states the 'Best Practice Guidance to PPS18 Renewable Energy' (BPG) and 'Wind Energy Development in Northern Ireland Landscapes' (SPG) published by the Northern Ireland Environment Agency (NIEA) will continue to apply.
20. Policy CTY1 of PPS21 states there are a range of types of development which in principle are considered acceptable in the countryside and that will contribute to the aims of sustainable development. It states that planning permission will be granted for non residential development in the countryside for renewable energy projects in accordance with PPS18. Other types of development will be permitted where there are overriding reasons why that development is essential.
21. The aim of PPS18 is to assist the siting of renewable energy generating facilities in appropriate locations within the built and natural environment in order to achieve Northern Ireland's renewable energy targets and to realise the benefits of renewable energy. This aim is consistent with the aim of the SPPS for the siting of renewable energy facilities. Policy RE1 Renewable Energy Development of PPS18 states that development that generates energy from renewable sources will be permitted provided the proposal will not result in an unacceptable adverse impact on five criteria. The Planning Authority and third party objections raised concerns with the following criteria:
 - criterion (a) public safety, human health, or residential amenity;
 - criterion (b) visual amenity and landscape character;
 - criterion (c) biodiversity, nature conservation or built heritage interests; and
 - criterion (d) local natural resources, such as air quality or water quality.
22. Specific to wind energy development the policy requires compliance with seven further criteria. In respect of the proposed wind farm concerns were raised to the following criteria:
 - criterion (i) that the development will not have an unacceptable impact on the visual amenity or landscape character through: the number, scale, size and siting of turbines;
 - criterion (ii) that the development has taken into consideration the cumulative impact of existing wind turbines, those that have permissions and those that are currently the subject of valid but undetermined applications;
 - criterion (vi) that the development will not cause significant harm to the safety or amenity of any sensitive receptors (including future compliance of committed developments) arising from noise, shadow flicker, ice throw and reflected light.
23. Further to policy set out by PPS18, paragraph 6.225 of the SPPS states that the wider environmental, economic and social benefits of all proposals for renewable energy projects are material considerations that will be given appropriate weight in determining whether planning permission should be granted.

Environmental, Economic and Social Benefits

24. Capacity and existing grid connection options are available in the area at Magherakeel or at the substation under construction at Curraghmuklin. The proposed 5 turbine development will result in a Maximum Export Capacity of 15 MW making around a 0.49% contribution towards meeting the Northern Ireland Strategic Energy Framework Target of 40% of its electricity consumption from renewable sources by 2020. It is therefore reasonable to assume the proposed development could be delivered in time to contribute to meeting the Northern Ireland 40% target by 2020.
25. At the appeal hearing the appellant provided a recalculation of the economic benefits of the proposal in respect of the 5 turbine scheme. These are as follows:
- Overall capital spends during the construction phase of c£16.3 million, with £8.2 million likely to be spent in Northern Ireland.
 - C91 direct job years created or sustained during the 18 months of construction phase.
 - Associated wages and gross value added (GVA) of £1.8 million and £3.2 million respectively
 - Total (direct, indirect and induced) benefits from 18 months of construction phase include the creation and sustainment of 221 total job years, £4.6 million of wages and £7.3 million of GVA for the NI economy.
 - 4 direct jobs, £210,000 of direct wages and £472,000 of direct GVA per annum.
 - Estimated total (direct and indirect) benefits from the ongoing operation of the proposal include the creation and sustainment of 18 Jobs, £456,000 wages per annum and £1 million of GVA per annum
 - £15.4 million in terms of wages and £33.3 million of GVA for NI accounting for activity during both the construction phase and the ongoing operational phase over the lifetime of the project (25 years);
 - Treasury benefits from increased taxes and benefits savings. Including tax revenue estimated £2.2-2.8 million during construction and £5.8 to £7 million over the project lifetime. Unemployment benefits savings in the range of £0.6 to £1.2 million during the construction phase and £1.2 to £2.4 million over the lifetime of the project.
 - Increased rates ranging from £1.5 million to £6.4 million over the lifetime of the project;
 - Reduction in 280038 tonnes of CO₂ emissions over the operational life of the wind farm and 4.3 million Euros in avoided carbon costs;
 - Meeting the electricity needs of circa 8,387 households per year; and
 - Opening up the market security of energy supply.
26. Whilst the Council argued that these benefits are overstated, I am satisfied they are substantial and that it is appropriate to attach significant weight to these considerations in the determination of this appeal.
27. The appellant advised they fully support the development of a joint community benefit between the former Strabane and Omagh District Council areas. This is standard industry practice. The appellant stated this framework was previously agreed and published in the 'Guidance Protocol on Community Benefits Derived from Wind Farms in West Tyrone (April 2014)'. Under this protocol the appellant is committed to a contribution of £5000 per MW per annum. The appellant stated that the Community Fund would amount to around a £1.9 million contribution to this community fund over the 25 year life time of the development. Paragraph 5.71 of the SPPS states that such voluntarily offered community benefits cannot be considered material considerations

in decision-taking. This is contradicted by the statement in paragraph 6.225 that the wider environmental, economic and social benefits of all proposal for renewable energy projects are material considerations. In the High Court Judgement in *R (on the application of Wright) v Forest of Dean District Council (2916) EWHC 1349 (Admin)* Mr Justice Dove held that a “community donation” was a purely financial contribution which did not regulate how the development might operate and it was untargeted contribution of off-site community benefits which was not designed to address a planning purpose. Whilst I note the third party support in respect of the Community Fund it is my view that the delivery of the Community Fund is a matter for the appellant. It does not serve any planning purpose as it is not related to the development proposed on the appeal site. My conclusions relating to the economic, social and environmental benefits of the project as stated above stand regardless of whether or not the Community Fund is in place.

Landscape and Visual Impact

28. The SPPS and Policy RE1 of PPS18 state that renewable energy development should not result in an unacceptable adverse impact on the visual amenity and landscape character. Paragraph 6.230 of the SPPS recognises that wind farms by their nature are highly visible yet this in itself should not preclude them as acceptable features in the landscape. The ability of the landscape to absorb development depends on careful siting, the skill of the designer and the inherent characteristics of the landscape such as landform, ridges, hills, valleys and vegetation.
29. Paragraph 1.3.18 of the BPG also recognises there is no landscapes into which a wind farm will not introduce a new and distinctive feature and given the Government’s commitment to addressing the important issue of climate change and the contribution expected from renewable energy developments, particularly wind farms, it is important for society at large to accept them as a feature of many areas of the region for the foreseeable future. Paragraph 1.3.19 continues to state this is not to suggest that areas valued for their particular landscape and/or conservation interest will have to be sacrificed and goes on to say careful consideration is required to locate the development even though highly visible, every effort should be made to reduce the impact and aid integration into the local landscape.
30. The SPG guidance is based on the sensitivity of Northern Ireland’s landscapes to wind energy development and contains an assessment of 130 Landscape Character Areas (LCA’s) in Northern Ireland. Whilst the SPG provides useful supplementary guidance to be taken into account, paragraph 4.15 of Policy RE1 of PPS18 states it is not intended to be prescriptive. The appeal site straddles LCA14 Lough Braden and LCA19 Killeter Uplands. Both LCA’s have been noted to have an overall ‘medium’ sensitivity to wind farm development. In respect of LCA14 masts and existing wind farms are noted as existing man made features in the area. It notes at the time of the landscape assessment there were three operational wind farms in the LCA (Tappaghan 13 Turbines 88m high, Lough Hill; 6 turbines 83 metres high; and Bin Mountain, 6 turbines, 92 metres high). It states that cumulative impact is already an issue, affecting both the setting of lower Lough Erne to the south and Derg Valley to the north. LCA19 states that care should be taken to avoid adverse impact on important skylines at the head of Derg Valley. At the time of the landscape assessment there were two consented wind farm sites in this LCA (Crigshane, 14 turbines, 100 metres high and Churchill, 8 turbines, 100 metres high) as well as three further application sites, hence there is an issue of cumulative impact already.

31. The objections in respect of the landscape and visual amenity impacts relate to the cumulative effects of the development in addition to other existing and approved wind farms in the locality. At the appeal hearing on the 9 November 2016, the appellant's landscape and visual consultant summarised the effects of dropping turbines 6 and 7 from the proposed wind farm layout. The removal of turbines 6 and 7 will result in the following changes to the landscape and visual assessment.
- From the north of the site, the nearest two turbines are turbine 6 and turbine 7 are no longer form part of the proposed wind turbine layout;
 - From the south, the two further turbines (turbines 6 & 7) are no longer part of the proposed layout;
 - From the east, the two far right turbines (turbines 6 & 7) are no longer part of the proposed layout; and
 - From the west, the two far left turbines (turbines 6 & 7) are no longer part of the proposed layout.
32. As detailed in the FEI III C5 (included in the appellant's consolidated landscape and visual pack) and from the Council's map and table included in appendix 8 of their (2016) statement of case there are a some 14 wind farms in the area surrounding the appeal site. These include:

Wind Farm Site	Number of Turbines	Status
Church hill	8	Operational
Crigshane	14	Operational
Seegronan	6	Operational
Seegronan ext	3	Planning Appeal
Tievenameenta	15	Construction
Lough hill	6	Operational
Bin Mountain	6	Operational
Castlecriag	10	Not built
Slieveglass	3	Not built
Thornog & ext	8	Operational
Tappaghan & Ext	19	Operational
Bessy Bell	6	Operational
Bessy Bell 2	4	Not built
Pigeon Top/ Pollnalaght	21	Not built

33. An OS map indicating the location of single turbines in the area was provided by the Council. Whilst these single turbines have not been included in the appellant's landscape and visual assessment I have taken them into account in assessing the proposals cumulative impact on the receiving landscape. The Council's concerns in respect of the landscape and visual impact related to the number, scale, size and siting of the proposed turbines given, in particular, the operational and/or consented wind farms at Churchill, Crigshane, Seagronan, Tievenameenta, Lough Hill, Bill Mountain, Castlecriag and Slieveglass. Additionally the Council stated that further significant wind farm development in these uplands would detract from their scenic quality by completely saturating the landscape with turbines through effectively joining up clusters.
34. Guidance contained in the SPG in respect of LCA14 Lough Braden states that significant separation distances between clusters may be required to prevent the main ridgelines becoming dominated by turbines. In respect of LCA19 the guidance states adequate separation distances between wind energy developments or clusters will be

a very important issue to help conserve its wild character. Table 3 General Principles of the SPG provides advice for spacing between wind farms and turbine grouping. In making my assessment of the landscape and visual impacts of the proposed wind farm I have taken into account this guidance.

35. The Zone of Theoretical Visibility (ZTV) illustrates the locations in the study area where landform may permit views of the proposed turbines. The ZTV relies on contour data and does not take account of the screening effects of surface features such as local topographic, vegetation, buildings and other built structures. The ZTV also uses the tip height of the turbine to denote the wind farm visibility in the area. A revised ZTV map was presented for the amended 5 turbine layout. It illustrated a 10% reduction in the ZTV of the now proposed wind farm. Using the ZTV tool, of itself, to assess the visual impact of the proposal within 5 km the wind farm will be seen around the site. Beyond 5 km – 10 km the main landscape and visual effects will be to the north and north east towards Derg Valley and then dissipating to a much lesser extent further away from the site towards the north, but becoming more visible over a long distance, up to 20 km, to the south west towards Lower Lough Erne.
36. In line with techniques recommended by the Northern Ireland Environment Agency (NIEA) landscape architects photomontages and wireframes were provided from 12 different viewpoints in the area. The Planning Authority identified viewpoints 1, 2, 3, 4, 6, 9 & 12 to be critical in terms of the landscape and visual impacts of the proposal.
37. The Council also advised these views points should be considered also on a transient basis when travelling throughout the area rather than a static position from each viewpoint. All of the viewpoints have been inspected on site with the use of the photomontages and commentary in the submitted text. However the identified viewpoints, noted above, have formed the basis of my consideration of the landscape and visual impacts of the proposal.

Viewpoint 1 Coolnaherin Park on the B50

38. This viewpoint is some 7.5 km north east of the appeal site where views along the B50 and across the Derg Valley are afforded of the appeal site and its surroundings. The submitted wireframe representative of this view point shows the upper part of two turbines and the blade tips of a third turbine on the contour of the landform. However, as clarified at the appeal hearing, the removal of turbines 6 and 7 from the layout means that from this view point only the upper part of one turbines and blade tip of another turbine would be visible. From this area the visual impact of the proposed wind farm of itself would not have a significant impact on the landscape.
39. Cumulatively from this viewpoint the wireframe indicates that 2-3 turbines as permitted at Pollnalaght would be visible from this viewpoint. However, given the orientation of these turbines to the far east of Altgolan only the blade tips of the 2-3 turbines would be seen and would be substantially screened by the intervening landform, vegetation, buildings in the forefront. Similarly to the far west of the appeal site from this view point the wind farms at Tievenameeta and Seegronan are substantially screened by the intervening topography, vegetations and buildings. Closer to the appeal site, from this view point, the upper part of one turbine at the Castlecraig wind farm would be visible and taking account of the 3 turbines at the Slieveglass wind farm which are located further from the appeal site than Castlecriagh, there is sufficient visual separation from the other wind farms along the ridgeline. From this viewpoint the wind farms at Bin Mountain and Lough Hill read as one wind farm. Where only the upper part of some of the wind turbines are visible. The appeal site offers a similar

separation distance from the grouping of turbines at Bin Mountain and Lough Hill with Craigshane and Slieveglass. Such separation is appropriate in this broad rounded drumlin and valley landform in the area and is consistent with the general principles set out in table 3 of the SPG. The large scale single turbine that is visible in line with Altgolan does not interrupt the visual separation of the turbines on the appeal site in relation to the other turbines in the area. Around 3 single turbines are currently visible on the landscape from this viewpoint; however, they are smaller and on lower ground and are visually separated from the appeal site. The appeal proposal would not have an adverse impact on the visual amenity or landscape character of the area when added to the existing turbines already consented or built in this area.

Viewpoint 2 Killen (along the B72 Scraghey Road)

40. This view point is taken when leaving the small settlement of Killen and is some 4.5 kilometres north east of the appeal site. The landscape from this area is notable by the rounded hills in the distance rising up with defined field boundaries and patterns. The wireframe representation of this view point shows a substantial part of two turbines at an upper level, with glimpses of the blade tips of three turbines sited to the rear of these two more prominent turbines. At the appeal hearing the appellant clarified that the two more prominent turbines to the forefront of this are turbines 6 and 7 and they are now removed from the overall layout. The removal of turbines 6 and 7 reduces the overall visual impact of the proposed wind farm from viewpoint 2. The landform at Altgolan screens the lower part of the remaining turbines on the site limiting the views of the turbines to the upper part of the turbines and blade tips of three to four of the turbines. The wind farm will not appear as prominent as shown on the visual representation in FEI III Figure 2.2 b.
41. Cumulatively from this viewpoint when looking to the east side of the Scraghey Road (B72) and east of the appeal site, the blade tips and upper part of some of the turbines at Loughhill and Bin Mountain are visible along the ridge. These turbines appear clustered together and are sufficiently separated from the now proposed 5 turbines on the appeal site. Other turbines to the east side of Scraghey Road at Castlecriag and Slieveglass are further in the distance and would not be entirely visible with the 5 turbines on the appeal site. Similarly to the west side of Scraghey Road the wind turbines at Seegronan, Tievenameenta and Church Hill read as one cluster of wind turbines. The fall and rise in the topography between the appeal site and this cluster of turbines to the east combined with intervening landscape, vegetation, forestry and other features on the land form means there is sufficient visual separation between the appeal site and this cluster of wind turbines to the east. The reduced turbine layout means the visual scale and layout of the wind farm is not as significant as the 7 turbine layout. The removal of turbine 6 and 7 means the proposed wind farm would not appear as prominent along the ridgeline. The proposed wind farm would be in keeping with the spacing, scale and height of the other turbines in the area. Whilst from this view point there are a high number of turbines visible along the ridge line the introduction of the now proposed 5 turbines would not significantly alter the landscape character of the area or result in an unacceptable cumulative visual impact of turbines in the area. As one travels closer to the appeal site views of the other wind farms in the area become less significant. As the proposed wind farm would be framed by the cluster of wind turbines to the east and west it would not be out of character in this landscape and given the spacing between the appeal site and the other wind farms in the area the proposal would not have an unacceptable cumulative impact.

Viewpoint 3 Quarry on B72

42. This view is within 1 kilometre south east of the nearest wind turbine. At such close range the visual representation contained in FEI III Figure 2.3b shows that all 7 turbines will be clearly visible in their entirety and will appear strung along the ridge of this hill. The removal of turbine 6 and 7 means the lateral spread of the turbines is not as significant. The proposed five turbines will appear grouped in a cluster together on the lower part of the site which is backed by the forestry plantation at Carrickaholten.
43. In the immediate area surrounding the site man made intervention is already evident in the landscape. An existing overhead electricity line on twin poles runs along the south east part of the site. In the distance along the ridgeline the landscape is cluttered with numerous wind turbines relating to other wind farms at Tievenameenta, Craigshane to the south west and to the north west of the site the blade tips of the wind farm at Seegronan are visible. Furthermore when approaching this viewpoint along the B72 the turbines at Bin Mountain and Lough Hill are evident to the east of the site. From this close range view of the appeal site there is cumulative impact with the surrounding wind farms. In this context of numerous turbines in the area, the additional of 5 turbines at this location would not significantly alter the existing landscape character of this area, where wind turbines and other vertical infrastructure is already a common feature in the surrounding landscape. Furthermore this impact is only within this close range of the appeal site and as the BPG acknowledges that up to 2 kilometres the general perception of a wind farm is likely to be a prominent feature. Whilst the proposal would add to the clutter created by other wind farms and vertical features in the area these views are local to this part of the B72 which is within 2 kilometres of the appeal site. From this viewpoint I therefore do not consider this impact to be significant adverse impact on the visual amenity or landscape character of this area.

Viewpoint 4 Ulster Way at Gortnaree

44. This view point provides a panoramic view of the ridge line and land when viewed from Gortnaree some 3.5 kilometres from south west of the appeal site. Similar views of the ridge line are possible in this area from the Scraghey Road towards Tawneydarragh, Clogher Bridge and Cushey's Bridge looking northwards towards the site. The visual representation shown in FEI III Figure 4 shows all seven turbines on the ridge. The removal of turbine 6 and 7 relate to the dropping out of two turbines at the very rear of the proposed layout. This does not significantly alter the appearance of the overall scale and size of the proposed wind farm when viewed from this location. Gortnaree is a minor road in a rural part of the landscape. It provides the context for assessing the proposal from the Ulsterway in this area. Views of the site are in the context of generally low lying land that rises towards the appeal site. Well defined hedge and tree boundaries are a common feature in this area. From this view point a substantial part of the 5 wind turbines will be visible on the land and they will appear relatively prominent.
45. When viewed from this area the pattern of wind farms along the ridge is very evident in the distance. The wind farm at Tievenameenta stretches across the ridge line to the west of the appeal site. A gap exists and then the blade tips and upper parts of the turbines at Churchill and Seegronan are visible on the landscape. To the east of the appeal site views of the wind farms at Bin Mountain and Lough Hill are limited because of their orientation and intervening undulating topography and vegetation. The other wind farms to the east at Castlecraig, Slieveglass, Thornog and Tappaghan are not seen in this context because of their distance from the appeal site and the

intervening landscape features and vegetation in the area. The proposed 5 wind turbines would introduce a new cluster of turbines on the ridgeline but the cluster would share a similar separation distance between wind farm groups already in the area. On site, when viewed in the three dimensional form, the pattern and distribution of the wind farms does not appear as a row of turbines along a ridge as illustrated by FEI III Figure 2.4b. The broad hills and associated valleys covered with intermittent vegetation and buildings reduce the 2 dimensional appearance of the wind farms as illustrated by the visual representation of the wind farm in its context. From this viewpoint I consider the appeal proposal would not have any greater significant impact on the landscape character than the existing turbines in the area. I therefore do not consider the cumulative visual impact from this viewpoint to be critically unacceptable.

Viewpoint 6 Aghamore Road

46. This viewpoint is from the north east of the appeal site and affords a panoramic view of the area. The visual representation relating to the 7 turbine scheme as detailed by FEI III Figure 1.6 shows the top part of two turbines rising above the ridgeline of the land form. These are turbines 6 and 7 which are no longer part of the appeal proposal. The impact of the proposed wind farm from this location would be negligible on the landscape character of the area.

Viewpoint 9 Cronalaghy (Co Donegal)

47. This view point is from almost 11 kilometres north of the appeal site. The visual representation shown by FEI III Figure 2.9b shows the blade tips of two turbines and very minimal part of the other turbines on the site. The most prominent turbines when viewed from this location are 6 and 7 which are no longer part of the appeal proposal. The removal of these two turbines significantly reduces the appearance of the proposed wind farm on the landscape character of the area.
48. The cumulative impact of the wind farms in the area is excessive on this area of landscape. Nonetheless, given the turbines will be substantially screened by the landform and intermittent vegetation and only a small part of the blade tips will be seen on the site the proposed remaining 5 turbines at Altgolan will not significantly alter the appearance of these wind farms on the landscape.

Viewpoint 12 Maghercreggan Road near Drumlegagh

49. This view point is from almost 11 kilometres north east of the appeal site. From this location extensive views of the Derg Valley are afforded. The visual representation shown by FEI III Figure 2.12b shows the blade tips of two turbines. These two turbines are 6 and 7 which no longer form part of the proposed turbine layout. The removal of these two turbines significantly reduces the appearance of the proposed wind farm on the landscape character of the area.
50. The cumulative impact of the wind farms in the area is excessive on this area of landscape but the turbines appear small and in the distance and would only be seen in their entirety in very clear visibility. Even when taking in to account any transient views in this area the proposed five turbines on the appeal site will not significantly alter or add to the appearance of the cumulative impact of the other wind farms on the landscape.

51. There are a number of single turbines built and approved in this area; however they are visually separate in terms of scale and siting from the proposed development on the appeal site. I do not find the cumulative impact of the appeal proposal with the single turbines in the areas to be determining.
52. In conclusion I find that the visual impact of the wind farm will be greatest from the southern views and up close to the wind farm. The turbines will be visible from this area but are set within the wider context of other wind farms. I do not consider the addition of these five turbines would significantly alter nor have an unacceptable adverse impact on the visual amenity and landscape character of the area. Views of the proposal from the Derg Valley are relatively limited, especially as turbines 6 and 7 have been dropped from the layout. The appeal proposal when added to the existing approved and built wind farms or single turbines in the area would not give rise to any significant increase in the impacts of wind farm development in the area or give rise to an unacceptable cumulative impact. The appeal proposal therefore satisfies this element of criteria (b) and (ii) of Policy RE1 of PPS18 and the policies set out in the SPPS.

Impacts on biodiversity and nature conservation interests

53. The Council's second reason for refusal relates to the impact of the proposal on the biodiversity and nature conservation interests of the site. Third parties also raised concerns relating to biodiversity and nature conservation.
54. The removal of Turbine 6 and Turbine 7 from the layout has given rise to a reduction in the overall habitat restoration area. The proposal now relates to a restoration area of 28.8 hectares which is considered to be a 28.8 factor betterment/improvement of the habitat and conservation interests of the site.
55. Criterion (c) of Policy RE1 relates to impacts on biodiversity, nature conservation or built heritage interests. Policy NH5 of PPS2 states that planning permission will only be granted for a development proposal which is not likely to result in the unacceptable adverse impact on or damage to known priority habitats or active peatland. It goes on to state that a development proposal which is likely to result in an unacceptable adverse impact on, change or damage, to habitats, species or other features may only be permitted where the benefits of the proposed development outweigh the value of the habitat, species and fauna. In such cases, appropriate mitigation and/or compensatory measures will be required.
56. It was accepted the removal of Turbine 6 and Turbine 7 and their associated tracks significantly reduced the impact of the proposed wind farm on active peatland on the site. However the Council raised concern about other smaller areas of active peatland, between Turbine 4 and Turbine 2, on the site that had not been fully explored at the previous hearing given the significance of the active peatland around Turbine 6 and Turbine 7.
57. Northern Ireland Environment Agency Natural Environment Division (NIEA NED) carried out a survey of this land between T4 and T2. They noted that this area contained deep peat and was recovering from past mechanical peat cutting. It considered as not being currently actively peat forming. Although NIEA NED considered the prevention of further damaging activities on the site (such as peat cutting, grazing, and burning) and along with some pro-active habitat management measures that this area has the potential to recover to active peatland in the medium

to long term. Nonetheless in respect of the reduced 5 wind turbine scheme NIEA NED considered it will not have a significant impact on active peatland.

58. The remaining concern related to the impacts of the development on the Northern Ireland (NI) priority habitat. NIEA NED noted that the proposal will result in the loss of non active blanket bog (0.82 hectares) and upland heathland (0.4 hectares), which are Northern Ireland priority habitats. It is noted that much of the habitat has been degraded through past human activities and that the proposed wind farm scheme has sought to minimise further damage to these habitats through careful siting of infrastructure, the use of existing access tracks and other appropriate mitigation measures. For these reasons NIEA NED would not contest the development of the 5 turbine scheme provided appropriate mitigation and compensation measures relating to impacts on these habitats were provided.
59. It was noted by NIEA NED that the measures described in FEI III/5 and further in the appellant's statement of case could deliver improvements to priority habitats on the site (non active blanket bog and upland heathland). However NIEA NED stated the spreading area of surplus peat should be confined to the smaller area noted on Figure 2 of the FEI III/5 by red hatching showing M20a blanket bog. The appellant had no objection to this requirement and agreed that a planning condition could be used to ensure the implementation of this requirement. It could be provided for and detailed in the final Habitat Management Plan and Peat Management Plan that would be submitted and agreed before any work commences on the appeal site.
60. NIEA NED stated that additional detail/clarification was required relating to drain blocking measures on the site. At the appeal hearing on 3 December 2016 the appellant provided clarification relating to the blocking of drains on the site. Clarification was also provided that all damaging activities would stop on the site and this could be ensured with the use of a planning condition. The appellant also agreed to provide a revised map to show the identification of 'donor' areas for harvesting heather brash/seed and bog cotton seed. As the baseline habitat conditions have been provided within the supporting environmental information it is not necessary to require the appellant to provide such details again. The chronology and timescales of proposed habitat management measures are set out in FEI III. These measures and measures stating suitable monitoring programme can be specified in the final Habitat Management Plan (HMP). All of the agreed measures can be implemented over the lifetime of the development on the site and can be implemented with the use of a planning condition.
61. On the basis of the above clarification and given NIEA NED are now satisfied that appropriate habitat management measures will be implemented on the site that would compensate for the loss of and damage to Northern Ireland priority habitats there appears to be no justification for the Council's second reason for refusal. Accordingly the second reason for refusal is not sustained.
62. Third parties raised concern relating to impacts of the development on birds in the area such as Curlew, Woodcock, Snipe, Hawks and Ravens. Concerns also related to impacts on Whooper swans and Geese heading south and who regularly stop off at Lough Any. Section 4 of the 2006 Environmental Statement provided a survey of birds on and around the site. An updated assessment in response to concerns raised by NIEA was provided within Section 10 of the FEI III in respect of the impacts of the proposed 7 turbine layout on ornithological issues on the site.

63. The 2006 Environmental Statement noted flights of small Whooper Swans passing in a northerly direction, generally following the River Derg valley. It was suggested that this might be connected to the movements of wintering birds from Lough Erne to significant Whooper Swan wintering areas in the Foyle. The 2006 Environmental Statement noted that the development would have a low risk to the disturbance of Whooper Swans in the area. No convincing evidence was provided by third parties and no concerns were raised by the Council or NIEA Natural Heritage in respect of unacceptable impacts on Whooper Swans or Geese. I have not been persuaded that the proposal would be likely to have a significant impact on these species.
64. NIEA Natural Heritage was consulted with the information provided in the FEI III that related to the updated status of Curlew and other bird species on the site. No Curlew was found at the locations of the original survey or within 800 metres of any turbine proposed on the site. Two territories were centred at 951 metres and 1,755 metres. It was estimated there are between 4 and 6 pairs of Snipe within 500 metres of the potential disturbance zone. Subject to the implementation of the mitigation measures NIEA Natural Heritage considers the proposal is unlikely to result in a significant adverse impact upon local birds. Accordingly such mitigation measures relating to construction works and the provision of an Ornithological Management and Monitoring Plan (OMMP) are necessary to protect breeding birds, including Curlew and Snipe. As pre construction surveys have already taken place on the site it is not necessary that this element is again included within the (OMMP).
65. Section 11 of the FEI III relates to the impact of the development on Bats on the site. The results of the survey indicated the majority of the Altgolan Wind Farm site is of low value to foraging and commuting Bats species. Bat activity was focused along the sheltered southern elevation of the Carrickaholten Forest. All turbines are positioned at least 50 metres from the nearest potential Bats habitat and this satisfied the Natural England 50 metre buffer distance recommendation for wind turbines and a potential bat foraging habitat. The amended 5 turbine layout does not alter this conclusion. In order to minimise any risk to Bats the submission of a Bat Mitigation Plan is necessary.
66. Third parties raised concerns relating to other animals and wildlife on the site such as badgers, foxes and hares. No persuasive evidence was presented to explain or justify how the proposed wind farm would have an unacceptable adverse impact on these animals in the area. I do not find these objections determining in this case.
67. Third parties raised concerns in their written evidence relating to an historical site (namely a priests mass rock), it was stated by the parties present at the hearing on the 3 December 2016 that this site does not exist. Nonetheless section 8 of the 2006 Environmental Statement carried out a full assessment of the impacts of a wind farm development on the site in respect of the cultural heritage and archaeological interests in the area. The survey concluded that the construction of a wind farm on the site would have a moderately adverse effect on the localised archaeological environment. Accordingly to ensure that archaeological remains within the site are properly identified, protected and appropriately recorded a planning condition relating to a programme of archaeological work is necessary.
68. Section 8 of FEI III provided an updated assessment in response to matters raised by NIEA Natural Heritage. Detailed consideration in this assessment was given to the River Foyle and Tributaries SAC and ASSI. The hydrological assessment demonstrates the potential effects of the site on the receiving water environment, including surface water quality have been minimised through the use of SuDs

techniques and drainage design. A robust suite of mitigation measures have been presented and include:

- Avoidance based on baseline constraints mapping;
- Optimisation of design to minimise impact on the water environment;
- Implementation of a Drainage Management Plan comprising the use of SuDs (drainage) and silt management; and
- Construction phase pollution prevention procedures.

69. The implementation of such mitigation measures will give rise to no significant residual effects to the receiving hydrological environment from the development on the site. The assessment ascertains a minor residual impact to the Foyle SAC arising from; changes in runoff and flow patterns; silt/suspended solid pollution of surface water; or chemical pollution of surface water will not constitute a likely significant effect to the SAC/ASSI and would not affect its integrity.
70. Section 7 of the FEI III provided an assessment of peat slide risk. The conclusion of this assessment stated notes that the proposed turbine locations are in areas that coincide with shallow to moderate peat depths and slopes of moderate to moderately high gradient and that there is an optimal level of risk can be attained at each turbine. NIEA Natural Heritage stated that from the information provided on peat slide risk, ground stability and hydrology they are satisfied the proposed development will not affect the integrity of the of the River Foyle and Tributaries SAC and ASSI. A condition requiring the submission of a Construction and Environmental Management Plan (CEMP) detailing such measures is necessary to ensure the implementation of the outlined mitigation measures. This would prevent likely significant effects on the River Foyle and Tributaries SAC/ASSI. I am satisfied such measures are robust and can be put in place to limit likely significant effects on the hydrological environment of the site including any impacts on Lough Any located some 460 metres south west of Turbine 1. I have not been persuaded by the third party concerns relating to hydrological impacts of the development on the site would have an unacceptable impact on the habitats of Lough Any.
71. Section 12 of FEI III sets out a Fisheries Report in response to matters raised by NIEA Natural Heritage. The report outlines background on fisheries of the Derg and Termon Rivers. The River Derg forms a significant part of the River Foyle and Tributaries SAC/ASSI and is hydrologically linked to the appeal site by the Killen Burn. The report states that principal risk to fisheries and the aquatic environment is during the construction phase of the development. However with the implementation of mitigation measures and the use of best practice guidance on construction, there will be neutral impact on fisheries interests in the streams directly draining the site, or in the downstream, Derg and Termon Rivers.
72. Third parties referred to a sink hole, a natural underground waterway some 50 metres from (H28) 99 Scraghey Road, concerns were raised if this became damaged or blocked that this may give rise to considerable flooding and damage their property. At the appeal hearing on 3 December 2016, it was stated by the appellant that this was outside the site boundary and was a feature characteristic of limestone underlying. The submitted environmental information fully considers the risks to the hydrological environment including risk of flooding. Such measures will be considered within the Construction and Environmental Management Plan (CEMP). I have not been persuaded that objectors concerns relating to flooding are determining in this case

73. Having considered the impacts of the development on the biodiversity and conservation interests of the area. I am satisfied that the appeal proposal satisfactorily meets the criteria (c) and (d) of Policy RE1 of PPS18 and the relevant policies of the SPPS.
74. The appeal site is upstream from the River Foyle and Tributaries Special Area of Conservation (SAC) and Area of Special Scientific Interest (ASSI) which is a significant European Site. The removal of turbines 6 and 7 and their associated access will further reduce the impact of the development on the area around Killen Burn, a tributary of River Derg. Having considered the environmental information submitted with the proposal, taking account of the comments from NIEA and the proposed implementation of the outline mitigation measures, I am satisfied that the development would not have any 'likely significant effects' that would impact on the integrity of the River Foyle and Tributaries SAC/ASSI. It is therefore not necessary to undertake an Appropriate Assessment for this project.

Residential Amenity

75. Third parties raise concern regarding the visual impact of the development on their residential amenity. Paragraph 2.3 of the SPPS states the planning system operates in the public interest of local communities and the region as a whole and encompasses the present as well as the future need of society. It also states that it does not exist to protect the private interests of one person against the activities of another. The policy states the basic question is whether a proposal would unacceptably affect the amenities and the existing use of land and buildings that ought to be protected in the public interest. Policy RE1 establishes for wind farm development a separation distance of 10 times rotor diameter to occupied property and a minimum distance not less than 500 metres, will generally apply. Paragraph 6.227 of the SPPS reinforces this requirement.
76. Objections relating to residential amenity were associated with the properties at 98 and 99 Scraghey Road. 99 Scraghey Road is within less than 10 times the rotor diameter (around 900 metres) of Turbine 4 and Turbine 5. The dwellings main orientation is towards the south east away from the turbines (T2, T4 and T5). Open views from within the dwelling and from its curtilage would be possible of the turbines on the appeal site. The turbines would appear large and prominent within this close proximity and would visually impact on the residents of this property. However, given the separation distance between the nearest turbine and this property I do not consider that the visual impact would be unacceptably overbearing or dominant at this location.
77. The property at 98 Scraghey Road is on the opposite side of the road (B72) from the wind farm at around 900 metres from Turbine 4 and Turbine 5. The property is set back from the road and is below the level of the road. Given the properties close proximity to the site the wind turbines will appear prominent when viewed from within and around the property at 98 Scraghey Road. Although I do consider that the intervening vegetation around the site and along the road, other buildings in the area including 99 Scraghey Road, would intercept open views of the turbines on the appeal site. Whilst I accept the development would have an impact on the visual amenity of the residents at this property I do not consider it be unacceptably overbearing to justify refusal of the proposed development.
78. Third party objections were raised in respect of noise immissions from the proposed wind farm on the site. The BPG refers to "The Assessment and Rating of Noise from 2012/A0070

Wind Farms” (ETSU-R-97) as describing a framework for the measurement of noise and gives indicative noise levels calculated to offer a reasonable degree of protection to wind farm neighbours, without placing unreasonable restrictions on wind farm development. The ETSU-R-97 document recommends limits for noise immissions from wind farms at sensitive receptors. Applying the ETSU-R-97 full standard, noise from wind farms should not exceed 35-40 dB L_A90 or 5 dB above the background noise level. The corresponding night time figure should not exceed 43 dB L_A 90 or 5 dB above the background noise. Such limits can be increased if properties are financially involved.

79. Subject to conditions presented at the appeal hearing on 3 December 2016, which took account of the amended 5 turbine scheme the Council presented no objection in respect of the noise effects of the proposed wind farm at Altgolan. In the interests of residential amenity the noise immissions from the proposed wind farm should conform to those set out in Table 1. Should a reasonable complaint arise relating to the noise immissions from the site the developer, at their expense, should undertake a noise survey to assess the level of noise immissions from the wind farm to ensure compliance with the noise limits in Table 1. The results of such surveys should be provided within 3 months of the receipt of the complaint. These requirements are necessary to ensure the immission of noise levels are not exceeded in the interests of the protection of the surrounding residential amenity. However I have not been persuaded that it is necessary for the developer to undertake noise survey assessments, 6 months post construction, unless a reasonable complaint arises in respect of the noise immissions from the site. Nor have I been persuaded that it is reasonable or necessary for the developer to provide details relating to post construction wind data on the basis of protecting the residential amenity of the area.
80. Additionally I find no planning reason why the developer of the site should notify the Council when the development becomes fully operational or the model specification of the proposed turbines. Compliance with the noise limits set out in Table 1 means the developer must use a turbine model that will not exceed such noise limits.
81. As the Council were unable to refer to direct standards and guidance relating to the assessment of effects of the wind farm relating to noise immissions from amplitude modulation (AM) and the BPG is silent on this issue, I do not consider it to be reasonable to seek that the appellant should provide a scheme for assessment and regulation of AM following a complaint. In order to limit the effects of construction noise on the surrounding residential amenity it is necessary that construction work does not take place outside 07.00 to 19.00 hours on Monday to Friday and 07.00 - 13.00 and no working on Sundays.
82. Whilst I note third parties raised concerns relating to noise immissions, these concerns were not substantiated with a detailed assessment to challenge the appellant’s assessment or the Council’s recommendations relating to specified achievable noise immissions from the wind farm in accordance with the ETSU-R-97 recommended standards. Accordingly the objectors concerns relating to predicted noise levels are not sustained.
83. Third parties at 98 and 99 Scraghey Road raised concerns in respect of the impact of shadow flicker on residential amenity in the area specifically on the well being and health of the residents of these properties. Section 14 of FEI III provides an assessment of the potential shadow flicker for the proposed 7 wind turbine scheme. The assessment included a computerised analysis identifying buildings or houses that could be potentially affected by shadow flicker from the turbines and estimating the

times of day and days of the year when shadow flicker may occur. The computerised analysis has many limitations and presents a worst case scenario assuming the sun is shining 100% of the time and takes no account of intervening structures, landscaping and forestry blocks between houses and a turbine. The BPG advises that problems caused by shadow flicker are rare but that it is recommended that shadow flicker at neighbouring offices and dwellings within 500 metres should not exceed 30 hours per year or 30 minutes per day.

84. Based on the 7 turbine scheme, the analysis indicates that 6 dwellings could be potentially affected by shadow flicker, by virtue of the location of the dwellings within a potential shadow flicker zone (130 degrees either side of the north and 10 rotor diameters or 900 metres) of the proposed turbines. Table 1 of Section 14 of the FEI III lists the dwellings and notes which turbine is the nearest to the property that may have an impact from shadow flicker. The removal of turbines 6 and 7 from the proposal layout means that now only one property (H28) at 99 Scraghey Road will fall within the shadow flicker zone. Table 2 outlines the theoretical worst case for potential shadow flicker effects. For property H28 it states that the orientation from the nearest turbine is south west, estimated shadow flicker will be 75 days per year, with maximum of 45 minutes per day and a total of 25 hours per year. Factoring in regional weather data of average sunshine statistics taken over a 30 year period (1981 – 2010) a more realistic prediction was presented in Table 4 of Section 14 FEI III. For the property at (H28) 99 Scraghey Road the predicted shadow flicker effects taking account of regional weather conditions is 8 hours per year and 0.1 hours per day. The BPG recommended limits of 30 hours per year or 30 minutes per day are not exceeded at the property at 99 Scraghey Road.
85. The residents of 99 Scraghey Road stated that shadow flicker and flash of the blades would cause a problem for their son, who has Thygeson's Superficial Punctuate Keratitis. They stated the change in light would cause him pain. This evidence was not corroborated with medical evidence. Taking account of the worst case scenario 45 minutes per day of shadow flicker over 75 days a year there may be some impact on the residents of this property. Given the medical circumstances, related to the effects of light, presented by the residents of this property a condition to should be imposed to mitigate the effects of shadow flicker on this residential property and should such problems arise. The appellant raised no objection to this condition.
86. Some third party concerns were raised relating to interference with TV signals. These objections were not substantiated with evidence. No objections were raised by the statutory consultees or by the Council in respect of this issue. Accordingly I have not been persuaded these objections are determining in this appeal or that it is necessary to impose a condition requiring the remediation of any interference with domestic TV to be submitted and approved to the Council.
87. Third parties raised concerns about the impact on the value of properties. However, these concerns were not corroborated with evidence to demonstrate how the approval of another wind farm in an area where there are other wind farms would significantly impact on the value of property in the area. Accordingly I have not been persuaded the proposal would significantly impact on the value of properties in the area.
88. Having considered the objections raised in respect of the impact of the proposed development on residential amenity, whilst there will be some effects from the wind farm on the amenity of the residents I have not been persuaded that these effects would give rise to unacceptable adverse impacts. The appeal proposal satisfactorily

meets the requirements of criterion (a) and (vi) of Policy RE1 of PPS18 and the policies set out in the SPPS.

89. No objections were raised by the appellant in respect of limiting the period of the development to 25 years. I consider that such a condition is necessary given the mechanical lifecycle of wind turbines.
90. In order to achieve a safe access to the site and in the interests of road safety in the area visibility splays of 4.5 metres by 160 metres are necessary and should be provided at the junction of the proposed access with the public road. These have been detailed on the submitted drawings. Given the existing sloping nature of the land the gradient of the access should not exceed 45 (1 in 25 m) over the first 10 metres outside the road boundary. Section 6 of Volume II of the ES provides comprehensive details relating to the roads and access to the site. It also sets out details relating to the access route and deliver of turbine components to the site. The proposed route for construction of the turbine delivery traffic has been chosen following a review of the local roads network and consultation with representatives with Transport NI. As the haulage route relates to the transport of an abnormal load this will be subject to the agreement with Transport NI. Should any works or development along the haulage route be required they will be subject of a separate planning application. It is therefore not necessary to condition that details of the haulage route are submitted to and approved by the Council.
91. No objections have been raised by the Council in respect of the impact of the proposal on air traffic. Consultation has been carried out with the Civil Aviation Authority (CAA), NATS, Belfast City and Derry City airports and no objections have been raised in respect of the impacts of the development on air traffic or airport safeguarding. Furthermore no justification was presented by any of the consultees in respect of the need for aviation light at the highest point on each turbine. I have not been persuaded by the Council that it is necessary to impose a condition requiring a scheme for the installation of aviation lighting. Furthermore it is not necessary to condition that all the power lines should be located as detailed on the submitted drawings.

Conclusions

92. Whilst I have considered there to be some impacts on the visual amenity and landscape character area, bio- diversity and conservation interests of the site and the residential amenity of the area, I have concluded that they do not give rise to an unacceptable adverse impact. These impacts must be balanced against the wider public interest including the outlined environmental, economic and social benefits of the proposal which I consider are substantial. Subject to the implementation of the conditions set out below I am satisfied that the proposal meets the requirements of PPS18, PPS2 and the relevant policies contained in the SPPS. Accordingly the proposal therefore represents a form of development that in principle is acceptable in this area of countryside and on this basis this wind farm should be approved.

Conditions

1. The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.
2. No development activity, including ground preparation or vegetation clearance, shall take place until a Construction and Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Council. The approved CEMP shall be

implemented in accordance with the approved details and all works on site shall conform to the approved CEMP, unless otherwise agreed in writing by the Council. The CEMP shall include the following:

- a) Pollution Prevention Plan; including the establishment of buffer zones to watercourses and details of watercourse crossings;
 - b) Site Drainage Management Plan; including SuDS, silt management measures and foul water disposal;
 - c) Peat and Spoil Management Plan; including identification of spoil storage areas and reinstatement of excavated spoil;
 - d) Mitigation measures for construction in peatland habitats;
 - e) Water Quality Monitoring Plan;
 - f) Environmental Emergency Plan;
 - g) Details of the appointment of an Ecological Clerk of Works (ECoW) and their roles and responsibilities.
3. No development activity, including ground preparation or vegetation clearance, shall take place until a Final Habitat Management Plan (HMP) has been submitted to and approved in writing by the Council. The approved final HMP shall be implemented in accordance with the approved details and all works on site shall conform to the approved HMP, unless otherwise agreed in writing by the Council. The HMP shall include the following:
- a) Appropriate maps, clearly identifying habitat management areas and proposed drain blocking.
 - b) Detailed methodology and prescriptions of habitat management measures, including timescales and defined criteria for the success of the measures;
 - c) A revised version of Figure 5 (FEI III/5) showing a revised area of proposed use of surplus peat of habitat restoration;
 - d) Details of regular monitoring of habitat management measures using fixed quadrant locations; and
 - e) Details of the production of regular monitoring reports to be submitted to the Council at intervals to be agreed and to include details of contingency measures should monitoring reveal unfavourable results.
4. None of the following activities shall take place on the site:
- i. Peat cutting;
 - ii. Over grazing. Grazing on the site shall not exceed levels stated in DARD (2006), Table 2;
 - iii. Post construction no new drainage and no maintenance of existing drains with other than those related to the development's infrastructure as detailed by the final site drainage management plan;
 - iv. Flailing/mowing
 - v. Farming
5. There shall be no construction works within the bird breeding season (1 February to 31 August) in any year.

6. No development activity, including ground preparation or vegetation clearance, shall take place on site between 1 February and 31 August in any year until an Ornithological Management & Monitoring Plan (OMMP) has been prepared by a suitably experienced and competent ornithologist and approved in writing by the Council. The approved OMMP shall be implemented in accordance with the approved details and all works must conform to the approved OMMP, unless otherwise agreed in writing by the Council. The OMMP shall include:
 - a) Details of the appointment of a suitably experienced and competent ornithologist, with the power to halt works, to supervise works during the breeding bird season;
 - b) Details of appropriate mitigation measures to be implemented prior to any works commencing, including the establishment of species specific buffer zones to active nests or breeding territories (to be agreed with NIEA) and the phasing of works to avoid any development activity within these breeding bird buffer zones;
 - c) Details of the timing of ground preparation and vegetation clearance to avoid disturbance to breeding birds;
 - d) Details of weekly bird surveys during the construction phase;
 - e) Details of appropriate mitigation measures to be implemented during the construction phase, including, temporarily halting works and the establishment of species specific buffer zones to active nests or breeding territories (to be agreed with NIEA);
 - f) Provisions for the reporting of the implementation of the OMMP to the Council after construction has commenced and at the end of each bird breeding season during which work takes place,
 - g) a programme of ornithological mitigation measures, including breeding wader habitat management measures;
7. No development activity shall take place until a Bat Mitigation Plan (BMP) has been submitted to and approved in writing by the Council. The approved BMP shall be implemented in accordance with the approved details, unless otherwise agreed in writing by the Council.
8. No site works of any nature or development shall take place until a programme of archaeological work, has been implemented, in accordance with a written scheme and programme prepared by a qualified archaeologist, submitted by the developer and approved by the Council. The programme shall provide for the identification and evaluation of archaeological remains within the site, for mitigation of the impacts of development, through excavation recording or by preservation of remains, and for preparation of an archaeological report. The arrangements shall be implemented as agreed.
9. Access shall be afforded to the site at all reasonable times to any archaeologist nominated by the Council to observe the operations and to monitor the implementation of archaeological requirements.
10. The noise immissions from the wind turbines hereby approved (including any tonal penalty) when determined in accordance with the procedures described in pages 102 - 109 of ETSU-R-97 shall not exceed the values set out in table 1 below. Noise limits for any dwellings which lawfully exist or have planning permission for construction at the date of this consent but are not listed in Table 1 shall be represented by the physically closest location listed in Table 1 unless otherwise agreed by Derry City and Strabane District Council.

Table 1: Permitted Wind Farm Noise Limits dB LA90

Property	Easting	Northing	Standardised wind speed at 10m height (m/s) within the site averaged over 10-minute periods									
			3	4	5	6	7	8	9	10	11	12
H21	222360	376573	18.6	22.6	25.6	27.6	28.6	29.1	29.4	29.6	29.6	29.6
H22	222075	376409	20.9	24.9	27.9	29.9	30.9	31.4	31.7	31.9	31.9	31.9
H23	222426	376340	19.6	23.6	26.6	28.6	29.6	30.1	30.4	30.6	30.6	30.6
H25	222123	375832	23.3	27.3	30.3	32.3	33.3	33.8	34.1	34.3	34.3	34.3
H26	221980	375061	25.1	29.1	32.1	34.1	35.1	35.6	35.9	36.1	36.1	36.1
H27	221846	374815	25.8	29.8	32.8	34.8	35.8	36.3	36.6	36.8	36.8	36.8
H28	221765	374864	26.8	30.8	33.8	35.8	36.8	37.3	37.6	37.8	37.8	37.8
H29	221340	374425	26.1	30.1	33.1	35.1	36.1	36.6	36.9	37.1	37.1	37.1
H30	221196	374230	24.9	28.9	31.9	33.9	34.9	35.4	35.7	35.9	35.9	35.9
H31	221106	374131	24.2	28.2	31.2	33.2	34.2	34.7	35.0	35.2	35.2	35.2
H32	220814	374476	28.2	32.2	35.2	37.2	38.2	38.7	39.0	39.2	39.2	39.2
H38	221417	374184	23.9	27.9	30.9	32.9	33.9	34.4	34.7	34.9	34.9	34.9
H43	222177	376259	21.0	25.0	28.0	30.0	31.0	31.5	31.8	32.0	32.0	32.0
H44	221913	374939	25.9	29.9	32.9	34.9	35.9	36.4	36.7	36.9	36.9	36.9
H52	221679	374742	26.6	30.6	33.6	35.6	36.6	37.1	37.4	37.6	37.6	37.6

11. Within 4 days of the receipt of a written request from the Council, following a complaint which it judges to be reasonable from an occupant of a dwelling relating to noise from the turbine, the turbine operator shall, at their expense, employ a suitably qualified and competent person to undertake a noise test at the complainant's property to assess the level of noise immissions from the wind turbines and submit the results of the test and the data on which it was based to the Council. The test results shall be submitted to the Council within three months of the date of the written request, unless otherwise agreed in writing with the Council.
12. The wind farm operator shall provide the Council, the results, assessment and conclusions regarding the noise monitoring required by Condition 11, including all calculations, audio recordings and the raw data upon which that assessment and conclusions are based. Such information shall be provided within 3 months of the date of a written request of the Council unless otherwise extended in writing by the Council.
13. Construction work, which is audible at any noise sensitive property outside the site, shall only take place between the hours of 07.00 - 19.00 hours on Monday to Friday, 07.00 - 13.00 hours on Saturday with no such working on Sunday. Out with these hours, work at the site shall be limited to turbine erection, testing/commissioning works, emergency works, or construction work that is not audible at any noise sensitive property.
14. The permission shall be for a limited period of 25 years from the date on which the wind farm is first connected to the grid. Within 12 months of the cessation of electricity generation at the site, or upon the expiration of this permission, whichever is sooner, all structures and access tracks shall be removed and all land affected by the development restored in accordance with a decommissioning scheme submitted to and approved by the Council prior to the commencement of any works, or in accordance with any variation to the scheme to which the Council subsequently agrees in writing.

15. Prior to the commencement of development, a report detailing measures to mitigate the effects of shadow flicker on the nearby residential property at 99 Scraghey Road shall be submitted and agreed in writing with the Planning Authority. The report and mitigation measures should include timescales within which resolution of a problem should take place.
16. Prior to the commencement of development, visibility splays of 4.5 metres by 160 metres and the required forward sight distance of 160 metres shall be laid out the junction of the proposed access road with the public road and shall be retained and thereafter kept clear.
17. The gradient of the access road shall not exceed 45 (1 in 25) over the first 10m outside the road boundary.

This decision is based on the following drawings, only in so far as Turbine 1, 2, 3, 4 and 5:-

- Drawing No 01B Site location Map (Scale 1:12,500) (only in relation to Turbines 1-5)
- Drawing No TL19 Scale 1:10.0000 Reduced Altgolán Layout (Turbines 1-5) Oct 2016
- Drawing No 03-1B Proposed Site Layout Map Sheet 1 of 2 (only in relation to Turbines 1-5)
- Drawing No 03-2B Proposed Site Layout Map Sheet 2 of 2 (only in relation to Turbines 1-5)
- Drawing No 04 Typical Wind Turbine Elevations FEI III October 2013
- Drawing No 05 Typical Wind Turbine Plan FEI III October 2013
- Drawing No 06-1B Proposed Electrical Control Building Plan & Section
- Drawing No. 06-2B Proposed Electrical Control Building Elevations
- Drawing No. 06-3B Proposed Electrical Control Building Cess Pit Details
- Drawing No 07 Site Work Drawings and Access Road Construction Details FEI III October 2013
- Drawing No 08 Site Entrance Details FEI III October 2013
- Drawing No 09B Proposed Drainage Details

COMMISSIONER ROSEMARY DALY

Note: The validity of this decision may be challenged by applying to the High Court for a judicial review. This must be done promptly and in any event within three months of the date of this decision.

List of Appearances on 9 November 2016

Planning Authority:- Sasha Blackmore BL instructed by the Derry City & Strabane District Council
Joanne Doherty, Derry City & Strabane District Council
Kieran Shanks, Derry City & Strabane District Council (EHO)
Laura Coyle, Derry City & Strabane District Council
Christopher Perry, NIEA, Natural Environment Division
Emma McLaughlin, NIEA, Natural Environment Division
Mark Hammond, NIEA, Landscape Architects Branch

Appellant:- William Orbinson QC Instructed by John Carolyn Solicitor
Kay Hawkins, Hawkins Bell Associates Ltd
Laura Roddy, Canavan Associates
Sheila Ross, Ross Environmental Associates
Neil McCullagh, Oxford Economics
Barry O Kane, Altgolan Windfarm Ltd
Doreen Walker, Altgolan Windfarm Ltd
John Carolyn, Solicitor

List of Appearances on 3 December 2016

Planning Authority:- Sasha Blackmore BL instructed by the Derry City & Strabane District Council
Joanne Doherty, Derry City & Strabane District Council
Kenny Donaghy, Derry City & Strabane District Council
Christopher Perry, NIEA, Natural Environment Division
Mark Hammond, NIEA, Landscape Architects Branch

Appellant:- William Orbinson QC Instructed by John Carolyn Solicitor
Kay Hawkins, Hawkins Bell Associates Ltd
Laura Roddy, Canavan Associates
Sheila Ross, Ross Environmental Associates
Neil McCullagh, Oxford Economics
Barry O Kane, Altgolan Windfarm Ltd
Doreen Walker, Altgolan Windfarm Ltd
John Carolyn, Solicitor

List of Documents

Planning Authority:	"A" 2016	Derry City & Strabane District Council Statement of Case and appendices
	"A"	Statement of Case DOE Planning Service
	"A1"	Noise Control Conditions (9 th June 2014)
	"A2"	Additional Ornithology Draft Conditions for Altgolan Wind Farm and additional conditions received from the appellant at the hearing
	"A3"	Legal Submissions of the Department in response to the appellant' submissions on Peat Policy Issues/ The second reason for refusal

"A4" Letter to PAC from Gary Vance, DOE
 Economics Branch
 "A5" Map showing proposed and Existing Wind
 Farm Clusters within 20km of Altgolan
 "A6" Email 30 Nov 2016 – Update on Altgolan
 Following Planning Committee Map of
 "A7" Map of Single Turbines in the Area
 "A8" NIEA response on amended scheme 9
 November 2016
 "A9" Updated conditions December 2016
 "A10" Birds draft condition
 "A11" Report to Planning Committee
 "A12" Case law bundle x 5 Cases 3 Dec 2016
 "A13" Case law bundle x 4 Cases 9 Nov 2016

Appellant:

"B" 2016 Supplementary Statement of Case by
 Canavan Associates
 "B" Statement of case and appendices
 Canavan Associates
 "B1" Case law submitted by the Appellant
 "B2" Article "Wind farms on degraded peat
 lands are unlikely to reduce carbon
 emissions"
 "B3" Legal Submissions on behalf of the
 appellant
 "B4" Submission from Oxford Economics
 "B5" Altgolan Wind Farm Appeal Appellant's
 Submission on the SPPS
 "B6" The appellant's submission in response to
 the Department's submission on the Peat
 Policy Issues/the second reason for refusal
 "B7" Amended ZVI for 5 turbines
 "B9" Consolidated Landscape and Visual Pack

Third Parties

"C" 2016 William McHugh Letter of Support
 "C1" 2016 Anne Gallen Letter of Support
 "C2" 2016 McHugh Family Letter of Objection

 "C" Letter of objection Mr James Mc Hugh 22/4/2014
 "C1" Letter of objection M.C & Paul McHugh dated
 22/4 /2014
 "C2" Letter from Peter Crossan on behalf of S and G
 McGlinchey, Mr D Collins and Mr P McHugh
 "D" Statement of Case Strabane DC

Environmental Information

13 Turbines layout

- Altgolan Wind Farm ES Volume 1 Non Technical Summary July 2006
- Altgolan Wind Farm ES Volume 2 Main Report and Annexes July 2006
- Altgolan Wind Farm ES Volume 3 Maps, Figures and Visuals July 2006
- Further Environmental Information (FEI) Doc 1 of 2 December 2007
- Further Environmental Information (FEI) Maps, Figures and Visuals Doc 2 of 2 December 2007

7 Turbines layout

- Further Environmental Information II October 2012
- Altgolan Wind Farm Environmental Statement Volume II – Main Report and Annexes
- Further Environmental Information II Cumulative Impact Assessment Visuals October 2012
- Altgolan Wind Farm FEI II October 2012 – FEI II/4: Cumulative Impact Visuals
- Further Environmental Information III October 2013
- Further Environmental Information III Updated Cumulative Landscape and Visual Impact Assessment - October 2013
- Altgolan Wind Farm Further Environmental Information III – October 2013